

Sunder Lal Vs. State

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Court : Delhi

Decided On : Nov-17-1989

Reported in : 40(1990)DLT478

Judge : Charanjit Talwar and; V.B. Bansal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 100(4) and 452

Appeal No. : Criminal Appeal Nos. 196, 203 and 216 of 1934 and 44 of 1985

Appellant : Sunder Lal

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi,; K.K. Sud,; M.L. Srivastava and;

Judgement :

Charanjit Talwar, J.

(1) The appellants herein Vinod Kumar, son of Subedar Sing Rajesh Kumar, son of Madan Mohan and Sunder Lal, son of Nawab Singh have been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life, They have further been convicted for the offence under Section 397 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500.00. in default of payment of fine, to undergo rigorous imprisonment for

three months. The sentences of imprisonment Were, how ever directed to run concurrently.

(2) Along with these three appellants another accused viz.. Sunder Lal son of Kherati Lal had also been tried. The pro section case as laid before the trial court was that on 16th July, 1981 at about 7.30 p.m. the four accused abducted Kirpa Shankar, who had been entrusted with 43 gold bangles by his employer M/s. NathuMal and Sons, Jewellers of Chandni Chowk and forced him to accompany them in a three-wheeler scooter. The scooter was driven to a lonely spot on title ring road where after robbing him of the bangles, he was stabbed to death. The booty which was divided amongst three out of. the four accused namely, Vinod Kumar, Rajesh and Sunder, son of Nawab Siagh was recovered from their houses during investigation.

(3) As no recovery of gold bangles was made from Sunder Lal son of Kherati Lal.the trial court was of the opinion that possibly had not participated in the crime. He was thus given benefit of doubt and acquitted-The other three accused, who have been found guilty, have assailed the judgment by filing three separate appeals. Sunder Lal son of Nawab Singh's appeal is numbered Cr. Appeal No. 196 of 1984; Vinod Kumar's appeal is Ct. Appeal No. 203 of 1984 and Rajesh Kumar's appeal is numbered' Cr. Appeal No. 216 of 1984. The State has also filed an appeal challenging the acquittal of Sunder Lal son of Kherati Lal. That appeal is numbered as Cr. Appeal 44 of 1985., As the questions of fact, and law are common in all these four appals, this judgment disposes of all of them.

(4) The conviction, of the three appellants is .based solely on circumstantial evidence; there is no direct evid.^cc to- prove the conviction. thereforee, the prosecution evidence has to satisfy the tests which have been laid down By the Supreme Court in its various judgments. In its latest decision in Ashok Kumar v. State of Madhya Pradesh, : 1989 CriLJ2124 , (1) the following tests have been reiterated

(1)The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established ;

(2) those circumstances should be of a definite tendency, unerringly pointing towards guilt of the accused ;

(3) the circumstances, taken cumulatively, should form a chain, so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that, of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(5) The prosecution case was that out of the four accused, Vinod and Rajesh were known to Kirpa Shanker. They knew that he was an employee of M/s. Nathu Mal and Sons, Jewellers of Chandni Chowk, Delhi. They were aware that he used to be entrusted with gold by his employer for purposes of taking it to various goldsmiths of Dariba Kalan for preparation of gold bangles and other ornaments. They had been keeping watch on his activities and on 16th July, 1981 at about 7.30 p.m. they forced him to sit in a three-wheeler scooter which was being driven by Public Witness. Tek Chand. At that time according to Panna Lal, a senior partner of M/s. Nathu Mal and sons, Kirpa Shanker had an envelope containing 42 gold bangles and another bangle in his pocket. On reaching near the T' Junction of the Ring Road, the scooter was stopped by them and its driver Tek Chand asked to wait for their return. Kirpa Shanker was taken on foot to a field near the Ring Road where he was robbed and murdered. The body was thrown in a pit nearby.

(6) Arising out of the said allegations, the first charge formed against the four accused was that of abduction under Section 364 of the Indian Penal Code. The trial court has acquitted all the accused of this charge. The finding is that the deceased was neither kidnapped nor abducted with the intention to murder him nor that he was abducted by deceitful means. However what has been found is that the deceased who was acquainted with Rajesh and Vinod had accompanied them on that fateful day just for an. though the fact established is that he had been asked by his employer to go immediately to return the gold bangles to a gold

smith of Dariba kalan.

(7) The effect of acquittal of Sunder Lal son of Kherati Lal must also be kept in view in re-assessing the genesis of the prosecution case. He has been acquitted because apart of the body was recovered from him.. The main reason for the conviction of the three appellants can be..said to. be recovery of gold bangles from their houses after their arrest. But those gold bangles were not produced before us. In fact no case property was produced before us. Thus we have been prevented from properly assessing the arguments of the appellants; about the bangles and weapons of offence having been planted.

(8) While accepting the prosecution version of recoveries the trial court has mainly relied on the statement of Public Witness Panna Lal, who happened to be a witness to all the said recoveries. It appears that Panna Lal did not support the prosecution case qua the recoveries in its entirety. He had mixed up the recovery of gold bangles from the house of one accused with the recovery from another. He was therefore, allowed to be cross-examined.

(9) Thus learned counsel for the three appellants submit that the three said factors namely (1) acquittal of the accused of the charge of abduction. (2) acquittal of Sunder son of Kherati Lal of all the charges including murder and (3) non-production of the case property before us entitle those appellants also to acquittal. To appreciate the contentions, the prosecution case may be summarised. The trial court has noticed the facts in great details, therefore, no useful purpose would be served by repeating them.

(10) Kanhaya Lal, a goldsmith by profession carrying on his business at premises No. 242, Gali Kunjus, Dariba Kalan, Delhi got registered a First Information Report on 17th July. 1981 at about 2.50 p.m. at Police Station Kotwali that one Kirpa Shankar. an employee of M/s. Nathu Mal and Sons, Jewellers of Chandni Chowk, Delhi had been entrusted by him with 43 gold bangles weighing 504.500 grams, a day earlier, i.e., on 16th July, 1981 at 6.00 p.m. The complaint was that Kirpa Shankar who was to take those 43 bangles to the shop of M/s. Nathu Mal and Sons did not do so nor had he returned those bangles to the complainant. Hence, the complaint against him for breach of trust punishable under Section 406 of the

Indian Penal Code.

