

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRIMINAL APPEAL NO. 143/2004**

% **Reserved on : 19th May, 2015**
Date of Decision : 23rd September, 2015

PARMOD KUMAR **..... Appellant**
Through Mr. Vivek Sood, Sr. Advocate with
Ms. Shruti Kukreja, Advocate.

versus

THE STATE **..... Respondent**
Through Mr. Varun Goswami, APP for State
with SI Prakash Chand, PS Lodhi Colony.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUSTOSH KUMAR

SANJIV KHANNA, J:

Parmod Kumar, the appellant in Criminal Appeal No.143/2004, has challenged the judgment dated 19th January, 2004 convicting him under Section 302 read with Section 120-B Indian Penal Code, 1860 (IPC, for short), and Section 395 read with Section 120-B IPC. The said conviction arises out of charge-sheet filed in FIR No.253/1995 Police Station Lodhi Colony, relating to homicidal deaths of Anil Kumar Shokal, Vijender Kumar Shokal and H.P. Pandey, as result of fire arm injury in an occurrence late in the evening on 5th July, 1995.

2. Earlier, vide charge-sheet dated 25th September, 1995, Lokesh, Mukesh, Prem Shakar, Rajeev and Sanjay Yadav (since deceased) were prosecuted under Sections 302/396/397/398 read with Section 120-B IPC and Section 201 read with Section 34 IPC in FIR No.253/1995 Police Station Lodhi Colony relating to the same

occurrence. They were acquitted. The State, in Criminal Appeal No.371/1998, has challenged the judgment dated 6th October, 1997, acquitting Lokesh, Mukesh, Prem Shankar, Rajeev and Sanjay Yadav (since deceased) from the said charges. One Mahesh was also charge sheeted but was discharged vide order dated 25th May, 1997.

3. The reason for two separate charge-sheets and judgments is that the appellant Parmod Kumar could not be earlier arrested and was declared a proclaimed offender. Parmod Kumar was arrested after he surrendered in the Court on 7th January, 1998, nearly three months after the judgment of acquittal dated 6th October, 1997 in the case of Lokesh, Mukesh, Prem Shankar, Rajeev and Sanjay Yadav (since deceased).

4. As there are two judgments and the evidence has been separately recorded, we shall independently examine and deal with the evidence on record and pronounce two separate decisions.

5. As noticed above, Parmod Kumar was arrested on 7th January, 1998 and was charged and stands convicted for the offences under Section 302 read with Section 120B of the Indian Penal Code, 1860 (IPC for short) for murder of Anil Kumar Shokal, Vijender Kumar Shokal and H.P. Pandey and Section 395 read with Section 120B for dacoity along with the co-accused Lokesh, Sanjay Yadav (since deceased), Prem Shankar and Rajeev. By order on sentence dated 29th January, 2004, the appellant stands sentenced to imprisonment for life and fine of Rs.10,000/- and in default, to undergo rigorous imprisonment for 10 months for the offence under Section 302 read with Section 120B IPC and rigorous imprisonment for life and fine of Rs.10,000/- and in default, to undergo rigorous imprisonment for 10 months for the offence under Section 395 read with Section 120B IPC. The sentences would run concurrently.

6. The impugned judgment notices the fact that the co-accused namely, Lokesh, Mukesh, Prem Shankar, Rajeev and Sanjay (since deceased) stand acquitted vide judgment dated 6th October, 1997 passed by the predecessor presiding judge. However, for reasons recorded therein and on the basis of evidence on record, the impugned judgment convicts Parmod Kumar.

7. The facts as emerging from the first information report in brief are that Anil Kumar Shokal and Vijender Kumar Shokal were engaged in the business of manufacture, procurement and sale of silver jewellery and articles by the name of M/s Sri Ram & Sons from their shop in Chandni Chowk and otherwise. On 5.7.1995, at about 4:00 p.m., Anil Kumar Shokal and Vijender Kumar Shokal along with Sumit aged 13 years and Upasana aged 8 years had proceeded for Madangir and Kotla in a Maruti Van bearing No. DNB 1968, which was driven by H.P. Pandey for sale and collection of money. Sumit and Upasana, children of Anil Kumar Shokal, had come to the shop at Chandni Chowk as Upasana wanted a bicycle as her birthday gift. They had first proceeded to Kotla Mubarakpur market from where Anil Kumar Shokal had to collect dues. As the collection was to take time, Sumit and Upasana were driven to their maternal uncle's home at Pragati Vihar Hostel by the driver H.P. Pandey. At about 6:30-7:00 P.M., Sumit and Upasana left Pragati Vihar Hostel with H.P. Pandey in the Maruti Van to go to Madangir market where Anil Kumar Shokal and Vijender Kumar Shokal were present. At about 8:00-8:30 p.m., Anil Kumar Shokal, Vijender Kumar Shokal, Sumit and Upasana sat in the Maruti Van being driven by H.P. Pandey for the return journey to their house at Rohini. When the Maruti Van stopped at the red light at the Joseph Tito Marg, New Delhi, one motor-cycle of Yamaha make of *mehroon* colour, with four persons riding on it, had stopped next to the

