

Ram Narayan Singh @ Narain Singh, Vs. State

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Court : Rajasthan

Decided On : May-22-2008

Reported in : RLW2009(1)Raj590

Judge : Prakash Tatia and; Chand Mal Totla, JJ.

Appellant : Ram Narayan Singh @ Narain Singh, ;ramanand and Arvind Dubey

Respondent : State

Advocate for Pet/Ap. : Shri. Pardeep Shah

Disposition : Appeal dismissed

Judgement :

Prakash Tatia, J.

1. These three appeals have been preferred by the three accused, namely DB Cr. Appeal No. 107/2002 by Ramnarayan Singh, DB Cr. Appeal No. 1029/2002 by Ramanand and DB Cr. Jail Appeal No. 159/2003 by Arvind Dubey, who have been convicted and sentenced by the court of Addl. Sessions Judge (Fast Track), Bhilwara in Sessions Case No. 73/2001 as under:

Name of accused

Conviction and Sentence

Ram NarayanSingh @ Narayan Singh

(i) Under Section 302/120B IPC sentenced to imprisonment for life and a fine of Rs. 30,000/- and in default to undergo further rigorous imprisonment for 3 months.

(ii) Under Section 397 IPC sentenced to 10 years rigorous imprisonment and a fine of Rs. 2,000/- and in default to further undergo rigorous imprisonment for 2 months.

(iii) Under Section 394 IPC sentenced to 10 years rigorous imprisonment and a fine of Rs. 2,000/- and in default to undergo rigorous imprisonment for 2 months.

Ramanand

(i) Under Section 302/120B IPC sentenced to imprisonment for life and a fine of Rs. 30,000/- and in default to undergo further rigorous imprisonment for 3 months.

(ii) Under Section 394/120B IPC sentenced to 10 years rigorous imprisonment and a fine of Rs. 2,000/- and in default to undergo rigorous imprisonment for 2 months.

Arvind Dubey

(i) Under Section 302/120B IPC sentenced to imprisonment for life and a fine of Rs. 30,000/- and in default to undergo further rigorous imprisonment for 3 months.

(ii) Under Section 394/120B IPC sentenced to 10 years rigorous imprisonment and a fine of Rs. 2,000/- and in default to undergo rigorous imprisonment for 2 months.

(iii) Under Section 3/35 of the Arms Act sentenced to 7 years rigorous imprisonment and a fine of Rs. 1,000/- and in default to undergo 1 month's rigorous imprisonment.

2. Brief facts of the case are that a first information report Ex.P/14 was submitted by PW-9 Ashok Kumar Burad, the then Branch Manager, State Bank of Bikaner and Jaipur, Branch Industrial Area, Biliya of District Bhilwara to the SHO,

Pratapnagar on 21.4.1997 stating therein that his bank's Chief Cashier, Umeshchandra Sharma, alongwith Guard Samrath Singh Rathore proceeded to deposit Rs. 2,70,000/- in the Bhilwara Branch of their bank i.e., State Bank of Bikaner and Jaipur and they were carrying Rs. 2,70,000/- of denomination 500x98, 100x2000, 50x400 and 10x100, out of which currency notes of Rs. 500, which were in number 98 were not stitched and rest of the currency notes were stitched in separate packets. When said Umeshchandra Sharma, Chief Cashier and Guard Samrath Singh came out from the bank and sent a Class-IV employee of the Bank Ramchandra Lakhara to fetch a three-wheeler, three persons came on scooter, out of which, two dropped down from the scooter and after showing pistol, snatched the bag of the currency notes from the hands of Chief Cashier Umeshchandra Sharma and both ride over the scooter with other who was already ready on scooter and all three started towards main road on scooter. The Chief Cashier Umeshchandra Sharma and the Guard Samrath Singh shouted and ran after the above three persons and they tried to throw some stones over the accused. While running, the accused persons' scooter collided with one electric pole and because of which all the three fell down. Guard Samrath Singh caught one of the assailants and instantly there were two fires, which hit the Guard Samrath Singh and Guard Samrath Singh died there. Because of that, the person who was caught by Guard Samrath Singh could escape and all three ran on the scooter with the currency notes referred above. It is stated that all three accused were of the age in between 25 to 30 years.

3. On receipt of the written report, FIR No. 178/97 was drawn and case under Sections 302, 394, 397, 398 and 34 IPC was registered and investigation was started.

