

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 11th January, 2010*
Judgment Delivered on: 19th January, 2010

+ **CRL.APPEAL NO.710/2005**

BHUPINDER SINGH Appellant
Through: Mr.Sumeet Verma, Advocate

Versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 08.07.2005, the appellant has been convicted for the offences punishable under Section 302 IPC, Section 394 IPC and Section 27 of the Arms Act. Appellant has been sentenced to undergo imprisonment for life for the offence punishable under Section 302 IPC; rigorous imprisonment for a period of five years for the offence punishable under Section 394 IPC and rigorous imprisonment for a period of two years for the offence punishable under Section 27 of the Arms Act.

2. On 20.04.1993 at about 01.30 A.M. SI Rajpal Singh PW-25, recorded the endorsement (tehrir) Ex.PW-25/B, which reads as under:-

“Respected Duty Officer PS Rajouri Garden Delhi it is humbly submitted that on receiving a copy of DD No.25A dated 20.04.2003 PS Rajouri Garden New Delhi I along with Const. Rajiv No.787/W reached the spot i.e. Seven Seas Banquet Hall, Rajouri Garden, opposite Ring Road where staff of PCR van P-27 namely, ASI Hukum Chand No.5511/PCR, Const.Mohd. Sabbir No.2745/PCR, Const. (Driver) Jamdev No.4908/PCR and staff of present police station namely HC Ram Kumar No.170/W and Const. Devender No.876/W were present. The spot was found to be stained with blood. HC Ram Kumar produced one person whose name was later on revealed as Bhupinder Singh s/o Prem Singh r/o B-152, Raghubir Nagar, Delhi, one country made pistol, one empty cartridge and one live cartridge. The statement of HC Ram Kumar was recorded and he told that the injured has been removed to Khetarpal hospital. After leaving aforesaid Bhupinder Singh in the custody of HC Ram Kumar and Const.Rajiv to guard the spot I left for Khetarpal hospital Bali Nagar where on making inquiries I learnt that the injured is present in operation theatre; that the doctor is performing operation in the operation theatre; that the injured is not fit to give a statement and that the operation would go on for some time. No eye-witness was found available in the hospital. When I returned to the spot the crime team and photographer were present at the spot. As per my instructions, photographer started taking photos of the spot and crime team started inspecting the spot. I prepared the sketches of recovered country made pistol, live cartridges and empty cartridge. On measuring the country made pistol, it has been found that the length of barrel is 12.2 cm, the length of body is 9.5 cm, length of butt is 9 cm and total length of country made pistol is 27.5 cm. The recovered country made pistol is made of iron and both sides of the butt of country made pistol are covered with wood. The length of empty cartridge is 5 cm and length of both

live cartridges is 7.5/8.5 cm. 8MMKF00 is written on empty cartridge and one live cartridge and 8MMKF01 is inscribed on the other live cartridge. Thereafter I went to Khetarpal hospital where doctor came out of the operation theatre and produced MLC No.202/03 dated 20.04.2003 of injured Ved Arora s/o Roop Chand Arora. The doctor had recorded gunshot injury and that injured is unfit for giving statement on the said MLC. After obtaining the MLC I again went to the spot. The senior police officers had come at the spot. On the basis of investigation conducted at the spot, MLC of the injured and the statement of the witnesses it is found that the offences under Sections 394/397 IPC and Sections 27/54/59 of Arms Act have been committed. The said endorsement is being handed over to Const.Rajiv No.787/W for registration of an FIR. The FIR be registered and the number of the said FIR be informed. I am available at the spot.

Time of occurrence: 20.04.2003 at about 1.00 A.M.

Place: Seven Seas Banquet Hall, opposite Ring Road, R. Garden

Time of departure of endorsement: 20.04.2003 at 06.45 A.M.”

