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**State Vs. Subhash Chander @ Subhash @ Yashpal @ Amerjeet**

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**Court : Delhi**

**Decided On : Feb-03-2000**

**Reported in :** 2000IIAD(Delhi)599; 2000CriLJ1908; 84(2000)DLT127; 2000(53)DRJ276

**Judge :** Anil Dev Singh and; R.S. Sodhi, JJ.

**Acts :** Code of Criminal Procedure (CrPC) , 1908 - Sections 366; [Indian Penal Code \(IPC\), 1860](#) - Sections 27, 34, 186, 302, 307, 333, 353, 395, 396 and 397; [Arms Act, 1959](#)

**Appeal No. :** Murder Reference No. 3 of 1998 and Criminal Appeal Nos. 433/98 and 129/99. Murder Ref. No. 3/98

**Appellant :** State;subhash Chander @ Subhash @ Yashpal @ Amerjeet;mohan Lal @ Mohan

**Respondent :** Subhash Chander @ Subhash @ Yashpal @ Amerjeet;state;The State

**Advocate for Def. :** Mr. P.R. Thakur, Advocate, ; Mr. Naveen Thakur, ; Ms. Neeta

**Advocate for Pet/Ap. :** Mr. M.S. Butalia,; Mr. P.R. Thakur, Advocate,; Mr. Naveen T

**Judgement :**

ORDER

## **Anil Dev Singh, J.**

1. The prosecution case is that on June 4, 1984 at about 1.15 p.m. Subhash, Ravinder Kumar @ Ravi, Satish, Mohan and Rajesh Gupta holding pistols in their hands entered the premises of the State Bank of Bikaner & Jaipur, New Rohtak Road, Delhi. They asked the employees and the persons present in the bank to raise their hands. They also enquired as to who was the Manager and the Cashier of the bank. One of the employees answered to say that Shri K.L. Batra was the Manager and Shri V.K. Marwaha was the Accountant. After collecting the bank employees and the customers near the strong room of the bank, they demanded the keys of the strong room from Shri K.L. Batra and Shri V.K. Marwaha, but they refused to hand over the same. Since they did not accede to their request, they were hit in their abdomens by the butts of the pistols. Shri Marwaha was made to take out the key from a locker. They also asked him as to where was the other key of the strong room as the same had a double locking system. Some one told them that the key was with Shri V.D. Sethi, Head Cashier. Thereafter three dacoits came to his cabin and asked for the key. At that point of time Shri Sethi, Head Cashier, and Shri Dharam Singh Vashist, Cashier, were having a sum of Rs.1,25,000/- in their cabins. One of the dacoits picked up the money and kept the same in a cloth bag. Thereafter Shri V.D. Sethi was taken near the strong room. A pistol was kept on his temple and was asked to get the key. On being thus threatened, the key was brought from the cash cabin and strong room was opened by operating the keys, one by Shri V.D. Sethi and the other by Shri V.K. Marwaha. Shri V.D.Sethi was directed to take out the cash from the strong room and transfer it to the bag which was being held by the dacoits. A sum of Rs. 2,82,000/- was taken out from the strong room and put into the bag. One of the dacoits also picked up three parcels lying in the strong room. The employees and the other persons were threatened not to follow the dacoits after the booty was picked up by them. According to the prosecution case, Subhash positioned himself near the main gate of the bank while the cash was being taken out. As the dacoity was in progress, Subhash Chand an employee of the bank was alighting from the stairs leading to the bank hall on the ground floor where the dacoity was taking place. Subhash Chand instead of coming down, rushed up-stairs and jumped into the adjoining building and informed the police post Dev