(11) On 18th July, 1981, a dead body of a young man of about 28130 years was found lying in a dry drain (which was about 15 feet deep) near Village Nangia, Delhi. This village is near the Ring Road, a little short of Nizamuddin Bridge. It seems that particular area falls within the jurisdiction of Police Station, Tilak Marg. The matter had earlier been reported to Police Station, Nizamuddin, which in turn informed the former police station about it. That information was recorded in the Daily Diary at Sl. No. 32-B. Sub-Inspector Om Prakash of Police Station, Tilak Marg was directed to go to the spot. On reaching the spot he found that the dead body was in a highly decomposed condition. He noticed that a wire had been tied around its neck. He had the body photographed from various angles. On its search, from the right pocket of the pant of the deceased, some articles including one gold bangle were recovered. 'Those were taken into possession vide memo Ex. Public Witness 71 A. Si Om Prakash made his endorsement on the said daily diary report (Ex. Public Witness 17/c) and sent it to the Police Station for registration of a case. B6 prepared the inquest report and took the blood and also controlled earth samples from the spot. He also prepared a site plan. As the identity of the dead body was not known by them, the Investigating Officer made an application requesting the Police Surgeon to preserve the body for 72 hours, before performing the post mortem.

(12) The autopsy was performed on 20th July, 1981 at about 8.30 a.m. Even then the identity of the deceased was not known. According to Dr. Bharat Singh, Police Surgeon, who conducted the post mortem, the body was in a State of advanced decomposition. He found that:

THE skin from all over the body was peeled off. The skin of hands and feet had fallen like gloves.

He opined that the man who was about 28130 years of age had met with violent death about five days prior to 20th July, 1981. The opinion was given because of the following injuries on 'the neck:

1. Incised wound over the neck on the front side placed horizontally. Size of the wound was 4'X3' cervical spines deep. Wound surface was covered by maggots. Margins were dried up by wrinkles. Trachea and oesophagus and other structures were cut in one line. Soft tissues in the surrounding area were blackish, in colour. Wound was situated at the lower level of thyroid cartilage. There was superficial cut on the fourth cervical vertebra.

(13) We may notice at this stage that we have carefully looked at the photograph of the deceased. We have no hesitation in holding that it is quite easy for anyone who was familiar with the deceased to recognise him. The prosecution produced Public Witness 4, Brij Bhan, younger brother of the deceased. He positively recognised the photograph to be of Ins elder Brother Kirpa Shankar. V/e have no reason to disbelieve him. Thus the missing Kirpa Shankar who was entrusted with 4-3 gold bangles on 16th July, 19'81 at about 6.00 p.m. was the murdered person. In view of the autopsy Surgeon 's opinion that he was close to death about five days prior to .the date of the post mortem, which opinion was not even challenged as that Doctor was not cross-examined at all, it can safely be assumed that Kirpa Shankar was murdered sometime in the late evening of 16th July, 1981, the date on which hs allegedly disappeared. There is conclusive evidence on the record to show that till about 7.00 p.m. on that date, he was alive.

(14) In view of the said First Information Report (Ex- Public Witness 22/A) got recorded by Shri Kanhaya Lal in Police Staion, Kotwali Delhi, it has to be held that Kirpa Shankar did have in his possession on the evening of 16th July, 1981 43 gold bangles in all. Whether that gold was the property either of M/s. Nathu Mal and Sons, Chandni Chowk, Delhi or of the goldsmith Kanhaya Lal, is not a question which falls directly for our consideration.

(15) During investigation; Si Om Prakash who appeared- as Public Witness 28. was successful in locating the goldsmith who had prepared the bangle, seized vide memo (Ex. Public Witness 7/A) from the pocket of the deceased. it may be noticed that. Dariba Kalan, Delhi is a locality where a number of goldsmiths and Jewellers carry on their busoness. Probably he contacted very many of them and after persistent efforts, was able to find on 21st July, 1981 that it was in the shop of

Kanhaya. Lal that the said bangle was prepared. He was then informed that actually 43 gold bangle weighing 504.500 grams in all had been entrusted to Kirpa Shanker and a receipt to that effect had been executed by him. That receipt has been brought record as Ex. Public Witness 13/A

(16) It is useful at this stage to refer to the evidence of Kanhaya Lal, Public Witness 15. According to this witness he was carrying on business of gold smith for the last about 10-15 years at shop No, 242. in Gali Kunjus Dariba Kalan Delhi. He Along with other goldsmiths working in the shop which he owned used to prepare bangles according to the, size and specification given to them by the jewellers. M/s., Nathu Mal and Sons were one of the jewellers. He deposed that on 16th July, 1981 he received a telephonic message from M/s. Nathu Mal and Sons informing him that Kirpa Shankar of their employees was being sent to his shop for collecting -samples of bangles. After a short while, at about 6.00-p.m Kirpa Shankar reached his shop and he (Kanhaya Lal)- handed over 43 gold bangles of different designs, weighing in all 504.500 grams to him. A slip acknowledging receipt of bangles .was got signed from Kirpa Shankar in his presence. Thereafter Kirpa Shankar left his shop.

(17) On 17th July, 1981, Kanhaya. Lal stated that he sent one of his employees, namely, Slibbas to M/s. Nathu Mat and Sons to enquire as to what design out of the 43 gold bangles had been approved by them. He further deposed and we quote him:

ULTIMATELY we came to know that Kirpa shankar never reached the shop of M/s. Nathu Mala and Sons with those bangles. we also made some search for Kirpa Shankar but without any success, Thereafter I lodged a report at Police Station, Kotwali, Chandni Chowk,. Delhi where a case was. registered. After about five days of my lodging that report, police came to me for making enquiries. The police brought one gold bangle to me and enquired about the manufacturer of that bangle. I told the. police that the said bangle was prepared at my shop. I also enquired from the police about the remaining 42 bangles.

(18) Thus the impression created by reading of the testimony of Kanhaya Lal is that Kirpa Shankar after taking the gold bangles from him did not go to his

employer's shop. Infact that was the complaint in the said First Information Report-also.