3. As per the prosecution, the events which preceded the recording of the afore-noted endorsement were that in the intervening night of 19/20.04.2003 HC Ram Kumar PW-5 and Const.Devender PW-6, were patrolling on a motor cycle in Rajouri Garden when at around 01.00 A.M. they heard loud voices coming from the direction of the road outside Seven Seas Banquet Hall. On reaching the spot from where the voices were coming the aforesaid police officers saw that one person namely Ved Prakash Arora (hereinafter referred to as the “deceased”) was lying injured on the ground and that public

persons were chasing the appellant. After directing some persons who had gathered at the spot to remove the deceased to the hospital, the aforesaid police officers also chased the appellant. However, by that time, the public persons had apprehended the appellant and were beating him. HC Ram Kumar PW-5, took the appellant in his custody. The appellant was holding a country made pistol in his hand. On checking the said pistol, HC Ram Kumar PW-5, found an empty cartridge in the barrel of pistol. Thereafter HC Ram Kumar conducted personal search of the appellant upon which he found two live cartridges in the pocket of pant of the appellant.

4. In the meantime, a public person informed the police control room over telephone about the happening of the incident in question pursuant to which HC Rambir Singh PW-11, prepared the PCR form Ex.PW-11/A; recording the information given by the public person. HC Rambir Singh transmitted the aforesaid information to police station Rajouri Garden where ASI Zora Singh PW-21, prepared the DD entry Ex.PW-21/A.

5. As already recorded in the endorsement Ex.PW-25/B, on receiving a copy of the DD entry Ex.PW-21/A, SI Rajpal Singh PW-25, accompanied by Const.Rajiv Kumar PW-23, reached the spot. HC Ram Kumar PW-5, handed over the

custody of the appellant as also the country made pistol, empty cartridge and the live cartridges recovered from the possession of the appellant to SI Rajpal Singh PW-25. Thereafter SI Rajpal Singh proceeded to Khetarpal hospital where vide MLC Ex.PW-9/A of the deceased he learnt that the deceased is unfit for making a statement. Relevant would it be to note that the MLC Ex.PW-9/A of the deceased records that *'42 yrs old male patient brought to this hospital in state of semiconsciousness, but arousable. He had sustained injury in the abdomen & said was hit by Gun shot by unknown person'.*

6. After collecting the MLC Ex.PW-9/A of the deceased, SI Rajpal returned to the spot and recorded the statement Ex.PW-25/F of HC Ram Kumar PW-5, based whereon the afore-noted endorsement Ex.PW-25/A (tehrir) was recorded. In his statement Ex.PW-25/F, HC Ram Kumar stated that in the intervening night of 19/20.04.2003 he and Const.Devender were patrolling in Rajouri Garden when at around 01.00 A.M. they heard the voices 'thief thief' coming from the direction of the road outside Seven Seas Banquet Hall. Thereafter they heard the sound of a gunshot. On reaching the spot from where the voices were coming, they saw that the public persons were chasing the appellant and that the deceased who was bleeding profusely was lying on the footpath. The

deceased told him that the person who is being chased by the public was attempting to snatch his wallet and that the said person shot him when he tried to resist him. Some time thereafter the public persons apprehended the appellant and started beating him. He and Const.Devender Singh took the appellant in their custody. The appellant was holding a country made pistol in his hand. On checking the said pistol, he found an empty cartridge in the barrel of pistol. Thereafter he conducted personal search of the appellant upon which he found two live cartridges in the right pocket of the pant of the appellant.

7. The statement Ex.PW-25/F on which the endorsement Ex.PW-25/B was made by SI Rajpal Singh PW-25, was forwarded at police station through Const.Rajiv Kumar PW-19, to the police station for registration of an FIR. Const.Rajiv Kumar took Ex.PW-25/A to the police station and handed over the same to ASI Suresh Chand Kaushik PW-8, who recorded the FIR No.288/2003, Ex.PW-8/A.