4. During investigation, seizure memo of the body of Guard Samrath Singh was prepared, his body was sent for postmortem and postmortem report was obtained and, thereafter, his body was handed over to his son. The site was inspected and site map and reports were prepared. From the place of incident two cartridges, one empty and one live, scooter mate, one knife with tape on the handle of the knife were recovered and their seizure memos were prepared. The blood soil and sample control soil were taken and were sealed. All the articles were sent to the

FSL. Total five accused were arrested, who are (i) Laxman Rai on 2.5.1997, (ii) Smt. Chandra on 3.5.1997, (iii) Arvind Dubey on 3.5.1997 (iv) Ramanand on 4.5.1997 and (v) Ramnarayan on 5.5.1997. In furtherance of the information given by Laxman Rai scooter was recovered and its seizure memo Ex.P/54 was prepared and at that time the mate of the scooter was not found on the scooter. On the basket of the scooter there was white paint of the same nature and colour, which was on the scooter's mate found on the spot. Accused Ramanand's house was searched before Ramanand was arrested for which memo Ex.P/57 was prepared and from his house a PVC tape was recovered. The said tape and tape which was on the knife, which was recovered on the spot both were sent for chemical examination for obtaining report from the FSL, Jaipur. On the information of Smt. Chandra Ex.P/59 some cloths, attache and one cartoon were recovered. In furtherance to the information given by Arvind Dubey Ex.P/62 from a plot, which was near to his residential room under some stones two local made 'Katta' (pistols), which were kept in hide were recovered, which were sealed. The said two pistols alongwith cartridges, which were recovered from the site were sent to the FSL to obtain opinion whether those cartridges were fired from same pistols or not. On the basis of information given by Ramnarayan, from the house of Laxman Rai, a pent and one bundle of note of denomination of Rs. 100 each in total Rs. 10,000/- were recovered from bathroom of Laxman Rai. During investigation, information was obtained from Ramnarayan about the route, which they have taken for committing above offence and that information was recorded. On the basis of his information, one bundle of Rs. 50/- in total Rs. 5,000/- were recovered, which he kept hiding in an under construction shop. The accused Ramnarayan was taken for test and identification parade where he was identified by witness Ran Singh, Umeshchandra Sharma, Heera Lal. The statement of witnesses were recorded under Section 161 Cr.P.C. And thereafter, challan was filed against above five accused. After committal in the court of Addl. Sessions Judge No. 2, after hearing arguments, the trial court framed the charges against all five accused persons under Sections 397, 394, 402 and 120B IPC. Arvind Dubey had one more charge against him, which was under Section 3/25 of the Arms Act. All the accused denied the charges and sought trial.

5. After evidence, when case was fixed for final arguments, the trial court found that against these five accused charge under Sections 396 IPC and 302/120B is made out, therefore, by order dated 12.8.2002 in addition to previous framed charges, charge under Sections 396 and 302/120B IPC were also framed, which were denied by the accused and they sought trial. Under Section 217 Cr.P.C. opportunity was given to the prosecution and to the accused for re-examination/cross-examination of the witnesses. On 9th Sept., 2002, on behalf of the accused Ramnarayan and Arvind Dubey, an application was submitted for cross-examination of witnesses Umeshchandra Sharma, Ranjeet Singh, Heeralal and Shyam Sunder Lata. On this request, above witnesses were summoned, who were cross-examined by the accused except witness Ranjeet Singh, who was not found and not produced by the prosecution and, therefore, his evidence was closed. On 10th Oct., 2002 counsel for the accused stated on behalf of the accused that the accused do not want to cross-examine any more witnesses.

6. Accused statements were recorded under Section 313 Cr.P.C. wherein they denied all the allegations and stated that they have been wrongly implicated in the false case.

7. The trial court after hearing the arguments of the Public Prosecutor and the counsel for the accused, acquitted accused Laxman Rai and Smt. Chandra W/o accused Ramanand from the charges referred above and convicted the above three appellants and sentenced them to undergo imprisonment as awarded and mentioned above. Being aggrieved against the judgment and order of the conviction and sentence dated 29.11.2002, all the three accused have preferred three separate appeals. Learned Counsel for the appellant Shri PN Mohanani submitted that initially no charges under Sections 302/120B IPC and 394/120B IPC were framed against the accused and as per the fact mentioned in para No. 4 of the impugned judgment, at the time of final arguments, new charges under Sections 396 and 302/120B IPC have been framed. It is submitted that the trial court could not have framed the charge at the time of final arguments and the trial court has convicted the appellants under Section 302/120B IPC, which is illegal. The trial court acquitted the appellants from the charge under Section 396 IPC and convicted under Section 394 IPC. It is also submitted that for charge for decoity all