(19) Shri Panna Lal Public Witness. 8, however, completes the verion. The evidence of Panna Lal runs into about 60 pages. His-testimony, has to be assessed at various stages while discussion the circumstantial evidence of this case but at this stage suffice it to,notese that he admits that Kirpa Shankar after receipt of the samples of gold bangles from Kanhaya Lal did reach his shop.I was his case that he had been running the jewellery business for about 30 years and that he used to get the gold bangles prepared from the goldsmiths for his customers; he used to send old ornaments to be prepared into gold bangles according to their specification and choice. Kb stated that it was his practice that:

THE customers would select the design and size or other specifications at my shop and according to those, specifications I would ask these goldsmiths to prepare bangles. I used to show at my shop to the customers samples of various designs and the customers would select from them. I used to keep some samples at my shop and if more were needed, I would call from the goldsmiths for showing to the customers.

(20) While referring to Kirpa Shankar he stated that he was working in his shop for about 1 or 1-112 years before his death. He used to pay him approximately Rs. 2001- per month. He had other employees also, Matadin, Bipin and Kundan Lal were some of them. Matadin and Kirpa Shankar used to reside in a room above his shop on the second floor. About the incident of 16th July, 1981 he admitted that he sent Kirpa Shankar to the shop of Hira Lal who used to sit in the shop owned by Kanhaya Lal) to bring some gold bangles so that he could show them by way of samples. Kirpa Shankar brought 43 gold bangles from that shop which were shown to the customer and he (the customer) selected one of them and placed order for four bangles of that design and size. What happened thereafter is relevant for discussion of this case and, thereforee, we quote Panna Lal:

I gave that sample bangle to Kirpa Shankar to keep separate and also handed over the rest of 42 bangles also to him in the same envelope to take all of them. to the shop of Hira Lal with instructions to get prepared from the shop four gold

bangles of the size and design given to him separately and to return all the bangles to that shop. He had kept the one gold bangle which had been selected as a sample in his pocket. The rest he kept in the envelope in his hand. Kirpa Shankar started from my shop at about 7.00 p.m. or 7.30 p.m. for going to the shop of Hira Lal with those gold bangles. I closed the shop then. Next day I receive a telephone at my shop from the shop of Hira Lal that he had not received back the gold bangles. Kirpa Shankar had not come to my shop that day. I enquired from Matadin who informed me that Kirpa Shankar had not come to the room also nor slept there at the night. Some person came from the shop of Hira Lal and I told him that I had sent back those gold bangles through Kirpa Shankar. But he said that those had not been brought at his shop.

(21) Thus the fact is corroborated from the statement of Panna Lal that Kirpa Shankar who was an employee of M/s. Nathu Mal and Sons, did have in his possession 43 gold bangles at about 7-7.30 p.m. He had been instructed to return those to the shop of Hira Lal. One bangle, the design of which had been approved by a customer, had been kept by him separately and the other 42 in an envelope. As Kirpa Shankar never reached the shop of Hira Lal on that date or on the next day, therefore, an F.I.R. (Ex. Public Witness 22/A) about Kirpa Shankar having misappropriated those bangles was got registered in Police Station, Kotwali on 17th July, 1981. As noticed above, his dead body was found a day thereafter, i.e., on 18th July, 1981. Only that bangle which had been approved by the customer, was found from his pocket. From the testimony of Dr. Bharat Singh, who performed the post mortem. it is further clear that it was a case of culpable homicide amounting to murder. The Investigating officer found that the bangle recovered from the deceased had been made at the shop of Hira Lal-Kanhaya Lal. He further came to know that infact 43 gold bangles including the one recovered had been handed over to Kirpa Shankar, the deceased. Thus the conclusion of the Investigating Officer that Kirpa Shankar was robbed and murdered was well founded.

(22) The prosecution case as laid before the trial court was that Kirpa Shankar had been abducted with the intention of robbing him of those bangles. As noticed at the outset. the first charge against the four accused was of abducting Kirpa

Shankar in order to murder him. That charge of abduction against them was to the following effect

THAT on 16-7-1981 at about 7.00 p.m. in the area of Chandni Chowk, Delhi you all four accused in furtherance of common intention of you all abducted Kirpa Shankar Mishra son of Ram Ikbāl in order that he might be murdered or might be so disposed of as to be put in danger of being murdered and thereby you all committed an offence punishable u/s. 364 Indian Penal Code r/w Section 34 Indian Penal Code and within the cognizance of this Court.

(23) It seems that the prosecution's allegation that Kirpa Shankar had been abducted by the four accused was based on the disclosure statements of the accused Rajesh Kumar @ Pappu and Vinod Kumar. Rajesh Kumar during day time was running a sort of a tea stall near the shop of M/s. Nathu Mal and Sons and in the evening he used to sell some other items by displaying their, on a Patri nearby that shop. It was known that the other accused Vinod used to visit him frequently. After the disappearance of Kirpa Shankar these two boys had not been seen near the shop of the jewellers. The police had kept a vigil in the Chandni Chowk area and around the shop of M/s. Nathu Mal and Sons. They were on the look out of various persons including the said two accused. In pursuance of a secret information Si Om Prakash arrested these two accused on 24-7-81 from the Company Garden which garden is also known as Gandhi Bagh and is situated very near the Chandni Chowk. During interrogation, the accused revealed that on 16th July, 1981 at 7.30 P.M. Kirpa Shankar, who had just left his employer's shop, i.e., M/s. Nathu Mal and Sons and was proceeding towards the shop of Hira Lal-Kanhaya Lal to return the bangles, was stopped outside Dariba Kalan by them and asked to sit in the three wheeler scooter of Public Witness Tek Chand. Rajesh Kumar had his own two wheeler scooter. He asked Tek Chand to follow him and proceeded towards the Ring Road via Kauriya Bridge, Mathura Road and Bhairon Road after the exhibition ground. On reaching the T junction of Bhairon Road, which road connects the Ring Road with Mathura Road near the Old Fort, he (Rajesh) stopped his scooter and parked the same. He directed Tek Chand to wait for them at that very junction. According to that statement, the accused accompanied by Kirpa Shankar thereafter proceeded on the Ring Road on foot. It

was from those disclosure statements that the Investigation Officer concluded that the four accused had taken Kirpa Shankar near the spot where his body was found and murdered him.

(24) As per those statements, after sometime they all returned to the 'T' junction, three of them i.e., Vinod and the other two accused both named Sunder got into the three wheeler scooter and Rajesh proceeded on his own scooter for their return journey. They further disclosed that the bangles which they robbed were divided amongst themselves

(25) It was in pursuance of those statements that from the house of accused Rajesh @ Pappu, eleven old bangles recovered. Similarly on the basis of the disclosure statement, two broad bangles, i.e. Karas' and nine ordinary bangles were recovered from the house of Vinod Kumar. He also disclosed that he had hidden a Knife which was also recovered after two days.