8. On 20.04.2003 at about 07.15 A.M. the deceased succumbed to his injuries at Khetarpal hospital. The body of the deceased was seized and sent to the mortuary of DDU hospital where Dr.Lalit Kumar PW-3, conducted the post-mortem and prepared the report Ex.PW-3/A. The post-mortem

report Ex.PW-3/A of the deceased records that one entry bullet wound and one exit bullet wound were found on the person of the deceased. The said two wounds were caused by firearm and were sufficient to cause death in the ordinary course of nature. The death of the deceased was caused due to shock.

9. During the investigation, the police recorded the statements Ex.PW-7/A and Ex.PW-10/A of Vimla Arora PW-7, the wife of the deceased, and Bahadur PW-10, the security guard of Seven Seas Banquet Hall, respectively wherein they stated that they have witnessed the appellant attempting to snatch the wallet of the deceased and shooting the deceased when he tried to resist him.

10. The country made pistol, empty cartridge and live cartridges recovered from the possession of the appellant were sent to FSL for ballistic examination. Vide FSL report Ex.PW-26/A, it was opined that the country made pistol recovered from the possession of the appellant was in working order and that the empty cartridge found in the barrel of the pistol was fired from the said pistol. It may be noted here that the bullet which was fired could not be recovered from the spot. As per the post-mortem report of the deceased, the bullet had made an exit from the body as an exit injury mark was noted.

11. Armed with the post-mortem report, FSL report and the various seizure memos prepared by the police during the investigation a charge sheet was filed against the appellant listing the wife of the deceased, Bahadur the security guard who claimed to be eye-witnesses as also HC Ram Kumar and Ct.Devender Singh as witnesses, apart from other police officers who had participated in the investigation.

12. Smt.Vimla Arora PW-7, turned hostile and did not support the case of the prosecution. She denied having made the statement Ex.PW-7/A to the police. She stated that on 20.04.2003 at about 12.30 A.M. or 01.00 A.M. she and the deceased were coming out of Seven Seas Banquet Hall when some person attempted to snatch the wallet of the deceased. Thereafter she heard the sound of a gunshot and that she fainted upon hearing the same. Upon gaining consciousness she learnt that the deceased has been removed to the hospital. She had not seen the person who had fired a shot at the deceased.

13. Bahadur PW-10, the security guard of Seven Seas Banquet Hall, also turned hostile and did not support the case of the prosecution. He denied having made the statement Ex.PW-10/A to the police. He stated he was present at the spot at the time of the incident.

14. HC Ram Kumar PW-5, deposed in harmony with his earlier statement Ex.PW-25/F recorded by SI Rajpal Singh PW-25, on the date of the incident.

15. Const.Devender Singh PW-6, deposed that in the intervening night of 19/20.04.2003 he and HC Ram Kumar were patrolling in Rajouri Garden when at around 01.00 A.M. they heard the voices 'thief thief' coming from the direction of the road outside Seven Seas Banquet Hall. Thereafter they heard the sound of a gunshot. On reaching the spot from where the voices were coming, they saw that the public persons were chasing the appellant and that the deceased was unconscious and lying injured on the road. The public persons who had gathered at the spot were saying that the person who is being chased by the public had fired a shot at the deceased. Some time thereafter the public persons apprehended the appellant. He and HC Ram Kumar took the appellant in their custody. The appellant was holding a country made pistol in his hand. On checking the said pistol, HC Ram Kumar found an empty cartridge in the barrel of pistol. Thereafter HC Ram Kumar conducted personal search of the appellant upon which he found two live cartridges in the right pocket of the pant of the appellant. After sometime SI Rajpal Singh came at the spot and started conducting spot investigation.