Nagar about the dacoity. In a short while SI Jaswant Singh, ASI Charan Singh and HC Malkiat Singh arrived at the spot on a Lambretta two wheeler scooter bearing No. DHI 4976 which was driven by SI Jaswant Singh. Hardly SI Jaswant Singh had parked his scooter at the gate of the bank, Subhash who was standing at the entrance of the bank, fired from his revolver. SI Jaswant Singh fell down as he was hit by bullets fired by Subhash. HC Malkiat Singh who was having a danda in his hand wielded the same in the direction of Subhash but at the same time he was hit by a bullet. Subhash alerted his other companions about the arrival of the police. Accused Ravinder Kumar @ Ravi who came out and was carrying parcels, also started firing from his revolver. Subhash who was meanwhile preparing to reload his revolver, was hit by HC Malkiat Singh with the danda. ASI Charan Singh who had taken position near the boundary wall of the bank, fired four bullets from his service revolver but none of the accused was hit. Satish, Mohan and Rajesh who were carrying the bag containing cash panicked and left the same as it got stuck in the grills of the main gate of the bank. They while running also fired from their revolvers. While Subhash and Ravinder Kumar @ Ravi escaped in a get away stolen Fiat Car No.CHB-3764 parked outside the bank, the others made good their escape on foot. SI Jaswant Singh as a result of the injuries died on the spot. HC Malkiat Singh and the body of SI Jaswant Singh were removed to the Hospital. Shri V.D. Sethi made a statement at the place of the incident on June 4, 1984 with regard to the incident, to Inspector M.S. Chikkara who recorded the same vide D.D. Entry No. 12-A at 3.10 P.M. This was sent to P.S. Original Road. On the basis of the statement, first information report bearing No.264/84 was registered under Sections 395/397/398/307/186/353/333/34 IPC and Section 28/54/59 of the Arms Act at Police Station Original Road.

2. On October 30, 1984, Subhash was arrested near Andheri Railway Station at Bombay by PW-97 SI K.J. Bardeshkar on a tip off. At the time of his arrest a Webley and Scott revolver, loaded with six rounds, was recovered from his person. Besides 9 rounds were found in his bag. A case under Section 25 of the Arms Act was registered against Subhash at Bombay. On October 31, 1984 Subhash was produced before a Metropolitan Magistrate who remanded him to police custody. The Bombay police informed Punjab, Haryana and Delhi Police through wireless about the arrest of Subhash. On November 4, 1984 Delhi Police

arrived at Goregaon Police Station. An application was filed at the instance of Delhi Police to Borivali Court No. 94 for transfer of the custody of Subhash to Delhi police Along with the revolver and ammunition recovered by the Bombay Police in connection with case FIR No.280/82 under Sections 395/397/398/34 IPC P.S. Nizamuddin. In consonance with the order of the said Court, Subhash was handed over to Delhi Police Along with the revolver and the ammunition recovered from him. As a result of the Court order Subhash was brought to Delhi on November 18, 1984 and was formally arrested. He made a detailed disclosure statement Ex. P88A with regard to his participation in several crimes including the instant case. He also gave details of his other accomplices, who had participated in the commission of the crime in question, namely, Satish @ Rani, Ravinder @ Ravi, Mohan Lal and Rajesh Gupta. On December 20, 1984 Subhash was formally arrested by PW-48 Insp. Laik Ram in a case FIR No. 121/84 under Sections 395/397 Police Station Darya Ganj. In this case a disclosure statement Ex.PW48/D was made by Subhash pertaining to the incident in question. The disclosure statement led to the recovery of parcel containing 20 inhalers which had been removed from the bank. From the disclosure statement of Subhash, the Delhi Police also came to know that Satish and Mohan frequently visited Disco at Hotel Rajdoot, New Delhi. On receiving this information a trap was laid by the police which resulted in apprehension of Satish and Mohan from near Hotel Rajdoot on November 18, 1984 at 9 p.m. They were found to be carrying revolvers in the dubs of their pants. They were accordingly arrested under Section 25 of the Arms Act and FIR Nos. 426/84 and 427/94 PS Nizamuddin, were recorded. While Rajesh was also arrested in connection with the instant case, Ravinder @ Ravi could not be apprehended and was declared a proclaimed offender. During the trial, Rajesh was granted bail. However, he jumped the bail and was also declared a proclaimed offender on September 23, 1995. While the prosecution produced as many as 99 witnesses to prove the case against the accused persons, the defense did not lead any evidence. The trial Court by its judgment dated September 23, 1998 found that approximately Rs.4 lakhs were looted jointly by Subhash, Satish and Mohan Lal as well as the absconding accused Ravinder and Rajesh Gupta. At the time of the incident they threatened the bank employees and forced them to open the strong room with the keys which were in possession of PW V.K.