Maruti Van. One of the persons on the motor-cycle came and fired a shot at Anil Kumar Shokal, who was sitting at the back seat, and entered the van through the rear door. Two others, who were riding the motor-cycle, entered from the two front doors after pushing Vijender Kumar Shokal and H.P. Pandey. When the light turned green, the person who had pushed the driver H.P. Pandey and taken the driver seat, drove the vehicle. Both H.P. Pandey and Vijender Kumar Shokal were shot dead by the person who had entered and sat on the rear seat of the Maruti Van and had earlier fired at Anil Kumar Shokal. The Van was driven to the western Gate of the Jawaharlal Nehru Stadium, where the three assailants fled away taking with them the briefcase and hand bag, on the same motorcycle which had followed them. The person, who had fired the shots, had removed money and other articles from the pockets of Anil Kumar Shokal. Sumit had raised an alarm and sought help from a guard posted at the Jawaharlal Nehru Stadium. Telephone call was made to the residence of his maternal uncle at Pragati Vihar Hostel, which is located near the Jawaharlal Nehru Stadium. Sham Verma, on receiving information, came to the spot and noticed that Anil Kumar Shokal and H.P. Pandey were lying dead in the Maruti Van, and Vijender Kumar Shokal was lying dead on the road. Police, on being informed, came to the spot. FIR No.253/1995 was registered at the Police Station, Lodhi Colony under Sections 302/396/397/120B IPC.

8. On the question that the deceased Anil Kumar Shokal, Vijender Kumar Shokal and H.P. Pandey had died homicidal deaths as a result of fire arm injuries, there cannot be any doubt and debate. Dr. M.S. Sagar (PW49), who had conducted the post-mortem on Vijender Kumar Shokal and Dr. Alpana Sinha (PW21), who had conducted the post-mortem on the dead body of H.P. Pandey and Anil Kumar Shokal

have proved the autopsy reports marked Ex.PW33/A, Ex.PW32/A and Ex.PW32/B respectively. They have given details of entry and exist wounds, internal and external injuries etc. Since homicidal death as a result of firearm injury is not disputed or under challenge, we need not amplify and straddle on the said aspect in greater detail.

9. The *primary* issue and contention raised in the present appeal relates to the identification and finding of the trial court that the appellant Parmod Kumar was one of the perpetrators and had committed the offences in question. As the impugned judgment relies upon the eye-witness account by Sumit and Upasana who had deposed as PW6 and PW7, we begin with their depositions. The appellant-Parmod Kumar has been identified by them as the person who had seated himself at the driver seat after pushing H.P. Pandey. He had driven the van from the T- point red light at the Joseph Brass Tito Marg to the western gate of the Jawahar Lal Nehru Stadium.

10. Sumit (PW6) has affirmed that he along with his father, uncle and sister (Upasana) had left for the return journey from Madangir market in the Maruti Van DNB 1968 at about 8:00 P.M. and the Van had stopped at the red-light on the Joseph Tito Marg, New Delhi, where a motor-cycle of Yamaha make and a two wheeler scooter of Bajaj make had also stopped by the side of the Maruti Van. One person, who had alighted from the motor-cycle, had fired from a pistol on the temple of his father, sitting on the rear seat of the Van behind the driver. Two others, who were earlier sitting on the motor-cycle, entered the Maruti Van from the left and the right front doors after pushing Vijender Kumar Shokal and the driver H.P. Pandey. When the light turned green, the person who had entered from the driver side, started driving the van. PW6 identified the present appellant Parmod as the person who had pushed the driver, occupied the driver seat and

had driven the van from the red light. At a little distance, the person who was sitting on the rear seat, first fired a shot at H.P. Pandey and then a shot at Vijender Kumar Shokal. In between, the said perpetrators had enquired and asked as to where the cash and jewellery was lying. The Van was driven to the western gate of the Jawaharlal Nehru Stadium. The perpetrators, thereafter, fled on the same motor-cycle taking with them jewellery and cash lying in the Van. The person who had fired the shots had taken out cash and some documents from the pockets of Anil Kumar Shokal, father of Sumit, (PW6). The perpetrators had shown a pistol and had warned Sumit (PW6) and Upasana (PW7) to keep quite or they too would be killed.