16. ASI Hukum Chand PW-19, deposed that in the intervening night of 19/20.04.2003 he was posted as in-charge of a PCR van and that he along with his staff was patrolling in Rajouri Garden. At around 01.00 A.M. he received a wireless message from the police control room that one person has been shot at Seven Seas Banquet Hall. On reaching Seven Seas Banquet Hall he saw some public persons, HC Ram Kumar and Const.Devender Singh were grappling with the appellant. The appellant was holding a country made pistol in his right hand and that an empty cartridge was found in the barrel of the said pistol. Two live cartridges were recovered from the pocket of the pant of the appellant. After sometime SI Rajpal Singh came at the spot and started conducting the spot investigation.

17. Const.Rajiv Kumar PW-23, deposed that on 20.04.2003 at about 01.18 A.M. the information regarding the incident in question was received at police station Rajouri Garden upon which he and SI Rajpal Singh proceeded to the spot. On reaching the spot he saw that the staff of said PCR van; HC Ram Kumar and Const.Devinder, were present there and that the appellant was apprehended by HC Ram Kumar and Const.Virender. HC Ram Kumar handed over the custody

of the appellant and one country made pistol, two live cartridges and an empty cartridge to SI Rajpal Singh.

18. Inspector M.L. Sharma PW-24, deposed that on 20.04.2003 at about 01.15 A.M. he received the information about the incident in question upon which he proceeded to the spot. On reaching the spot, he saw that the appellant was apprehended by some police officers and public persons. He also saw that the police officers who had apprehended the appellant were carrying a country made pistol and some cartridges stated to be recovered from the possession of the appellant.

19. SI Rajpal Singh PW-25, deposed that on 20.04.2003 at about 01.18 A.M. he received the information regarding the incident in question upon which he and Const.Rajiv proceeded to the spot. On reaching the spot he saw that a PCR van was stationed at the spot and that the staff of said PCR van, HC Ram Kumar and Const.Devinder were present there. He further saw that HC Ram Kumar had apprehended the appellant. HC Ram Kumar handed over the custody of the appellant and one country made pistol, two live cartridges and an empty cartridge to him.

20. In his statement under Section 313 Cr.P.C. the appellant denied everything. His defence was of false

implication by the police officials. He stated that in the intervening night of 19/20.04.2003 he was lying in a drunkard condition near his house; that the police officials forcibly lifted him from the said place and falsely implicated him in the present case.

21. The appellant chose not to lead any evidence in support of his defence.

22. Holding that the witnesses namely HC Ram Kumar PW-5 and Const.Devinder Singh PW-6, are trustworthy; that the evidence of the said witnesses when coupled with the fact that a country made pistol and an empty cartridge which was fired from the said pistol were recovered from the possession of the appellant just few minutes after the occurrence establishes that the appellant is the perpetrator of the crime(s) with which he is charged, the learned Trial Judge has convicted the appellant of having committed offences punishable under Section 302 IPC, Section 394 IPC and Section 27 of the Arms Act.

23. At the hearing of the appeal, learned counsel for the appellant advanced under-noted three submissions:-

A. The first submission advanced by the learned counsel for the appellant was that the case of the prosecution against the appellant had fallen like a house of cards inasmuch

as Vimla Arora PW-7, the wife of the deceased, and Bahadur PW-10, the security guard of Seven Seas Banquet Hall, who were the key witnesses of the prosecution did not support the case of the prosecution at the trial.

B. The second submission advanced by the learned counsel for the appellant was that the only evidence which connects the appellant with the crime(s) with which he was charged is the testimony of the police officials and that it is not safe to rely upon the evidence of the police officials to sustain the conviction of the appellant particularly when despite the fact many persons were present at the spot at the time of the incident as deposed by the prosecution witnesses namely HC Ram Kumar PW-5, Const.Devender Singh PW-6, ASI Hukum Chand PW-19 and Inspector M.L. Sharma PW-24, not a single public witness has been examined by the prosecution. Counsel lastly submitted that there are material discrepancies in the evidence of the police officials which further makes it unsafe to rely on their evidence. The first discrepancy pointed out by the learned counsel was that HC Ram Kumar PW-5, deposed that when he and Const.Devender Singh reached the spot the deceased told them that the appellant was attempting to snatch his wallet and fired a shot at him whereas Const.Devender Singh deposed that when he and HC Ram