persons who conjointly committed decoity may be punished even if only anyone of them has committed crime of murder and the accused may be convicted for the act committed by other. But under Section 394 IPC individual act can make liable to that individual for the commission of offence and there cannot be jointness or common responsibility in a case under Section 394 IPC. Learned Counsel for the appellant Shri Mohanani also submitted that there is no evidence for the charge under Section 120B IPC and, therefore, the conviction of the accused under Section 302 and 294 with the aid of Section 120B IPC is absolutely illegal as is not supported by any evidence. It is also submitted that in the act of robbery unless there is overt act of a person in the commission of offence of robbery, he cannot be convicted because of his presence with the person, who in fact, and actually committed offence of robbery. It is submitted that in the case of State (NCT of Delhi) v. Navjot Singh Sandhu reported in 2005 Cri. L.J. 3950 the Hon'ble Supreme Court while considering the scope of Section 121A IPC held that those who committed offences pursuant to conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy, but the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. According to learned Counsel for the appellants the Hon'ble Apex court in the above judgment held that there is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive offence not committed by them. It is also held that the offender will be liable only if he comes within the plain terms of the penal statute. The criminal liability for an offence cannot be fastened by way of analogy or by extension of a common law principle. With the help of above judgment, learned Counsel for the appellants vehemently submitted that the act of commission of robbery completed with the snatching of the bag by the person and act of firing and killing one person is an act done after the completion of the act of robbery or snatching of bag containing the currency notes. The killing of Guard Samrath Singh is not part and parcel of the act of robbery and, therefore, the appellants could not have been convicted under Section 302 IPC with the aid of Section 120B IPC.

8. Learned Counsel for the appellant Shri Mohanani relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Subash v. State of Harayana

reported in 2008 Cri. LJ 693 wherein, in a case of robbery and murder the fact revealed that accused person allegedly threw deceased and other person into canal after committing robbery of money and tractor. In the said case, the Hon'ble Supreme Court held that no specific overt act has been attributed to the appellant. In the said case, the accused started robbery of money from the pocket of the deceased and when he resisted, the accused caught him and pressed his neck and thrown him into the canal. The victim tried to catch hold of grass grown on the bank of the canal, but accused gave blows on his face and was again thrown into the water by which the victim died. In that situation, the Hon'ble Apex Court held that the evidence available on record does not suggest the death of victim. The case falls under Section 304 Part II IPC and the accused was convicted under Section 304 Part II IPC and sentenced to undergo seven years RI.

9. Learned Counsel for the appellant also relied upon another judgment of the Hon'ble Apex Court delivered in the case of Ajit Singh v. State of Haryana reported in 1996 (1) Crimes 146 (SC). In the said case, the accused, who did not use the weapon for robbing was held not liable to be convicted under Section 397 IPC and has been convicted under Section 392 IPC. In view of the above reasons, according to learned Counsel for the appellant, in the present case, it is not known, who fired and the trial court in para No. 15 of the judgment held that Ramnarayan Singh accused-appellant was one of the persons, who came on scooter and committed robbery, but the other accused were not involved in the commission of the said crime. It is also submitted that Ramnarayan fired the gun shot, is not the case of the prosecution and none of the accused has been found responsible for firing, then conviction of any of the accused under Section 302 read with Section 120B IPC cannot be sustained.

10. Learned Counsel for the appellant Shri Pardeep Shah and learned Counsel for the appellant Shri Rakesh Arora vehemently submitted that in view of the trial court's finding as recorded in para No. 15, it is clear that the trial court specifically held that the appellants Ramanand and Arvind Dubey were not involved in this crime. Contrary to its own finding, the trial court convicted Ramanand merely on the basis of the recovery of Rs. 5,000/- from a place, which was an open place and was not the place of appellant Ramanand. No money was recovered from the

house of Ramanand is the finding of the trial court. The trial court also considered the recovery of PVC tape from the house of the appellant Ramanand as material evidence ignoring this fact that the PVC tape is an article, which is found in almost every house and it is used over electric wire etc and is also used for very many domestic purposes. According to learned Counsel for the appellant Shri Shah not a single witness has identified the accused Ramanand during investigation or in the trial. It is also submitted that though the prosecution tried to show that accused was not on his duty during relevant period where he was doing the job work, but in fact, from the same evidence produced by the prosecution itself, it is proved that accused was on duty in the factory. Therefore, accused Ramanand could not have been with any of the accused, who might have committed crime referred above. Learned Counsel for the appellant Shri Rakesh Arora also submitted that in view of the trial court's finding recorded in para No. 15 the appellant Arvind Dubey was not on scooter on which three accused might have come to the place of occurrence and might have snatched the bag of currency notes and might have fired. The appellant Arvind Dubey has been convicted merely on the basis of recovery of two pistols (Deshi Katta), which were lying in an open place where anyone could have placed those articles. The appellant has wrongly been connected with the recovery of those pistols. Apart from above recovery, there is no evidence against the appellant and more important is that there is neither circumstantial nor ocular evidence about the presence of appellant on spot at the time of commission of offence or even thereafter. In view of the above reasons, apart from the grounds submitted by learned Counsel for the appellant Shri Mohanani, the appellant Arvind Dubey is entitled to be acquitted.