(26) The accused Sunder Lal son of Nawab Siagh surrendered before the court of a Magistrate on 29th July 1981. On 30th July, 1981 on his disclosure statement and pointing out 20 gold bangles were recovered from his house. It is stated that these bangles were lying concealed behind a statue. On that very day, i.e., 30th July, 1981, a dagger was also recovered on his pointing out from the vicinity of a bridge on Bhairon Road.

(27) Thus the foundation of the prosecution case was that Kirpa Shankar had been abducted by the four accused. It was to be based on the testimony of Public Witness - 2 Tek Chand who had been earlier examined, under Section 164 of (the Code of Criminal Procedure).

(28) The learned trial court, however, has not believed the prosecution case to the extent that Kirpa Shankar was abducted, as alleged or at all. All the accused were acquitted of that charge. The finding on that aspect is given in the latter part of paragraph 67 of the impugned judgment. It was observed:

HERE in the instant case, the deceased had just accompanied the accused persons being a friend without any inducement or allurement or threat. It seems

that the deceased accompanied them in good faith being an acquaintance. In order to establish the charge of abduction with intention to murder it is not enough for the prosecution merely to prove certain circumstances under which the abducted person was induced to go nor even to prove mis-representation. It also must be proved that the abductor had the intention at the time of abduction that the person abducted would be murdered or would be so disposed of as to be put in the danger of being murdered. I, therefore, find that the prosecution has not been able to prove the charge under Section. 364 IPC.

(29) From the above finding it is clear that the trial court has proceeded on the basis that Kirpa Shankar was a friend of the accused persons and had accompanied them in that capacity, it has also been observed in the impugned that Kirpa Shankar had been taken away in a scooter by the accused on the pretext of outing. For the finding regarding the friendship of the deceased with the accused and that he had accompanied them for an outing, the only admissible evidence produced by the prosecution is the testimony of Public Witness -2, Tek Chand, who claimed to be, by profession & scooter driver.. There had been some controversy raised before the trial court as well as before us that Tek Chand was actually not a three-wheeler driver as the scooter bearing No. DER-1763, which he claimed belonged to him, was in fact the property of one Abdul Sattar. The record of the case, however, shows that Public Witness -2, Tek Chand had claimed the release of the said three-wheeler scooter in his capacity as driver of the vehicle, which had been impounded by the police on 24th July. -1981 ..during investigation-of the case. The application made in the court of Shri A. K. Srivastava, Metropolitan Magistrate (Ex. PW-2/DC) for the supradari of the scooter clearly shows that Tek Chand was seeking its release in his capacity of being the driver and not the owner.

(30) The question to our mind is whether Tek Chand, as claimed by the prosecution can be said to be a witness who had last seen the deceased with the four accused? Did Kirpa Shankar go with them willingly, if at all

(31) We have carefully scrutinised the statement of Public Witness -2 Tek Chand. The observation of the learned trial court that the deceased had accompanied the

accused willingly because he was their friend, is not born out from his statement. According to this witness, he knew one of the accused, Rajesh @ Pappu rather well from before. The witness had been engaged by that accused on an earlier occasion also. It seems that Rajesh knew that Tek Chand was residing in Bhagirath Place, Chandni Chowk, Delhi and Tek Chand was aware that the brother of that accused was running shop in Chandni Chowk. On 16th July, 1981 Rajesh went to Tek Chand's house about 4-5.00 p.m. and engaged his scooter for going to visit some place in the evening. The witness agreed and promised to reach the shop of the elder brother of that accused. According to him he reached the shop at 5.00 p.m. where he met Rajesh and the other accused Vinod. But he was made to wait as those two were taking tea. Rajesh @ Pappu told him that he was waiting for his other friends. Around 5.30 p.m. or 6 p.m. two boys whom the witness did not know and saw them for the first time also reached there. Vinod and one of the two boys who had reached thereafter the witness's arrival, sat in his scooter and started talking to each other. While the other two accused were talking to another person, who appeared to the witness to be a passer by. Tek Chand stated that he continued to wait till about 6.30 p.m. It was that time that the person who appeared to be a passer by, left the place and Rajesh @ Pappu called somebody. A boy, who came on calling of Pappu, sat in the scooter. The fourth accused also sat in that scooter. Pappu, however, had his own two-wheeler scooter. He started it and asked Tek Chand to follow him. Thus at that time there were four persons who had occupied the passengers seats in the three-wheeler scooter, i.e., Vinod the other two accused, who are both named Sunder and the fourth person, who according to the prosecution was Kirpa Shankar. Tek Chand does not claim that he heard any talk between Kirpa Shankar and the accused either prior to his sitting in the scooter or thereafter. Tek Chand merely said that two of the accused were talking someone who seemed to be a passer by and on his going away Rajesh called out a boy who came and sat in the scooter. The witness did not know that boy.

(32) Public Witness -2 Tek Chand admitted that he had not given facial description (hulia) of the boy (Kirpa Shankar) either to the police or to the Magistrate. His Explanation was that he had seen him for the first time only on that day. When shown the seven photographs of the deceased (Ex. Public Witness. I/B-I, 2,3,6,7,8

and 10), he was unable to identify the body. The further question after he had seen the photographs to pin point the identity of that boy and his answer are as follows:

Q.Can you identify the person who accompanied the four accused in your scooter and who did not return on 16-7-81?

A.I may perhaps be able to do so if he comes before me and I may be able to look at him very thoroughly.'

(33) Learned counsel for the appellant are right to the extent that at least from Tek Chand's statement it cannot be held that the fifth person who had allegedly accompanied the accused in the three-wheeler was Kirpa Shankar. They submit that at the time when the three-wheeler scooter allegedly left the vicinity of Panna Lal's shop, Kirpa Shankar was still attending to his work. The argument is that according to Panna Lal, Kirpa Shankar was in the shop till 7-7.30 p.m. on 16th July, 1981. This submission needs to be assessed.