Marwaha and PW V.D. Sethi. The trial Court also came to the conclusion that the prosecution had been successful in proving that Subhash had fired at SI Jaswant Singh, HC Malkiat Singh and ASI Charan Singh when the trio reached the spot on a two wheeler scooter. As a result of the firing SI Jaswant Singh died at the spot and HC Malkiat Singh received grievous injuries. Since Subhash, Satish and Mohan Lal were armed with deadly weapons and had caused the death of police officer Jaswant Singh while committing dacoity, they were held guilty for the commission of an offence under Section 396 IPC. They were also held guilty under Section 395 read with Section 397 IPC since they had attempted to cause the death of HC Malkiat Singh. It was also held that the murder of SI Jaswant Singh was committed in furtherance of common intention of the accused persons. As such Subhash, Satish and Mohan Lal were held guilty under section 302 read with Section 34 IPC. The trial Court also found that they had obstructed public servants in discharge of their functions. Accordingly it held the three above named accused persons guilty for commission of an offence punishable under Section 186 read with Section 34 IPC. Besides they were also held guilty under Section 353 read with Section 34 IPC as they had used criminal force against the bank employees and HC Malkiat Singh while they were performing their public duties. The three accused persons were also held guilty under section 333 read with Section 34 IPC for causing grievous hurt to HC Malkiat Singh to deter him from performing his public duty. Since Head Constable Malkiat Singh sustained bullet injuries on his body as a result whereof he could have died, and since accused Subhash had fired at HC Malkiat Singh in furtherance of common intention of all the accused persons, while wanting to escape from the scene of crime, they were convicted under Sections 307/34 IPC. Besides, Subhash was convicted under Section 27 of the Arms Act for using the revolver recovered from his possession on October 30, 1984 at Bombay. In nutshell the accused were convicted for the following offences:-

- i) Under Sections 395/396/397 IPC;
- ii) Under Sections 186/353/333/307/302 r/w sec. 34 IPC;
- iii) Under Sections 27 of the Arms Act.

3. By a subsequent order dated 26th September, 1998 sentences were imposed on the accused persons on various counts. In so far as Subhash is concerned, following sentences were imposed on him under the below mentioned provisions of the Indian Penal Code:-

1. One month R.I. under Section 186 IPC;

2. Six months R.I. under Section 353 IPC;

3. Five years RI with Rs. 500/- fine under Section 307 IPC. In default of payment of fine, to suffer a further RI for one month;

4. No separate sentence was awarded under Section 307 IPC since the accused had already been sentenced for a more serious offence under Section 307 IPC;

5. Seven years RI and Rs.500/- fine under Section 395 read with section 397 IPC. In default of the payment of the fine to suffer a further RI for one month;

6. Death sentence under Section 396 IPC;

7. Under Section 302 IPC no separate sentence was awarded as accused Subhash was already sentenced to death under Section 396 IPC.

8. One year RI under Section 27 of the Arms Act;

4. All the above sentences were directed to run consecutively.

5. As far as Mohan Lal and Satish are concerned, the learned Additional Sessions Judge took a lenient view and did not impose death sentence on them. While sentencing the two accused persons on various counts, he stated as follows:-

'xx xx xx

..... it may be stated that from the material placed on record, it was quite evident that there was pre-planning on the part of the accused persons who had picked up this bank for committing the dacoity in a broad day light after considering the strategic position of the bank. All the three accused along with the absconding had come armed with revolvers and had overawed the entire bank

staff working in the bank. At the same time, it may also be added that the accused Mohan Lal had only played the part of transferring the cash from the cash counter as well as from the strong room is the 'Jhola' which was specially brought by accused persons for transferring the looted property in that 'Jhola', he had not fired any bullet from his revolver on any bank employee. He has been facing trial for the last 14 years and has been in judicial custody during this period. He has two elderly daughters who are yet to be married. Keeping in view these mitigating circumstances, I am of the opinion that he should not be awarded extreme penalty of death as his case does not fall in the category of rarest of rare cases.

So, keeping in view his age and circumstances in which the offence was committed, I, therefore, direct the accused Mohan to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 500/- u/s 395 r/w Sec. 397 IPC, in default of payment of fine, he shall further undergo rigorous imprisonment for one month. He is further directed to undergo life imprisonment u/s 396 IPC. However, this accused is not being sentenced separately for the offence punishable u/s. 302 IPC in view of the fact that he is being sentenced for committing the offence of dacoity and murder u/s. 396 IPC. Accused Mohan is further directed to undergo rigorous imprisonment for one month u/s 186 IPC and he is further sentenced to undergo rigorous imprisonment for six months u/s. 353 IPC. He is further directed to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500/- u/s. 307 IPC, in default of payment of said fine, he shall further undergo rigorous imprisonment for one month. Since accused has been sentenced for the graver of offence u/s 307 IPC, no separate sentence is being passed against him u/s. 333 IPC.