11. Learned Public Prosecutor vehemently submitted that so far as happening of unfortunate event of robbing bank persons and in that consequence killing of Guard of the bank, there cannot be any dispute. The written report was given by the Branch Manager of the bank to the police station. The prosecution produced Chief Cashier of the State Bank of Bikaner and Jaipur -Umeshchandra Sharma as PW-8 who stated that he took the currency notes of Rs. 2,70,000/- of Rs. 500, 100, 50 and 10 on 21.4.1997 at about 3.00 PM and came out from the bank with Guard Samrath Singh. When they reached outside the bank, three persons came on scooter where two persons dropped from the scooter and snatched the

currency note bag from him and ride the scooter. He and Samrath Singh ran after them and also threw stones towards them. Scooter of the accused collided with electric pole and fell down. Samrath Singh caught one of the accused and immediately thereafter, bullets were fired, which hit the Guard Samrath Singh and he died there on spot. He stated that on the bundle of notes there was seal of the bank with sign of the witness PW-8 - Chief Cashier and of the Cashier Ajay Gupta. He identified the accused Ramnarayan in the Central Jail in front of Judicial Magistrate on 28th May, 1997 and also identified the accused in the court during his statement. His statement is fully corroborated by the other witnesses PW-4 Ranveer Singh and PW-6 Heera Lal. PW-7 Mohan corroborated the statement of PW-6 Heeralal. However, PW-6 Heeralal could not identify the accused and PW-11 Banshilal proved the fact that while running on scooter three persons fell down because of colliding of scooter with the lamp post and one of the persons was caught by the Chowkidar (Samrath Singh) and another person, who was also sitting on the scooter, fired on the Chowkidar and the shots hit the Chowkidar. In addition to the above, the recovery of the currency notes from the accused in the facts of the case, cannot be considered to be an insignificant recovery because of the reason that it was a case of robbery of currency notes of the bank known as State Bank of Bikaner and Jaipur. The bundle of notes recovered from the accused had seal of the bank and none of the accused gave any explanation how those currency notes were lying at the place from where recoveries were made.

12. It is also submitted that the recovery from Arvind Dubey of the pistols and pistols' connection with the cartridges, empty and fired found on the spot, proved by the FSL report, which fully establishes Arvind Dubey's inflicting injury by those cartridges through the recovered pistols. It is also submitted that this event cannot be dissected in two parts, one of snatching of currency notes and another killing the Chowkidar, who tried to caught one of the accused. The clear aim, object and intention of the three accused were premeditated and, therefore, they proceeded with the knife and pistols on one scooter to rob the victims and to take the currency notes and in case, there is resistance then they may use the deadly weapons to kill anybody and they in fact, have given effect to their intention. It is not a case where gun was not fired to save one himself, but was fired to save co-accused. Therefore, the judgments relied upon by learned Counsel for the

appellants have no application to the facts of this case.

13. It is also submitted that for conspiracy there may not be a direct evidence and normally it is difficult to collect evidence about hatching a conspiracy by the accused. It is required to be inferred from the manner in which the individual acted with common intention. In view of the above, all the three accused have rightly been convicted under Section 302/120B IPC as well as under Section 394/120 IPC. The appellant Arvind Dubey was rightly convicted under Section 3/25 of the Arms Act.

14. We considered the submissions of learned Counsel for the parties and perused the record and the judgment relied upon by learned Counsel for the appellants.