(34) From Public Witness Panna Lal's testimony which we have quoted above (at page 12), it appears that when Kirpa Shankar left to return he bangles to the goldsmith, he closed the shop. Thus up to the time of closing of the shop which we are informed in Summer is up to 7.30 p.m., Kirpa Shankar was at the shop. But by that time as per the examination-in-chief of PW-2 Tek Chand, the accused had left the area in his scooter. The timings given by him were that he reached the rendezvous, that is the shop of the elder brother of Rajesh at about 5.00 p.m. If was about 5.30 p.m. or 6.00 p.m. then the other two boys whom he did not know (reference was to the two accused both named Sunder), reached here. It was at about 6.30 p.m. when the passer by with whom Rajesh @ Pappu was talking, had left that the fifth person, who according to the prosecution was Kirpa Shankar, was called. He was made to sit in the scooter and they all proceeded towards the 'T' junction, i.e., near the place of occurrence of the murder. They reached thereby 7.30 p.m

(35) The difference of about one hour given by the two witnesses, i.e., Tek Chand and Panna Lal about the movements of Kirpa Shankar by itself is not all that important. What is important is that Tek Chand was unable to identify the

photographs of the deceased This witness was primarily produced by the prosecution to prove that it was Kirpa Shankar who was abducted by the four accused and was taken in his scooter on 16th July, 1981 at about 7.00 p.m. from the area of Chandni Chowk. He was supposed to have told the police that the fifth boy (referring to Kirpa Shankar) was forced by Sundar of Nabi Karim to sit in his scooter. But this fact was not even brought out by the public prosecutor in the examination-in-chief of the witness. It was only in cross-examination by Mr. K. K. Sud that he was confronted with his statement under Section 161 of the Code of Criminal Procedure on this aspect but he denied having made such a statement. His specific assertion that he did not know the two accused both named Sunder, has also been accepted by the prosecution.

(36) The prosecution has heavily relied on the testimony of PW. 2 Tek Chand to prove that the deceased was last seen together with the accused. However, as per our discussion above, from the part of his statement which we have noticed so far, it is not firmly established that the person who had travelled in his scooter Along with the three accused was Kirpa Shankar. We may add that according to the prosecution, the above testimony together with extra confessional statements made by the accused to this witness and also to Public Witness .9 Rana Singh, leave no doubt that it was Kirpa Shankar who had been taken by the accused for an outing. It is further alleged that the accused had threatened both these witnesses not to disclose this fact to anyone. The argument is that it was because of the threat of dire consequences that these two witnesses did not report the matter to the police or disclose it to anyone else. We would revert to this aspect of the case a little later.

(37) In our view, it is appropriate at this stage to consider the argument regarding the non-production of the case property. The case property consisted of 43 gold bangles; one recovered from the pant pocket of the deceased, 11 from the house of Rajesh, another 11 from the house of Vinod and twenty from the house of Sunder son of Nawab Singh. Apart from these E ornaments, the prosecution case is that three different weapons were also got recovered at the pointing out of three of the accused. The pant which according to the prosecution, Vinod was wearing at the time of commission of the offence and which had become blood stained, was also

seized.

(38) As has been noticed above, the acquittal of Sunder son of Kherati is based mainly on the fact that no gold ornament had been recovered from his possession or at his pointing out. The other accused have primarily been found guilty because of the recoveries of gold bangles from them. therefore, the gold recoveries from the three accused are a very important piece of prosecution evidence. The learned trial court has believed the recoveries from the accused', as alleged. Public Witness .8, Panna Lal's testimony is the pivot around which the prosecution case regarding the recoveries revolves.

(39) However, before we proceed to analyze that part of the testimony of Public Witness. 8, Panna Lal, it may be re-emphasised that he was permitted by the trial court to be cross-examined by the prosecutor, on the aspect of recoveries of gold bangles as he had mixed up the incident of recovery from the house of one accused with the recovery from another. But we are unable to properly assets the arguments about the recoveries because of non-prodnction. of case property before us by the State. We were informed that the learned trial court after its decision, vide. its order of 27th October, 1984 had directed handing over of the 43 gold bangles to Shri Panna Lal on that very day. A copy of the said order was produced before us for our perusal. We find that those gold: bangles were directed to be 'released' to Panna Lal. It has been noticed in that order that he had 'given the undertaking to produce this case property as and when required' The said order was passed after the three appeals had been filed in this Court. From the minutes of proceedings it appears that Cr. Appeal No. 196184 filed by Sunder Lal son of Nawab Sineh had infact been admitted on 22nd October, 1984. Most probably, notice of that appeal on the Stat; had been served by 27th October, 1984.

(40) When these appeals reached for hearing, we directed the counsel for the State to produce all the case property including the jewellery in question. We were informed by Mr. Ghanshyam Vashisht, counsel for the State on 13th July, 1989 that the case property apart from the jewellery had been destroyed after obtaining orders from the court of Shri Om Frakash, Metropolitan Magistrate, New Delhi. The

learned counsel's statement was recorded by us. Mr. Vashisht, however, took time to produce the jewellery. On 17 July, 1989 he showed his helplessness as according to him, Panna Lal to whom the jewellery was 'released was not in a position to produce the same. We recorded that statement also.

(41) It appears to us that there was a lapse on the part of the prosecution in not informing the trial court that it was contemplating filing an appeal challenging the validity of acquittal of one of the accused namely Sunder Lal son of Kherati. The application seeking leave to appeal was infact filed on January 14, 1985. The State had applied for a certified copy of the impugned judgment on 19th October, 1984 with a view to filing the said appeal. That was a week prior to the passing of the order of release of the jewellery. The copy was ready on 20th November, 1984 and the application under section 378(3) of the Code of Criminal Procedure seeking leave to appeal was thereafter filed in time. It is obvious from the record of the trial court that a notice of the application by Panna Lal seeking release of the gold was issued to the prosecution, and the bangles were produced in court on 27th October, 1984. We are of the view that provisions of Section 452 of the Code of Criminal Procedure have not been strictly complied with. The jewellery was not subject to any speedy or natural decay and as no bond had been directed to be executed, the order ought not to have been executed for two months as provided in sub-section (4) of Section 452 of the Code.

(42) The defense of two of the accused in this case regarding the recoveries of jewellery from their houses seems to be that their family members were coerced and pressurised to hand over their personal jewellery to the police during investigation and that jewellery was in fact got re-prepared into bangles of the same weight and specification which were robbed from Kirpa Shankar and then shown to have been recovered from their houses.