Kumar reached the spot the deceased was unconscious and that the public persons told them that the appellant was attempting to snatch the wallet of the deceased and fired a shot at him. The second discrepancy pointed out by the learned counsel was that HC Ram Kumar PW-5, Const.Devender Singh PW-6, ASI Hukum Chand PW-19 and Inspector M.L. Sharma PW-24, deposed that public persons were present at the spot around the time of the incident whereas Const.Rajiv Kumar PW-23 and SI Rajpal Singh PW-24, have not deposed a word about the presence of public persons around the time of the incident.

C. The last submission advanced by the learned counsel for the appellant was predicated upon the post-mortem report Ex.PW-3/A of the deceased. Counsel submitted that the post-mortem report Ex.PW-3/A records that one entry bullet wound and one exit bullet wound was found on the person of the deceased, meaning thereby that the bullet allegedly fired by the appellant must have been found at the place of occurrence inasmuch said bullet exited from the body of the deceased. Counsel submitted that a perusal of the seizure memos prepared during the investigation and the testimony of the police officials associated with the investigation shows that no bullet was found at the place of

occurrence. As per counsel, the fact that no bullet was found at the place of occurrence creates a serious doubt on the case of the prosecution.

24. As regards the first submission advanced by the learned counsel for the appellant, it would be apposite to refer to the following observations of Supreme Court in the decision reported as Sheikh Zakir v. State of Bihar AIR 1983 SC 911:-

“It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a Court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution. In the instant case, both the Trial Court and the High Court have believed evidence of the prosecutrix and the evidence of the other prosecution witnesses who had been examined at the trial.”

25. In the decision reported as Bhola Ram Khushwaha v. State of M.P. AIR 2001 SC 229 Supreme Court has held that the fact of an independent witness turning hostile is not in itself a ground to acquit the accused.

26. In view of the dictum laid down by Supreme Court in the afore-noted two decisions, we hold that merely because Vimla Arora PW-7 and Bahadur PW-10, had turned hostile and did not support the case of the prosecution does not entitle the appellant to be acquitted if there is material on the record establishing the guilt of the appellant.

27. Pertaining to the second submission advanced by the learned counsel for the appellant, following observations were made by Supreme Court in the decision reported as Kalpna Rai v State (1997) 8 SCC 732:-

“As a legal proposition it was argued that it would be unsafe to base a conclusion on the evidence of police officers alone without being supported by at least one independent person from the locality. To reinforce the said contention Shri V.S. Kotwal, Senior Advocate cited the decision of this Court in Pradeep Narayan Madgaonkar and Ors. v. State of Maharashtra (1995) 4 SCC 255 wherein want of independent witnesses of the locality rendered suspicious a raid conducted by the police.

There can be no legal proposition that evidence of police officers, unless supported by independent witnesses, is unworthy of acceptance. Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the court to adopt greater care while scrutinising the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that court must reject the prosecution version solely on the ground that no independent witness was examined.....” (Emphasis Supplied)

28. In the decision reported as Sarwan Singh v State of Punjab (2002) 1 SCC 240 Supreme Court observed as under:-

“As regards the examination of independent persons or witnesses, we would do well to note a decision of this Court in Ambika Prasad and Anr. v. State (Delhi Admn.) (2002) 2 SCC 646, wherein this Court in paragraph 12 observed:

12. It is next contended that despite the fact that 20 to 25 persons collected at the spot at the time of the incident as deposed by the prosecution witnesses, not a single independent witness has been examined and, therefore, no reliance should be placed on the evidence of PW5 and PW7. This submission also deserves to be rejected. It is known fact that independent persons are reluctant to be witnesses or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and they dare not depose the truth before the court, independent witnesses believe that their safety is not guaranteed. That belief cannot be said to be without any substance. Another reason may be the delay in recording the evidence of independent witnesses and repeated adjournment in the court. In any case, if independent persons are not willing to cooperate with the investigation, the prosecution cannot be blamed and it cannot be a ground for rejecting the evidence of injured witnesses. Dealing with a similar contention in *State U.P. v. Anil Singh* 1988 Supp SCC 686, this Court observed:(SC pp. 691-92, para 15)

In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable.