At the same time, it may be added that since accused Mohan had past criminal record and as such it will be dangerous for the society if he is allowed to roam freely and in these circumstances, it was necessary that he should be kept isolated from the main stream of the society. As such, I direct that all the sentences passed against accused Mohan Lal shall run consecutively.

So far as regards accused Satish @ Rani was concerned he had also not fired any bullet from his revolver. He had snapped the telephone wire and had brought Sh.

K.L. Batra, from his room at the point of revolver to the main hall along with PW Roop Chand, Peon, and had made both of them to sit in the main hall of the bank. He has also played the part of transfer of the looted property in the 'Jhola'. No other part is attributed to him while committing the dacoity. He has been facing trial for the last 14 years. Keeping these mitigating circumstances, I am of the opinion, his case also does not fall in the category of the rarest of the rare cases for which the extreme penalty of death should be awarded to him. As such I direct the accused Satish @ Rani to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.500/- u/s 395 r/w Sec. 397 IPC, in default of payment of said fine, he shall further undergo rigorous imprisonment for one month. He is further sentenced to undergo life imprisonment u/s 396 IPC. However, accused is not being sentenced separately for the offence punishable u/s 302 IPC in view of the fact that he is being sentenced for committing the offence of dacoity and murder u/s. 396 IPC. Accused Satish is further directed to undergo rigorous imprisonment for one month u/s. 186 IPC and rigorous imprisonment for six months u/s. 353 IPC. He is further directed to (undergo) rigorous imprisonment for 5 years and to pay a fine of Rs. 500/- u/s 307 IPC, in default of payment of said fine, he shall further undergo rigorous imprisonment for one month. Since, accused Satish has been sentenced for the most serious offence u/s 307 IPC, no separate sentence is passed against him u/s. 333 IPC. At the same time, it is also relevant to add that accused Satish had past criminal record and has no source of income, he is all alone in the world and there is no body to keep control on his activities and there was likelihood on his part to repeat the same type of offence. As such, it will be in the interest of justice if he is also isolated from the society. Keeping in view all these circumstances, I direct that all the sentences passed against him shall run consecutively.

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6. Since Subhash Chander was given death sentence by the trial Court under Section 396 IPC as such the instant reference (No. 3 of 1998) was made under Section 366 of the Code of Criminal Procedure for confirmation of the same. Besides the Murder reference No. 3/98, two separate appeals, being Criminal Appeal No. 433/98 and Criminal Appeal No.129/99, have been filed by Subhash

and Mohan Lal challenging the judgment and order of the trial court dated September 23, 1998 and September 26, 1998.

7. We have heard learned counsel for the State Mr. M.S. Butalia, Mr. P.R. Thakur, learned counsel for Subhash, and Mr. Mukesh Kalia counsel for Mohan Lal. We have been taken through the material on record. We find that the prosecution has succeeded in establishing the guilt of the appellants and therefore the trial court was right in convicting the accused for various offences. We will first take up the case of Subhash. The involvement of Subhash in the crime has been established by several pieces of evidence, both ocular as well as circumstantial.

8. Subhash, who was arrested by the Bombay Police on October 31, 1984, was brought to Delhi on November 18, 1984. On the application of the police Ex. PW-94/A, test identification parade of Subhash was conducted at the Central Jail, Tihar by PW-94 Mr. D.S. Sidhu, Metropolitan Magistrate, on December 6, 1984. PW-2 Lekh Raj, Clerk; PW-7 Roop Chand, peon and PW-8 Raj Narain Mishra identified Subhash as the one who had taken part in the commission of the offence. PW-20 SI Charan Singh who was part of the police party identified Subhash both at the time of TIP as also in Court as the one who fired while making good his escape in Fiat Car No.3764 from the scene of occurrence.

9. Learned counsel for the appellant Subhash submitted that the incident had taken place for a very short period and the dacoits had asked the bank employees to keep their heads and eyes down to ensure that they had no opportunity to see them properly. According to the learned counsel, this being the position firstly the employees did not have an opportunity to watch the dacoits and even if they had a slight opportunity, it would have been well High impossible for them to have retained their physical features in their minds. We are not impressed by the submission of the learned counsel. It may be that the dacoits had asked the persons present in the bank at the time of the incident not to look towards them but it cannot be assumed that the persons, who had identified them, had not seen them or had seen them so cursorily that the features of the dacoits would not have registered in their minds. As is apparent from the statements of the prosecution witnesses, dacoits remained in the bank for couple of minutes. They got the strong