(43) The plea of the third accused Sunder son of Nawab Singh on this aspect is that nothing was recovered from his house. Mr. Sethi, his learned counsel submits that on the prosecution's own showing, the Investigating Officer Along with the two accused who had already been arrested, visited his house on 27th July, 1981. In fact he says that the Investigating Officer had searched his house on the very day

those two accused were arrested, i.e., 24th July, 1981. Thereafter he also visited that house in search of the accused. On coming to know that he was wanted by the Police, Sunder surrendered himself before a court on 29th July, 1981 and was sent to judicial lock up. He was produced in Patiala House Courts, New Delhi on the next day. After obtaining his remand, the Investigating officer allegedly recovered a knife from the vicinity of Bhairon Road on the pointing out of Sunder and thereafter he was taken to his house situated in Nabi Karim, Delhi. The prosecution case was that he had kept the 20 bangles, his share of booty, wrapped in a silk cloth behind an idol of Bhairon Ji kept in a recess in wall. Mr. Sethi submits that a lay man would not know without legal advice when the police is on his trial, if it is better for him to surrender before a court, or report to the police. He urges that Sunder must have obtained expert legal advice before he took that step and it is unthinkable that he would leave evidence of his involvement in his house. His plea is that the story of recovery has been made up with the help of Panna Lal and in any case he submits that on prosecution's own showing, it had ample opportunity to plant the mala-view that provisions of Section 452 of the Code of Criminal Procedure have not been strictly complied with. The jewellery was not subject to any speedy or natural decay and as no bond had been directed to be executed, the order ought not to have been executed for two months as provided in sub-section (4) of Section 452 of the Code-

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(46) Another argument which has also to be kept in mind is the one put forth on behalf of the appellant Rajesh, by his counsel Mr. Srivastava. He submits that the total weight of the bangles recovered during the investigation did not tally with the weight of 43 gold bangles which were entrusted to Kirpa Shankar vide Ex. Public Witness 13 /A. As per that document, in all 43 gold bangles weighing 504.500 grams were handed over to Kirpa Shankar. Learned counsel pointed out that vide Ex. Public Witness 810, the memo regarding taking into possession the eleven bangles from the house of Rajesh @ Pappu, it was found that they weighed 145.300 grams. The case was that the appellant had himself took out a cloth packet which was hidden behind empty bottles placed on top of an almirah.

(47) As per Ex. Public Witness 8/D, the memo regarding taking into possession of eleven gold bangles from the house of Vinod Kumar, the accused took out a packet of khaki paper which had been kept on a water tank in a latrine in his house

and it was from that packet that two gold karas and nine bangles weighing in all 162.250 grams were recovered. These recoveries were made on 24th July, 1981, the day on which these two appellants were apprehended. 'The two memorandums have been attested by Panna Lal.

(48) Vide Ex. Public Witness 8 If, the gold bangles recovered from house No. BB-163 Qadam Sharief-Nabi Karim, Delhi of Sunder son of Nawab Singh. weighed 187 grams. This recovery was made on 30th July, 1981 in the presence of Panna Lal. This memorandum has also been signed by him. Learned counsel submit that the total of these three recoveries comes to 494.550 grams. His challenge to the prosecution was that these 42 bangles alone with the one banal which had been recovered from the Docket of the pant of ^he deceased in fact weighed much more than 504.500 grams. He requested us to have the sold bangles weighed. This submission was made prior to the statement of the public prosecutor that he was unable to produce the ornaments. We cannot, however, direct the ornaments to be got weighed. In case those were available, we would have done so as it appears that gold bangles produced before the trial court were never got weighed by it.

(49) Another submission made, which we cannot re-appraise on this aspect is that according to Panna Lal, amongst the 42 bangles which were handed over to Kirpa Shankar in an envelope after the customer had selected the design, there were three other bangles, of the same weight and design. It was urged that infact from the bangles recovered, there was no bangle similar to the one found in the pant pocket of the deceased.

(50) According to the learned counsel, non-production of the ornaments and other case property including the weapons alleged to have been used in the commission of offence, is an infirmity which has to be held to be fatal to the prosecution case. They have referred to various judgments of tills Court in support of their plea. Those cases are:

1.Mhod. Ibrahim v. State : AIR1969 Delhi315 .

2.Krishan Kumar v. State Cr. Appeal No. 179183 decided by a Division Bench on 11th September, 1987 (3).

3.Lala Ram and Anr. v. State, Cr. Appeal No 1161 84, decided on 3rd May, 1988 by a Division Bench. (4)

4.C. N. Thampy v. State, Cr. Appeal No. 75 of 1984 decided on November, 8, 1988 by a Division Bench. (5)

(51) In Lala Ram's case (supra) after noticing the provisions of the Code of Criminal Procedure and the provisions Contained in Chapter II(e) Vol. Til of the High Court Rules and Orders, it was observed that the prosecution was duty bound to keep in safe custody the case property so that the appellate and revisional court could have the opportunity to examine and scrutinise the material before it on which the prosecution relied for proving its case against the accused persons. It was held that to deprive the High Court of the benefit of examining the weapon of offence and other articles taken into possession was a serious infirmity.

(52) In two of the cases cited, it appears that the infirmity regarding the non-production was held to be fatal to the prosecution case. However, in Krishan Kumar's case (supra), this court held that:

WE are not called upon to go into the general question whether non-production of case property before the appellate court or the revisional court is an infirmity which is fatal to the prosecution case. In the present appeal it could be held so as was held in Mohd. Ibrahim's case (supra)

(53) Thus the trend of the decisions of this Court is that non-production of the case property is a serious infirmity which can in the facts and circumstances of the case be held to be fatal to the prosecution case.

(54) Now advertng to the seizure of weapons. The knife which was allegedly recovered on 27th July, 1981, i.e., after three days of the making of disclosure statement by Vinod and the dagger recovered on 30th July, 1981 on the pointing out of Sunder son of Nawab have not been produced. The knife got recovered at the pointing out of Vinod was Ex. P. 28 and the dagger got recovered by Sunder son of Nawab Singh was Ex. P. 27. It is stated that another knife was got recovered by Sunder son of Kherati, who has since been acquitted. It appears that

only one weapon out of the three, was sent to the Central Forensic Science Laboratory for examination. There is no Explanation as to why the other two were not sent. The one sent to the C.F.S.L. which was got recovered at the pointing out of Vinod, could not be connected with the crime although the police surgeon Dr. Bharat Singh vide Ex. Public Witness. 14/D opined that it could cause injury No. I as per the post mortem report.