The test of creditworthiness and acceptability in our view, ought to be the guiding factors and if so the requirements as above, stand answered in the affirmative, question of raising an eyebrow on reliability of witness would be futile. The test is the credibility and acceptability of the witnesses

available - if they are so, the prosecution should be able to prove the case with their assistance.”

29. From the afore-noted judicial decisions, the legal position which can be culled out is that the evidence of the police officials cannot be discarded merely on the ground that they belong to the police force and are, either interested in the investigation or the prosecuting agency but prudence dictates that their evidence needs to be subjected to strict scrutiny and as far as possible corroboration of their evidence in material particulars should be sought. Their desire to see the success of the case based on their investigation; requires greater care to appreciate their testimony. The factum of non-examination of public/independent witnesses is not fatal to the case of the prosecution in every case. It depends upon the additional factor whether the evidence led by the prosecution inspires confidence or not. If the evidence led by the prosecution is otherwise credible and trustworthy, the non- examination of independent/public witness is of no consequence.

30. This takes us to the discrepancies pointed out by the counsel in the evidence of the police officials.

31. A conjunctive reading of the testimony of HC Ram Kumar PW-5 and Const.Devender Singh PW-6, brings out that somebody did tell them that the appellant had attempted to

snatch the wallet of the deceased and that he fired a shot at the deceased. The only discrepancy pertains to the person who gave them the said information, which discrepancy can be dealt with reference to the MLC Ex.PW-9/A of the deceased. As already noted herein above, the MLC Ex.PW-9/A of the deceased records that the deceased was in a semi-conscious state at the time of his admission in the hospital and that he told the doctor that he has been shot by an unknown person. Both HC Ram Kumar PW-5 and Const.Devender Singh have deposed that many persons were present at the spot at the time when they reached there. It is quite possible that due to commotion at the spot Const.Devender Kumar PW-6, did not notice that the deceased was semi-conscious and that he was mumbling something. It is also possible that public persons who were present at the spot were saying that the appellant had fired a shot at the deceased and that HC Ram Kumar PW-6 felt that the deceased was also mumbling the same thing. In such circumstances, the first discrepancy pointed out by learned counsel does not dent the case of the prosecution. When read in light of the MLC Ex.PW-9/A there is sustenance in the claim of HC Ram Kumar that the deceased was conscious and told him that the person who was running away was the one who had shot at him while attempting to rob him.

32. Insofar as second discrepancy pointed out by the learned counsel for the appellant is concerned, it is settled legal position that minor contradictions which do not hit at the root of the case of the prosecution are to be ignored by the courts.

33. With regard to the third submission advanced by the learned counsel, it would be relevant to note that the fact that bullet fired at the deceased had exited from his body came to the knowledge of the investigating officer only after the conduct of the post-mortem of the deceased. The narratives of the investigation conducted in the present case as noted by us in preceding paras show that the spot investigation was conducted by the investigating officer before the conduct of the post-mortem of the deceased. It is quite possible that the investigating officer did not minutely inspect the spot for the presence of a bullet for the fact that the bullet fired at the deceased had exited from his body was not in his knowledge at the time when he was conducting spot investigation.

34. Having dealt with the submissions advanced by the counsel for the appellant, we proceed to consider that whether the prosecution has been successful in establishing the guilt of the appellant.