room opened. The keys of the strong room were with PW-23 V.K. Marwaha who was working as Accountant and V.D. Sethi who was working as Head Cashier. The opening of the strong room would itself had taken some time. Some time must have been consumed while picking up the cash and parcels from the strong room. It appears that the function arise of the bank were not known to the dacoits. They had to ask as to who was the Manager, Cashier and Accountant of the bank. Some time must have elapsed before the dacoits were able to identify them. Besides they must have taken time in collecting the cash from the cash cabins of the bank. The fact that Subhash Chand, Peon, was able to inform the police while the dacoity was taking place and the police was able to reach before the dacoity was over, shows that it must have taken some time for the appellants and their associates to collect the booty. It seems to us that the time during which they remained in the bank was sufficient for the witnesses, who had identified them, to register their physical features in their minds. PW-2, PW-7, PW-8 and PW-20 not only identified Subhash during the test identification parade but they also identified him in Court. We are conscious of the fact that besides the aforesaid witnesses, PW-5 Ram Krishan Panwar, PW-6 Vijay Singh and V.D. Sethi identified Subhash during the test identification parade. However, V.D. Sethi expired before he could make a statement before the Court. In so far as Ram Krishan Panwar and Vijay Singh are concerned, they were not able to identify Subhash in Court when their statements were being recorded by the trial Court. It appears that they were not able to muster enough courage to identify Subhash though they had identified him at the time of test identification parade. Vijay Singh, however, tried to give an Explanationn that he does not remember the faces of the dacoits because of lapse of time. Undoubtedly a passage of 10 years is quite a long period for destroying, decimating and diminishing memory of a person depending upon factors like his age, mental condition, health of the brain cells, etc. Depending upon such like factors some body may not be able to recognise a person whom he is seeing after such a long time. Learned counsel for Subhash also submitted that out of 17 witnesses who were present at the time of incident, only 7 were able to identify Subhash during the TIP and this shows that 10 witnesses did not support the theory of the involvement of Subhash. Learned counsel further submitted that this factor casts a doubt on the prosecution story about the involvement of Subhash in

the commission of crime. We regret our inability to accept the submission of learned counsel. The fact that they were not able to identify Subhash does not show that he was not involved in the commission of the offence. It merely shows that their power of cognition may not be good enough or that they literally acted upon the command of the dacoits and did not look up towards them at the time of the incident. It also needs to be noted that besides PW-19 Malkiat Singh identified Subhash in Court as the one who fired at SI Jaswant Singh. The fact that PW-2, PW-7, PW-8 and PW-20 have identified Subhash during the test identification parade and in the Court leaves no manner of doubt in our minds that Subhash was one of the five dacoits who committed dacoity at the bank in question.

10. Complicity of Subhash in the crime is also evident from the following circumstantial evidence appearing against him:

(1) SI Laik Ram (PW-48) arrested Subhash on December 20, 1984 in case FIR No. 121 dated 15.2.1984 under Sections 395/397/342 IPC relating to Police Station Darya Ganj. On the same day, Subhash made a disclosure statement (Ext. PW 48/D) before him which resulted in recovery of one box containing inhalers which was removed from the strong room of the bank. According to SI Laik Ram, Subhash after making the statement led the police party to the house of Om Prakash and got recovered the parcel of inhalers. PW-51 Shri Om Prakash, though was declared hostile, admitted that the parcel Ex.P-18 containing twenty inhalers was kept by Subhash in his house. There is also evidence to show that the inhalers which were lying in the strong room of the bank were sent by M/s. Vakil & Sons, Park Road, Bombay, for M/s. Alwadi Medicos, Delhi. As per the statement of PW-36 Ajay Kumar, Manager of M/s. Vakil & Sons, Park Road, Bombay, a parcel containing twenty inhalers was sent under registered post for M/s. Alwadi Medicos through the State Bank of Bikaner and Jaipur, New Rohtak Road, Delhi, which was a mistake and the same were to be sent through the State Bank of India, New Rohtak Road, New Delhi, A bill Ext. PW26/A was raised by the company in respect of the above parcel. However, the parcel was not delivered to M/s. Alwadi Medicos and in lieu thereof another parcel was sent to it. The sealed parcel containing the inhalers Ex. P-18 was opened and the witness identified the inhalers to be the same which were sent. PW-26 Ravinder Kumar Alwadi of M/s.