15. So far as death of Samrath Singh on spot due to gun shot injury during the course of robbery is concerned, the finding has been assailed by the learned Counsel for the parties. The plea of all the three accused is that they have not committed offence and were not present on the scene of occurrence at the time of commission of offence, the plea is the plea of alibi. Witness PW-8 Umeshchandra Sharma who was examined twice, one for the charges originally framed and subsequently after adding of charge under Section 302/120B and 396 IPC, supported the prosecution case fully and stated that he alongwith Samrath Singh came out from the bank at about 3.00 PM with currency notes of RS.2,70,000/- in bundle of Rs. 500,100, 50 and 10. At that time three persons came on scooter and two dropped down from the scooter with pistol and after showing the pistol, they snatched the bag of the currency notes from his hands and tried to run away. They were followed by witness himself alongwith deceased Samrath Singh. The scooter collided with the lamp post and the assailants fell down, Samrath Singh caught one person, upon which another person fired shot upon the Guard Samrath Singh, who died due to gun shot injury. PW-8 Umeshchandra Sharma identified the accused Ramnarayan Singh in Court. He stated that he snatched the bag from his hand and ran away. He also stated that the currency notes had slips over which there were seal of the bank with his sign and sign of Cashier Ajay Gupta. He also identified the accused before the Magistrate and proved the test identification

memo Ex.P/7. He stated that the total event took place in 2-3months only. However, in subsequent evidence, which was recorded on 27th Sept., 2002 i.e., after more than five years from earlier his statement in court, he stated that because of passing of too much time, he cannot identify the accused.

16. Witness PW-8 Umeshchandra Sharma's statement is fully corroborated by PW-4 Ran Singh, who was running hotel in front of the bank and he saw three accused persons coming on scooter and saw one person in Khakhi dress running after him. The scooter fell down after colliding with the lamp post and one of the persons who was on the scooter was caught by the said person in uniform. As that person caught the running person, a fire came and hit the said Chowkidar. The Chowkidar fell down instantly in the pool of blood. This witness PW-4 identified Ramnarayan Singh in court also and before that he identified him in jail for which test identification memo Ex.P/7 was prepared. He as well as PW-8 both stated that on spot mate of the scooter as well as one knife fell down. His hotel is 30 to 35 feet away from the bank.

17. PW-6 Heeralal who was an employee in one nearby factory and was in the hotel of one Mohan also corroborated the statement of PW-8 Umeshchandra Sharma and gave his statement how the event occurred. PW-6 Heeralal also identified the accused Ramnarayan Singh in the court and he was witness in the test identification parade and signed the memo Ex.P/7.

18. PW-7 Mohan is the owner of the hotel also supported the prosecution case fully and proved the presence of Heeralal on his hotel and also witness to the event of catching hold of one person by Chowkidar of the bank and hitting the bullet to the Chowkidar. He also stated that all the three accused of the age of 25 to 30 years. However, he stated that he cannot identify those accused.

19. The PW-4 is the witness to the site inspection and he signed site inspection report Ex.P/8. He also stated that the knife, which was recovered from spot had PVC tape on his handle. He also stated that there was two cartridges, which were seized by the police out of which one was live and other was empty. He is witness to the seizure memo Ex.P/10 also and also witness to the seizure of the sample soil and blood soil Ex.P/11. In cross-examination, he stated that since his hotel is

in front of bank, therefore, he was knowing the Guard.

20. In view of the above evidence supported by the postmortem report, it is clear that the prosecution fully proved that on 21.4.1997 the cash was in the hands of Chief Cashier of the State Bank of Bikaner and Jaipur. He along with Guard Samrath Singh came out from the bank where three persons came on scooter and snatched the currency notes bag from them and tried to run away then their scooter met with accident with the electric pole and all the three fell down. One of the accused was caught by the Guard Samrath Singh, upon which one of the accused fired upon Samrath Singh because of which Samrath Singh died. The finding which has been assailed by all the three accused appellants is about their involvement in the crime and not about the incident. So far as Ramnarayan Singh is concerned, there is ocular evidence of the eye witness PW- 8 Umeshchandra Sharma from whose hands the bag was snatched by the accused. PW-8 Umeshchandra Sharma, PW-4 Ranveer Singh and PW-6 Heeralal identified the appellant Ramnarayan Singh and have proved that he snatched the bag from PW-8 Umeshchandra Sharma. PW-8 Umeshchandra Sharma in his statement recorded on 27th Sept., 2002 could not identify the accused Ramnarayan, which is absolutely irrelevant and that can be due to passing of more than five years' time from his earlier statement. There is no reason to disbelieve his statement recorded on 4.8.1992 wherein he identified the accused Ramnarayan Singh and his statement is corroborated by other witnesses who saw the incident. In view of the above reasons, so far as involvement of appellant Ramnarayan Singh in coming on scooter to rob the victims to take away the currency notes is concerned, fully proved.