(55) It seems that the only weapon which according to the prosecution was used in the commission of the offence is the one got recovered by Vinod. Apart from the fact that the C.F.S.L. gave negative report about it, in our view its recovery in any case has to be discarded from consideration. It is conclusively proved that the investigating officer took no immediate steps to recover it. The recovery proceedings were initiated after three days of the disclosure statements. That interval could have possibly been used to plant a knife.

(56) Another recovery which has been made use of by the prosecution is that of a pant allegedly worn by appellant Vinod at the time of commission of the crime. Public Witness. 20 Constable Shame Singh has deposed that during investigation on 27th July, 1981 at the pointing out of Vinod, a black pant (Ex. P. 29) was seized from his house. But according to Mr. Sood. this recovery is patently false. He urges that infact the relations of Vinod were being pressurised after his arrest to produce a black pant so that it could be shown to have been recovered from his house. The counsel said that before the recovery of that pant on 27th July, 1981, he had been contacted and told about the insistence of the Investigating Officer. It was on his (counsel's) suggestion that a chit bearing the date '26-7-81' was stitched in the waist band of a black pant specially procured by the family.

(57) That chit was taken out during the trial and pasted on a bigger paper (Ex. Public Witness. 20j DB), The suggestion to Constable Shame Singh, one of the witnesses to the recovery of the pant was that actually it was father of Vinod who had produced the pant on 27th July, 1981 in the police station and since he had been asked to do so earlier, he met the counsel and to show that the recovery was a fake one, the said chit was got stitched in the waist band. This chit disproves the prosecution allegation that the pant was recovered during the investigation of the

case at the instance of Vinod from his house on 27th July, 1981. The recovery seems to be manipulated.

(58) Another circumstance found by the trial court to connect the accused with the crime was that the accused had confessed their guilt to Public Witness. 9 Rana Singh and Public Witness. 2 Tek Chand.

(59) Rana Singh, Public Witness. 9, a goldsmith by profession was working with M/s. Nathu Mal and Sons for about seven years. He deposed that he knew Rajesh Kumar as he used to supply tea at that shop. It seems from his testimony that the accused voluntarily informed him that he had stabbed Kripa Shankar and had robbed the bangles from him. Rajesh while naming his co-accused threatened him to keep silent. That part of his testimony which was recovered on 18th January, 1983 may be noticed:

ABOUT 1 1/2 years back at about 9 or 10 A.M. I was going in Dariba Kalan, Chandni Chowk, Delhi. The said accused told me that he had stabbed one Kirpa Shankar and had snatched bangles from his possession. At that time the said accused also named one Vinod and two Sunders as his associates in the said crime. Accused Pappu directed me to keep silent and not to disclose the information to anybody else. I do not know the said Vinod or the said persons by the name Sunder. Pappu accused while divulging the above information to me had threatened to kill me in case I disclosed that information to anybody else.

(60) In cross-examination, however, he disclosed that he had been kept in custody by the police for four or five days during interrogation. He said that all the employees of M/s. Nathu Mal and Sons were being interrogated. He alleged that:

ALL those persons who were called for interrogation were beaten by the police when they were detained. I was also beaten by the police. The police threatened to implicate (me) in the murder case. Through- my father I made an application in this court for getting orders for medical examination while I was under detention for interrogation. That application was moved in the court of the concerned Magistrate. Before I could be medically examined I was released by the police. That application was moved on 25-7-81. That application was moved through Shri

B. L. Gupta, Advocate. Out of the fear of the police I agreed to give evidence in this case. Whatever the police asked me to depose I have deposed.

He further went on to say that:

TEK Chand Public Witness 2 was also defamed simultaneously with me by the police during interrogation. He was also beaten and tortured by the police like me. Myself and Tek Chand were asked to note down the statement the police wanted us to give. We were required to cram that statement therefore, the police took me and Tek Chand together before Shri O. P. Gogne, M.M., New Delhi. before we could be examined before the said Magistrate we were again threatened by the police in case we resiled from that statement before the Magistrate we will be implicated in the murder case. Consequently we both gave only that ascribed and crammed statement before the Magistrate.

(61) The assertion of this witness that he Along with others including Tek Chand had been tortured and beaten by the police during investigation, seems to have been accepted, by the prosecutor as. no permission was sought by him to re-examine the witness. It is thus apparent that he was tortured to give a version to fit in with the theory propounded by the Investigation Officer. From his examination-in-chief it cannot be said that Rajesh was very friendly with him and, therefore, had confided in him. His testimony regarding the confession has rightly been impeached by the learned counsel for the appellants.

(62) Likewise Tek Chand deposed that he was also told by the accused that they have done away with Kirpa Shankar first at the T' Junction and then again when they dismissed the scooter after their return at the Petrol Pump near Tie Hazari Telephone Exchange. He further stated that Rajesh and the other two accused both named Sunder met him outside Kumar Cinema, where he generally parked his scooter, after about two days of the incident and threatened him while showing a knife that if he told anybody about Kirpa Shankar's murder, he would also meet the same fate. This witness was confronted with his earlier statements. It seems that he did improve upon them. Infact he tried to show in his deposition that he even demonstrated with the accused when the fifth person had not been brought, back in the evening of 16th July, 1981 by them to the scooter at the 'T' Junction.

(63) We may note that on 16th July, 1981 three-wheeler scooter in Delhi were on strike. .It is the admitted case of the prosecution. This witness's version that he had agreed to take Rajesh and his friends in his normal course of work, is not even borne out from his statement. According to him he waited for about an hour and a half to two hours near the tea shop of Raiesh's older brother. This seems to be unusual for a normal three wheeler scooter driver. He again waited at the T Junction on the asking of Rajesh. who was in any case traveling on his own two-wheeler scooter. Possibly he was at the back and call of Rajesh. But he has not been portrayed as an accomplice by the prosecution. His own effort was to show that he was not an accessory after the event. Eowever, the testimony of Public Witness. 9 Rana Singh clinches the matter. He stated and we have no reason to disbelieve him that Tek Chand was also tortured. It seems that even in the tortured statement, he had not stated about the threats of dire consequences given to him by Rajesh and two other accused both named Sunder.