Alwadi Medicos testified to the effect that he bought twenty inhalers from M/s. Vakil & Sons, Bombay, vide invoice Ext. PW26/A through the State Bank of India but he failed to receive the parcel. In view of the clear evidence on record it is manifest that the inhalers for which M/s. Alwadi Medicos placed an order with M/s. Vakil & Sons, Bombay, and which were sent by the latter to the former and were kept in the strong room of the State Bank of Jaipur and Bikaner, were recovered pursuant to disclosure statement made by Subhash.

11. Learned counsel for Subhash submitted that reliance should not be placed on the disclosure statement recorded by SI Laik Ram as no public witness was joined to witness the disclosure statement. We see no merit in the argument of the learned counsel. SI Laik Ram in his statement has clarified that the public witnesses were not willing to be associated in witnessing the disclosure statement. It is a matter of common knowledge that it is not easy to persuade public at large to witness the disclosure statement of the accused or to be a witness to the seizure memos etc. during investigation. This tendency to a very great extent is due to the making of the police itself. Besides, the public at large is also reluctant to be a witness in matters of this nature because of the fear of the criminals. In the instant case just because no public person witnesses the disclosure statement does not reflect that disclosure statement leading to recovery of inhalers was foisted on Subhash. We see no reason why SI Laik Ram would be interested in falsely implicating Subhash. It is not the case of the appellant Subhash that SI Laik Ram or the police personnel who witnessed the recording of the disclosure statement had any animus against him. The fact that Subhash had kept the inhalers with Om Prakash has been accepted by the latter in his statement. The recovery of inhalers at the instance of Subhash therefore cannot be doubted.

(2) As per the case of the prosecution, Subhash had purchased the revolver, used by him during the commission of the crime, from National Arms, New Delhi, by posing himself to be Amarjeet Singh. He produced a fictitious license No. 21358 in the name of Amarjeet Singh at the time of purchase of the revolver from National Arms, New Delhi. Prosecution case is supported by the depositions of PW-29 Kamal Dhawan, Manager, National Arms, New Delhi, PW-70 Kamal Tej Singh, Proprietor, National Arms, New Delhi, PW-56 V.K. Khanna, Senior Scientific

Officer, and PW-62 HC Jethanand. According to PW-29 Kamal Dhawan, Manager, National Arms, New Delhi, before a customer purchases any article, an order form is required to be signed by him. According to the order form Ext. PW29/A, one Amarjeet Singh s/o Kasturi Lal, resident of 5C, Civil Lines, Haryana, was the purchaser of revolver bearing No. B-5751 (Ext.P-20) of 38 bore, Manufactured by Webley & Scott along with ten live cartridges. Banking upon his memory he identified Subhash as having purchased the weapon. Deposition of PW-70 Kamal Tej Singh is also to the effect that order form Ext. PW29/A through which revolver and ten cartridges were sold revealed that the same was sold to one Amarjeet Singh. He also testified to the effect that sale report dated September 26, 1983 regarding sale of revolver Ext. PW-70/A was sent to the Deputy Commissioner of Police, Licensing. From the statement of PW-56 V.K. Khanna, Senior Scientific Officer, and his report Ext. PW-56/A, it is evident that the signatures on the order form Ext. PW29/A tallied with the specimen signatures of accused Subhash. PW-62 Jathanand, who was deputed to verify the authenticity of the arms license No .21358, deposed that on enquiry from the office of the SDM Karnal he was informed that no such license was issued by the concerned authority during the year 1982-83.

12. From the aforesaid evidence on record it is pellucid that Subhash purchased the revolver Ext. P-20 under a fictitious name on the basis of a fictitious license from the National Arms, New Delhi. It is also in evidence that on October 31, 1984 at 9.30 A.M. Subhash was arrested by PW-97 Inspector Bardeshkar and PW-58 HC Vithal Ramchander of the Bombay Police at Bombay from a bus stop near Andheri Railway Station. At the time of his arrest, revolver Ext. P-20 containing six rounds was recovered. That apart, nine rounds were recovered from his bag. The arrest and the recovery was made in the presence of PW-57 Yusuf Ismail Khan. On the application of Delhi Police, Borivali Court No.94 at Bomaby transferred the custody of Subhash to Delhi Police along with the revolver and ammunition recovered at Bombay. Pursuant to the order, Subhash was handed over to the Delhi Police along with the revolver and ammunition. Spent bullets recovered from the dead body of SI Jaswant Singh and the body of Malikiat Singh along with the revolver in question were sent to C.F.S.L. According to the report Ext. PW-76/B of Shri B. Moitra, Senior Scientific Officer, C.F.S.L, Delhi, and his statement it is

revealed that revolver Ext. P-20 was in working condition and the bullet found in the dead body of the SI Jaswant Singh and the bullets recovered from the body HC Malikiat Singh were of 38 bore and the same could have been fired from the revolver in question.