21. Apart from above direct ocular evidence, Rs. 10,000/- in one bundle of Rs. 100/- with the bank seal of State Bank of Bikaner and Jaipur was recovered from the house of Ramnarayan Singh and there is no explanation of Ramnarayan for this money. Even if no much weightage is given to this recovery even then in view of the direct evidence of eye witnesses, the involvement as well as overt act of Ramnarayan Singh in commission of offence stands fully proved from the evidence produced by the prosecution. It has come on record that accused Ramnarayan Singh was resident of Ajamgarh in UP and he came to Bhilwara

about seven years and just after incident he again went to the UP. A special team was sent to Ajamgarh from where the accused Ramnarayan Singh was arrested. At Ajamgarh it was found that from the money looted by them Ramnarayan Singh purchased one motor cycle (Hero Honda) which was seized vide seizure memo Ex.P/44 and it was purchased by him from witness PW-2 Roopesh. Ram Singh gave information under Section 27 of the Evidence Act that a paint he has put under the bricks of house of Laxman Rai. In pursuance of the said information, his paint was recovered and memo Ex.P/45 was drawn in the presence of witness PW-25 and PW/26 Jassumal and Modu Das. PW-25 and PW-26 Jassumal and Modu Das admitted their signatures on the recovery memo. By another information vide Ex.P/68 the attache was recovered from his house and in pursuance of his information Ex.P/68 Rs. 10,000/- each of Rs. 100/- in bundle with the bank's seal were recovered from Ramnarayan vide Ex.P/71. He also gave the route by which they traveled to complete their robbery, but that was not accepted as evidence admissible under Section 27 of the Evidence Act by the trial court. Be that as it may be, from the evidence, as stated above, the commission of offence by Ramnarayan Singh is fully established and, therefore, we do not find any merit in the appeal preferred by Ramnarayan Singh i.e., DB Cr. Appeal No. 107/2003 so far as challenging to the finding about his involvement is concerned.

22. The legal point raised by learned Counsel for the appellant will be considered after considering the merit in the appeals of other two accused.

23. The accused Ramanand was an employee of an industrial unit Padamani Synthetics and he was working as jobber. The evidence has been produced to prove that the accused appellant Ramanand remain absent from duty on relevant date from 1.00 PM to 4.00 PM. For this, prosecution produced witness PW-12 Sansar Singh who was working on the post of Master who deposed that Ramanand was employee in the said factory and at the relevant time Mahadev Meena was Chowkidar in the factory. Mahadev Meena gave attendance register of the factory to police on 29th April, 1997. He proved his hand writing in the register Ex.P/16. However, he stated that he cannot tell from when Ramanand was engaged in the factory as jobber. The witness PW-13 Mahadev Meena stated that in the month of April, 1997 the appellant Ramanand was working in the above

factory as jobber. He stated that there is only one register wherein entries are made for all the employees. At page No. 17 of the register at article (1) the name of Ramanand is entered for the date 21.4.1997. He came in the factory at 8.00 PM and he went to Bhilwara city at 1.25PM and came back in the factory at 4.30 PM. He proved this fact by the entry made in the register at article (1) at entry P/17. Ramanand remained in the factory till 8.00 PM. After 24.4.1997 Ramanand did not come to the factory any time after 24.4.1997. From that evidence, prosecution tried to prove that Ramanand was not in the factory where he was working during the time when offence was committed and from 24.4.1997 Ramanand did not come on duty.

24. PW-14 Ashok Kumar was produced to show that Ramanand came to his shop at the relevant time, during the period, when he was not in the factory on 21.4.1997 and the witness was knowing him well because he used to come to his shop because of his job in the Padamani Synthetics. That was one of the circumstances which was relevant but independently, this circumstance alone was not found sufficient by the trial court as a proof that Ramanand was involved in the crime. But it appears from the other facts, which have been proved by the prosecution with the help of evidence about the route from which he would have traveled that how Ramanand's presence on the spot could have been as well as from the recovery of the currency notes from him in furtherance of his information which had seal of the bank if, taken together, then his involvement is also proved. It is true that the currency notes were not recovered from the house of Ramanand (Ex.P/48) but the currency notes were not lying open so as they could have come in the knowledge of anybody. They were hidden under the stones and could have been in the knowledge of the person, who had put them there. The another recovery is PVC tape from the house of Ramanand. The same tape was found on the handle of the knife as per the FSL report Ex.P/42 wherein it has been opined that the tape on the handle of knife is from the same tape which was recovered from the house of Ramanand. It is true that same tape may be available in most of the houses but sequence in which this evidence has come with other evidence; of absence of accused from the duty from 1.30 PM to 4.00 PM, recovery of Rs. 5,000/- from him as well as having the same tape, which was on the knife at his house fully establishes that the appellant Ramanand was involved in the crime and was

present alongwith the other two accused persons. Therefore, the finding of the trial court that Ramanand was also involved in committing offence is concerned, that is based on cogent evidence and the trial court has not committed any illegality in holding him guilty.