(64) In support of their plea that the prosecution had put up false version through Tek Chand, learned counsel submitted that Tek Chand had stated that his three-wheeler scooter which according to the Investigating Officer was seized on 25th July, 1981, was infact seized a day earlier. A reference has been made to the application (Ex. Public Witness. 2/DC) made to the Magistrate by him whereby he had sought supurdari of the vehicle. In that. application, the date of seizure has been shown as 24th July, 1981. Tek Chand admitted in his crossexamination that the date given in the application was the correct date. If that be so, it is argued, the three-wheeler scooter was seized earlier to the apprehension of Vinod and Rajesh which was in the afternoon of that day. It is pointed out that Tek Chand admitted that (1^ he did not know the attesting witnesses to the seizure memo and (2) the scooter had been driven by him to the Police Station on the asking of the Investigating Officer in the forenoon. It is thus argued that the arrest of Vinod and Rajesh in the afternoon of 24th July, 1981, their having made disclosure statements and the subsequent recovery of the gold ornaments from their houses on that very day, are patently false.

(65) The main witness in support of the prosecution version that Rajesh and Vinod had made disclosure statements was PW. 8 Panna Lal. This witness's presence in

the Company Bagh at the time of interrogation of the said two accused has not satisfactorily been explained. He said that a policeman had come to his shoo to inform him that the accused had been apprehended. On receipt of this information, he reached there he stated in his testimony. When asked by the defense counsel as to who were the accused who had been apprehended in the Company Bagh, he pointed out towards Rajesh, whom he knew from before and Sunder son of Kherati. It may be noticed that Sunder son on Kherati according to the Investigating Officer was arrested almost a month after the arrest of Vinod and Rajesh, i.e., on 23rd August, 1981. Obviously Panna Lal has mixed up the identity of the accused in this case. According to him, he accompanied the Investigating Officer to the respective houses of Vinod and Rajesh from where recoveries of the bangles were made. Vinod's house bearing No. 112672 was situate in Gali Anar Wali, Kinari Bazar, Dariba Kalan, Delhi. The house of the other accused bearing No. 111275, Mansarovar Park was situate in the Shahdara area of Delhi. It was incumbent on the Investigating Officer to comply with the provisions of sub-section(4) of Section 100 of the Code of Criminal Procedure to call upon two or more independent and respected inhabitants of the respective localities, to join. That provision reads as follows:

(4)Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(66) It is the admitted case of the prosecution that the attesting witness to the recovery memos Ex. Public Witness. 8/C and Ex. PW. 8/D apart from the police officers was Public Witness. 8 Panna Lal, who as per his own showing was a resident of Punjabi Bagh, Delhi, a locality which is nowhere near either Shahdara or Dariba Kalan. As has been noticed above, even the parcel or the packets recovered from the respective houses of the said two accused, were not correctly identified by this witness.

(67) Again Public Witness 8 was present when Sunder son of Nawab Singh was produced in the court of a Magistrate at Patiala House, New Delhi on 30th July, 1981, A specific question was asked to the Investigating Officer whether he had sent for the said jeweller He replied in the negative. The witness, however, insisted that he had rung up the police station on that day and was told by a lady that the remainder of the bangles had also been recovered from the possession of an accused who was to be produced in Patiala House Courts after lunch. Thus on this occasion also, he was the only public witness who was taken to the house of that accused viz.. Sunder son of Nawab Singh at Qadam Sharef, Nabi Karim, Delhi. Before proceeding to his house, it is the case of the prosecution that after obtaining his police remand, the accused took the police party in a vehicle to the place near Bhairon Road (which is the road connecting Mathura Road to Ring - Road) where he had hidden a dagger. A dagger was recovered on his pointing out. This spot was opposite Gate No. 1 of exhibition Ground. Panna Lal was the attesting witness to the memorandum showing the recovery of the knife. In cross-examination, however, he admitted that he was following the police party in his own car. When the police party accompanied by the accused got down on Bhairon Road, he kept on sitting in his own car and it was while sitting there that he saw Sunder pointing out towards a bush from which he took out the knife/dagger.

(68) These are some of the points on which Panna Lal's testimony has been impeached before us.

(69) As a result of our scrutiny of the testimony of Public Witness .8, Panna Lal, he can only be believed to the extent that on 16th July, 1981 at about 7.00-7.30 Pm, he had directed Kirpa Shankar to proceed to the shop of Kanhaya Lal-Hira Lal so as to return the 43 gold bangles which had been received earlier in the day from that shop; that 42 of the gold bangles were in an envelope, .the very envelope in which the bangles had been sent by the gold smith.The 43rd bangles had been kept by Kirpa Shankar in his pocket. It was singled out as its size and design had been approved by a customer. Thereafter Kirpa Shankar was not seen alive. Panna Lal's testimony regarding the recoveries of the bangles from the respective house of Rajesh, Vinod and Sunder son of Nawab is to be discarded for the reasons noticed above.

(70) As far as the testimony of Public Witness 2 Tek .Chand is concerned, the only circumstances. which can be said to have been established is that at about 6.30 P.M. on 16th July, 1981, on the asking of Rajesh, Tek Chand followed him in his scooter from near the shop of M/s Nathu Mal and Sons, Jewellers of Chandni Chowk. .At that time he was carrying four passengers. Only one 'of them viz., Rajesh was well known to him. It has not been established that Kirpa Shankar was one of them. The charge that Kirpa Shankar had been abducted has been rejected by the trial court and we agree with that finding. It is not probable that Kirpa Shankar who had been holding an envelop containing 42 gold bangles and was proceeding towards the shop of the gold smith, would merely on the asking of Rajesh, sit in a scooter for an outing as has been held by the trial court. It is more probable that Rajesh and Vinod in the company of some other persons whom Tek Chand did not know, had gone at that time on an outing reconnaissance. Learned counsel for the appellants have not taken up this plea- We say so because travel by Kirpa Shankar in the scooter of Tek Chand, as alleged, has not been established.

(71) The testimony of Tek Chand regarding the accused having made extra-confessional statements, is in our view to be discarded from consideration for reasons which, we have already noticed above.

(72) In our view, none of the tests (quoted at Para 4 above) laid by the Supreme Court are satisfied in the present case.

(73) The appeals of the three appellants viz. Sunder son of Nawab Singh, Rajesh Kumar and Vinod are allowed. As a result of our discussion above, the appeal filed by the State challenging the acquittal of Sunder son of Kherati is to be dismissed and we order accordingly.

(74) The said three appellants are on bail. Their bail bonds are discharged. STATE Appeal Dismissed.