(3) PW-4 Gulshan Kumar, who was working as Sanitary Inspector in J.P.N. Hospital, deposed that on June 5, 1984 at about 1.30 or 2.00 P.M. he saw a man changing the number plate of a car. He asked him as to what he was doing. The person changing the number plate dared him to come near him. While he started going towards the person changing the number plate, he sat in another car and the person at the wheel pointed out a pistol towards him. The person sitting in the car threatened to kill him. Thereupon, in order to save himself he is stated to have sat down while both the persons escaped in the other car leaving behind the car whose number plate was being changed. From the abandoned car No. CHB-3764, which was used as a getaway car after the dacoity, chance finger prints were lifted, photographed and developed by PW-75 Shri Gautam Ray. According to the report of Dr. Jaspal Singh, Senior Scientific Officer, Finger Prints Expert, C.F.S.L., New Delhi, (Ext. PW74/D), print mark 'Q1' developed from the rear view mirror of the Car No. CHB-3764 was found to be identical with the specimen left thumb impression of Subhash Chand. The report of Dr. Jaspal Singh, Senior Scientific Officer, was proved by PW-74 Shri S.K. Chadha as Dr. Jaspal Singh had died meanwhile. Shri S.K. Chadha, Senior Scientific Officer, Finger Prints Expert, Grade II, stated that he was conversant with the handwriting and the signatures of Dr. Jaspal Singh as he had seen him writing and signing various documents. According to him Ext. PW-74/D was prepared and signed by Dr. Jaspal Singh. The identity of the getaway car is established from the statement of PW-19 HC Malkiat Singh who deposed that two boys who were firing at the police party sat in Fiat car No. 3764 and drove the same towards Liberty Cinema. He identified the Car. It is significant that it was the same car from which the aforesaid chance finger print of Subhash was lifted. This circumstantial piece of evidence also clearly points to the participation of Subhash in the crime.

13. Dr. L.T. Rehmani who conducted the post mortem examination on the body of SI Jaswant Singh noted the following injuries :-

'1. Rounded punctured wound of 7 mm diameter on the front of left arm 9 cm below the acromion. Margines were inverted and there was no evidence of blackening or tattooing around the injury, fluid blood was oozing out from the wound.

2. Bruise with bulging 3 cm x 3 cm area on the right side chest wall in the mid axillary line 12 cm below the armpit.

3. Rounded punctured wound of 5 mm diameter on medial aspect of left wrist near the crease. Margines were inverted.

4. Laceration wound 1.5 cm x 0.5 cm x on the dorsum of left thumb with fracture dislocation of metacarpophalangeal joint. Margines were inverted with the chip of the bone projecting out.'

14. He opined that the injuries were anti-mortem caused by fire arm. According to him injury to lung was sufficient to cause death in ordinary course of nature. The injuries as per Dr. L.T. Rehmani was possible by .38 bore revolver. He further opined that death was due to haemorrhagic shock resulting from injury to the lungs. Thus it is obvious that SI Jaswant Singh died due to haemorrhagic shock resulting from injury to the lungs and the same was sufficient to cause death in ordinary course. The bullet recovered from the body of SI Jaswant Singh and the revolver recovered from Subhash were sent to CFSL to determine whether spent bullet was fired from the revolver recovered from Subhash. PW-76 B. Moitra, Senior Scientific Officer Grade-I, stated that he received parcel No. 23 containing one 3.80 jacketed bullet mark 'BC/3' recovered from the body of SI Jaswant Singh. He after detailed examination in the laboratory came to the conclusion that the bullet marked 'BC/3' of parcel No. 23 and two other bullets had been fired from .38 calibre fire arm. He further stated that he examined .38 revolver marked 'W/3' of parcel No.31 and found the same to be in working order. He further opined that .38 bullet mark BC/3 of parcel No.23 and two other bullets marked BC/4 and 5 had been fired from the .38 revolver marked 'W/3' of parcel No. 31. As already seen, this parcel was the one which contained the revolver recovered from Subhash.