25. In the appeal of Arvind Dubey learned Counsel for the appellant tried to submit that the trial court clearly held in para No. 15 of the judgment that two other accused other than Ramanand including Arvind Dubey were not involved in the crime. Contradicting its own finding the trial court, held that appellant Arvind Dubey is guilty merely on the basis of alleged recovery of the two pistols from open space over which the appellant Arvind Dubey neither could have any control or possession nor has any connection. It is submitted that assuming for the sake of arguments that fire might have been caused by those two pistols but the appellant Arvind Dubey cannot be connected with those pistols. It is submitted that when there is no evidence of any witness that Arvind Dubey was present at the time of occurrence and took part in that event and particularly when the witness identified Ramnarayan Singh then the appellant Arvind Dubey cannot be convicted only on the basis of assumption. The trial court, therefore, has committed illegality.

26. The appellant Arvind Dubey was arrested on 3rd May, 1997 Ex.P/22. On 3rd May, 1997 he gave information under Section 27 of the Evidence Act, which Ex.P/62. In furtherance to that information the appellant Arvind Dubey got the recovery of two pistols from the plot adjacent to his own residential room. The pistols were hiding under the stones, therefore, the relevant fact is that the recovery was made from the plot just near the residence of the appellant Arvind Dubey. The articles could not have been noticed by anybody and the appellant Arvind Dubey had knowledge where the pistols were hiding under the stones near his residential room, which is proved from his information Ex.P/62. A fact which is in the knowledge of the accused is required to be explained by him and in this case, there is no explanation of the appellant Arvind Dubey that how he came to know that those pistols were lying hidden under the stones if he himself has not put them there.

27. PW-19 Parasram was the witness of that recovery who stated that appellant Arvind Dubey came with the police and he removed the stones and brought the pistols out from that hiding place. The police prepared the memo Ex.P/29 which he signed. He is also witness of photograph taken at that time and the Photographs is Ex.P/37. He identified the accused appellant Arvind Dubey in the Photographs and stated that the person who brought pistols out from the hidden place is shown at place 'Z' in Photograph Ex.P/37. Ex.P/29 is the site map. Ex.P/30 also the photograph of the site and recovery, therefore, the recovery of weapon from the appellant Arvind Dubey is fully proved.

28. The FSL gave report Ex.P/41. FSL opined that from the pistols sent to them having point 303' aluminum chamber and from those pistols fire can be affected. It opined that from pistols 'w-2' of packet 'O' the cartridge 'C-1' was fired, which was sent to FSL in packet 'Q' and after taking measurement of the cartridges etc., FSL opined that the fire was affected from both the pistols. It was also found that the cartridge, which was found empty on spot could have been fired from the pistols recovered from Arvind Dubey. In view of the above reasons, the trial court rightly reached to the conclusion that the victim Samrath Singh was killed by the injury caused by the pistols and by the fire affected from those pistols. The evidence of recovery of pistols from the accused Arvind Dubey from which offence was committed is sufficient evidence to hold him guilty for his involvement in the commission of offence.

29. After going through the reasons given by the trial court in its detailed judgment given after careful consideration of all evidence if we look at the finding recorded in para No. 15 of the judgment on the basis of which learned Counsel for the appellants tried to submit that the trial court held that only Ramnarayan Singh was involved in the crime and two other persons who were with him were not involved in the crime and, therefore, the appellant Ramanand and Arvind Dubey should have been acquitted, it appears that that the finding recorded by the trial court may not be properly worded but it is clear from the reading of para No. 15 itself that the trial court was conscious of the fact that two more accused Ramesh and Vijay were not arrested and their case is pending under investigation as per Section 173(8) of Cr.P.C. There is positive finding that accused Ramnarayan Singh was

involved in the crime and, thereafter, it has been mentioned that other accused of this case were not only three accused but out of three, two accused Ramesh and Vijay have not been arrested. It is relevant to mention here that in the present case itself, there were five accused. Account No. 2 Laxman Rai and accused No. 3 Smt. Chandra have already been acquitted by the trial court and the trial court has considered the case of each accused separately and while considering the individual case of Ramnarayan he has been found guilty and, thereafter, when the trial court considered the case of accused Ramanand and Arvind Dubey specific finding has been recorded on the basis of evidence on record that they are also guilty. Therefore, the para No. 15 cannot be read in isolation to all findings recorded by the trial court in the judgment nor it could be read as a finding recorded contrary to the finding recorded in subsequent paras in the same judgment by the court below.