35. The success of the case of the prosecution against the appellant depends upon the evidence of HC Ram Kumar PW-5 and Const.Devender Singh PW-6. HC Ram Kumar PW-5 and Const.Devender Singh PW-6 were cross-examined at length but nothing could be elicited therefrom which could cast a doubt on their veracity. The presence of HC Ram Kumar and Const.Devender Singh at the spot around the time of the incident is confirmed from the testimony of ASI Hukum Chand PW-19, Const.Rajiv Kumar PW-23, Inspector M.L.Sharma PW-24 and SI Rajpal Singh PW-25, which witnesses have withstood the test of cross-examination. Not only that, the evidence of the witnesses; ASI Hukum Chand PW-19, Const.Rajiv Kumar PW-23, Inspector M.L.Sharma PW-24 and SI Rajpal Singh PW-25, in particular the deposition of ASI Hukum Chand PW-19, who was the first police officer to have come at the spot after the arrival of HC Ram Kumar and Const.Devender Kumar at the spot, that he had seen public persons, HC Ram Kumar and Const.Devender Kumar grappling with the appellant lends due corroboration to the evidence of HC Ram Kumar and Const.Devender Singh. The fact that the endorsement Ex.PW-25/A, contents whereof have been noted in para 2 above, which document was prepared soon after the occurrence, records that HC Ram Kumar and Const.Devender Singh were

present at the spot soon after the occurrence and that HC Ram Kumar handed over the custody of the appellant and one country made pistol, two live cartridges and one empty cartridge to SI Rajpal Singh leads a very strong inference that HC Ram Kumar PW-5 and Const.Devender Singh PW-6, are truthful witnesses.

36. A careful reading of the evidence of HC Ram Kumar PW-5, and Const.Devender Singh PW-6, brings out following facts namely:- (i) HC Ram Kumar and Const.Devender Singh arrived at the spot within few minutes of the occurrence where they saw that the public persons were chasing the appellant; (ii) someone told HC Ram Kumar and Const.Devender Singh when they arrived at the spot that the appellant had attempted to snatch the wallet of the deceased and that he shot the deceased when he tried to resist him; (iii) public persons apprehended the appellant within few minutes of the occurrence; (iv) the appellant was carrying a country made pistol in his hand at the time of his apprehension and an empty cartridge was found in the barrel of the pistol. The aforesaid facts when coupled with the fact that the injuries found on the person of the deceased was caused by firearm leads to only one conclusion that the appellant had murdered the deceased while attempting to commit robbery. It may be

noted that while examining the police officers who had reached the spot and claimed that the appellant was apprehended at the spot itself have not been put any question in cross-examination that the appellant was actually picked up from outside his house and the pistol containing a fired cartridge and two live cartridges were planted on him. It is apparent that the said defence of appellant taken up for the first time when he was examined under Section 313 Cr.P.C. is an afterthought.

37. Before concluding the discussion, we deem it most appropriate to point out one fact. Learned counsel for the State drew our attention to the MLC of the accused dated 20.04.2003 contained in the police diary of the present case. The said MLC records that the appellant was conscious and oriented. The said MLC further records that some injuries were found on the person of the appellant, which injuries are suggestive of the fact that the appellant was given beatings. The said MLC lends credence to the case of the prosecution that the appellant was beaten by the public persons at the time of his apprehension. Not only that, said MLC falsifies the defence of the appellant that he was lying in a drunkard condition when the police officers forcibly arrested him and falsely implicated him in the present case for the reason the

MLC clearly records that the appellant was 'conscious and oriented' at the time when he was medically examined. But, unfortunately the police did not file the said MLC before the trial court. A vital document establishing the guilt of the appellant was not filed before the trial court due to the callousness of the police. This serious lapse committed by the police shows the shoddy manner in which the police conducts the prosecution(s). This court expects that in future the police shall be more vigilant while conducting prosecution(s) and would ensure that no guilty person should go scot free on account of its lapses.

38. We find no merit in the appeal which is dismissed.

39. Since the appellant is in jail we direct that a copy of this judgment and order be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 19, 2010
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