15. Having regard to the above discussion, we uphold the order of the trial court convicting Subhash on various counts.

16. Insofar as Satish and Mohan are concerned, they were arrested in the vicinity of Rajdoot Hotel on 18th November, 1984 at 9.00 p.m. On 19th November, 1984 they were produced before PW-95 Shri Raghbir Singh, Metropolitan Magistrate, by the police with an application Ex.PW-91/A for their test identification parade in jail. The Metropolitan Magistrate fixed the TIP for 22nd November, 1984. On 19th November, 1984 when the TIP was fixed for 22nd November, 1984 no objection was raised by them thereto. However on 22nd November, 1984 both of them refused TIP. therefore, the trial court was right in drawing an adverse inference from their refusal to participate in the TIP to the effect that in case the TIP was held, both the accused would have been identified by the prosecution witnesses as the ones who participated in the dacoity along with Subhash on the fateful day. PW-20 SI Charan Singh identified Satish and Mohan Lal in Court as the persons who had participated in the crime. Besides PW-20 SI Charan Singh, PW-9 Harbir Singh, and PW-82 K.L. Batra identified Satish in Court; PW-12 Narender Madan and PW-23 Mr. Marwaha identified both Mohan Lal and Satish. It appears to us that both Mohan Lal and Satish have been rightly convicted by the trial Court on various counts.

17. We find that Satish has not filed any appeal. Appeals have been filed only by Subhash and Mohan Lal. We have already upheld the conviction of Subhash. We also uphold the conviction of Mohan Lal on various counts as recorded by the trial court.

18. The trial Court imposed death sentence on Subhash and has made a reference for its confirmation under Section 366 of the Code of Criminal Procedure. We find that while charge sheet was filed some time in the year 1984, conviction and sentences were recorded by the trial court on September 23, 1998 and September 26, 1998 respectively. This means the trial remained pending for a period of one and half decades. Thereafter, reference and appeals have remained pending for two years. It seems to us that during long years of confinement and trial Subhash must have been haunted and tormented by the prospect of going to

the gallows. Life of a person gripped by such a fear is extremely agonising. It is a life of a living dead. Long years of incarceration and looming uncertainty must have caused immense suffering to him both in mind and body. In the circumstances, therefore, it will not be appropriate to maintain the capital punishment imposed on Subhash by the trial court though there is no doubt that he has committed a heinous crime of killing SI Jaswant Singh, a police officer on duty, who was defender of law. For saying this we draw inspiration from the decision of the Supreme Court in *The State of Gujarat Vs . Anirudh Singh and Another*, : 1997 CriLJ3397 , held as follows:-

'Accordingly, the judgment and order of acquittal, passed by the Designated Court stand set aside. Instead, the first respondent having committed the offence of murder of Popatbhai, is convicted under Section 302 IPC and is sentenced to undergo imprisonment for life. Since more than nine years have elapsed from the date of the commission of the crime, we do not think it appropriate to impose capital sentence of hanging, though he has committed an heinous and a gruesome crime of killing a responsible Member of Legislative Assembly who was attending flag hoisting ceremony on the Independence Day. He is also convicted for an offence under Section 5 of the TADA Act and is sentenced to undergo imprisonment for three years. Both the sentences are directed to run concurrently. The appeal against the first respondent is allowed accordingly. Appeal against the second respondent is dismissed.'

19. It may be pointed out that the Supreme Court was dealing with a case where a gruesome murder of a Member of Legislative Assembly, who was attending the flag hoisting ceremony on the Independence Day, was committed. The Supreme Court did not maintain the death sentence due to inordinate delay in the trial of the case. Keeping in view the aforesaid decision of the Supreme Court, we reduce the sentence of Subhash from one of death sentence to one of life. The murder reference is answered accordingly.

20. We also find that the sentences imposed on Mohan Lal have been made to run consecutively. Sentences can be directed to run consecutively only when transactions relate to different offences committed at different points of time. It will

not be proper and legitimate to allow sentences of the said convicts to run consecutively. In spite of the fact that Satish has not filed an appeal before us, still we cannot allow him to be treated differently from Mohan Lal. The sentences imposed on Mohan Lal and Satish, therefore, are directed to run concurrently.

21. The appeals of both Subhash and Mohan Lal succeed to the extent indicated above and are hereby disposed of.

22. A copy of this judgment be sent to the Superintendent, Central Jail, Tihar, New Delhi, expeditiously.

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