30. Now the question arises whether in the present set of facts, the act of robbery has been completed with the snatching of bag of currency notes from the hands of the Chief Cashier of the bank Umeshchandra Sharma PW-8 and if the murder has been caused by one of the accused who was with the person who robbed or committed robbery whether other accused can be convicted under Section 302/120B IPC and whether after snatching the property from the hands of victim if any other offence is committed then whether co-accused can be convicted for the offence, which was committed after completion of act of robbery.

31. In the case of Subash v. State of Haryana reported in 2008 Cri. LJ 693 the facts reveal that the accused started robbing the money from the pocket of Raghbir Singh (deceased). When it was resisted by the witness Mane Ram, all the accused caught hold the witness Mane Ram and pressed his neck and threw him in the canal. After throwing Mane Ram in the canal, accused caught hold Raghbir Singh (deceased) by legs and also threw him in the canal. Raghbir Singh tried to catch hold of the grass grown on the bank of the canal then the accused Joginder and Jai Kumar gave leg blows on the face of the Raghbir and, thereafter, Raghbir was again thrown in the water and did not come out whereas witness Mane Ram kept on swimming with the flow of water and came out of the canal after having covered a distance of about three acres. In this way, victim Raghbir died. The

event, which occurred before this incident referred above and after the incident was taken note of by the Hon'ble Apex Court in detail in above case and because of that reason on the facts of the case, the appellant convicted under Section 392 IPC read with Section 397 IPC for robbing the money and tractor both. In above case, it has been held that evidence available on record does not suggest that there has been any intention of causing death of the deceased and, therefore, conviction was altered to conviction under Section 304 Part II IPC. Here in this case, in all three accused in day light come on scooter with pistols and knife with intention to commit robbery in front of a bank near which there are several shops. The intention of the accused can be well inferred. They took the weapons with them with clear intention to kill any person, who may resist them in taking away the money.

32. The facts of the case of *Ajit Singh v. State of Haryana* reported in 1996(1) Crimes 146 (SC) were also entirely different. In the said case, it has been specifically held by the Hon'ble Apex court that appellant did not use the weapon for robbery but used it in self-defence. In that situation, the appellant was convicted under Section 392 IPC and his conviction under Sections 397 and 394 IPC was set aside. In the present case, the gun shot from pistol was not fired in self-defence and it is proved by the prosecution that one of the accused was caught by the victim Samrath singh and another accused fired, therefore, the case of *Ajit Singh* (supra) is quite different than the case in hand.

33. In the judgment of *State (NCT of Delhi) v. Navjot Sandhu* reported in 2005 Cri. LJ 3950 the Hon'ble Apex Court held that the theory of agency can be extended to find all the conspirators guilty of the actual offences committed in execution of the common design even if such offences were ultimately committed by some of them, without the participation of others. Those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but, the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. So far as commission of actual offence is concerned, for that the person who committed actual offences alone is liable, but the punishment in a case where the case is covered by Section 120A of the Indian Penal Code, under

Section 120B of the IPC. From the evidence, it is proved that three accused has the conspiracy who committed robbery with the help of deadly weapons and to secure that the accused may have full control over the money, they moved to use the weapons to kill the person resisting their act. In view of the above reason, the fact of raising conspiracy is proved from the facts and Sub-section (1) of Section 120B IPC clearly provides that whosoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall be punished in the same manner as if he had abetted such offence. The act of murder of Samrath Singh is not an independent and separate act nor it can be separated from offence of committing robbery. The explanation given to the Section 390 IPC says that the offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint. Three accused were present on spot and the role of three accused may be different, but they actively participated in committing robbery, therefore, their act in participation on spot proves their presence not only near to the victim so as to put them in fear of instant death. Section 394 IPC provides that 'any other person jointly connected in committing or attempting to commit robbery shall be punished with imprisonment for life....'

34. In view of the clear language of Section 390 read with Section 394/120B IPC, the two appellants Ramanand and Arvind Dubey were rightly convicted for the charge under Section 394/120B IPC apart from their conviction under Section 302/120B IPC. The conviction of Ramnarayan Singh under Section 302/120B, 397 and 394 IPC is upheld. The conviction of appellant Arvind Dubey for charge under Section 3/25 of the Arms Act is also upheld.

35. In view of the above discussion, the all the three appeals are dismissed.