11. Sumit (PW-6) was subjected to extensive cross-examination and several portions of his statement under Section 161 Cr.P.C. marked Exhibit PW-15/A were confronted to him on issues like the timing, when they had reached Madangir for the first time, what time they had left their uncle's residence at Pragati Vihar Hostel and when they had started their return journey back home from Madangir, etc. These confrontations show insignificant divergence as to the timing etc., which to our mind, are minor in nature. Similarly, inability of Sumit (PW-6) to clearly specify the route does not in any way dent or materially affect his core testimony, which is whether the occurrence in fact took place, how the occurrence took place and also identification of the appellant-Parmod as one of the perpetrators, i.e., he had entered the van from the driver's seat and thereafter, driven the said van to the western gate of the Jawahar Lal Nehru Stadium. The fact that Exhibit PW-15/A does not record that the perpetrators had beaten Sumit (PW-6) or had put the pistol on his sister or warned them to keep quiet or they would kill him, are minor exaggerations or improvements by Sumit (PW-6) on his statement recorded vide Exhibit PW-15/A. Sumit

(PW6) has categorically averred that only a portion of Jawahar Lal Nehru Stadium was visible from the house of his uncle and the said uncle living in Pragati Vihar Hostel had not come to the spot after the occurrence and it was Sham Verma, who used to stay at Qatab Hotel, who had reached the spot. These are factually correct assertions. PW-5 has testified that several vehicles had stopped at the red light at Joseph Tito Marg, but nobody tried to save them or follow their van after the gun shots were fired. The windows of the van were open as it was summer. Window panes of the van, as is clear from the photographs marked Ex.PW24/A-6 to A-9, did not break because of the firing. Sumit (PW-6) did not remember whether the blood had fallen on his clothes or on the clothes of his sister after his father had fallen down. He had failed to give physical description of the perpetrators to the police. However he did recall that one of the perpetrators was being called Sanjay. The aforesaid assertions and narration does not show or establishes that the appellant is an innocent person falsely implicated and identified by Sumit (PW-6). Sumit (PW-6) has asserted that he could see the person who was driving the van asserting as the said person had looked back on several occasions. Sumit (PW-6) could not remember if he had seen the appellant-Parmod at the police station. Albeit, earlier in his examination-in-chief, he had stated that he had seen the appellant-Parmod when he was in custody of the SHO and had identified him as one of the perpetrators but he could not remember the exact date.

12. Upasana (PW-7) was equally forthright in identifying the appellant Parmod as the person who had driven the Maruti van after they had stopped at the red light on the way back to their home. Initially, she had stated that three persons had come on the motorcycle and one person had come on a scooter. At the same time, she had

asserted that the person who had fired a shot at her father had sat next to her on the rear left seat of the Maruti van after entering the same. Two others had forcibly entered the van from the right and the left side of the Maruti van by pushing the driver H.P. Pandey, and Vijender Kumar Shokal. Once the light turned green, the present appellant Parmod Kumar, who had occupied the driver seat after pushing the driver, drove the van. The motorcycle had followed them. (Thus, she has affirmed presence of four persons on the motorcycle). After some distance, Sanjay Yadav (since deceased) fired a shot at her uncle Vijender Kumar Shokal. On being cross-examined by the Public Prosecutor, Upasana (PW-7) clarified that the Bajaj Scooter, which had followed the van, was told to go away and had gone by the side of Mool Chand Flyover. H.P. Pandey was questioned as to where money was kept and had pleaded that he was only a servant and did not know anything. H.P. Pandey was shot on his left temple. Upasana (PW-7) testified that the person who had fired shot was being addressed as Sanjay by two others. She accepted as correct that on 20th July, 1995, she had identified the accused i.e. the appellant. In her cross-examination, PW-7 agreed that her maternal uncle Sham Verma had come to the spot from the residence of his other maternal uncle Ram Chander. Jawahar Lal Nehru Stadium was visible from the residence of her maternal uncle and was located at a walking distance of 10-11 minutes. However, as her maternal uncle's house was on the fifth floor, the western gate of the Jawahar Lal Nehru Stadium was not visible from his residence.

13. In her cross-examination by the Additional Public Prosecutor, Upasana (PW-7) had pertinently clarified that there were four persons on the motorcycle and not three as was deposed to by her in the examination-in-chief. This was correct as three persons had entered

the Maruti van and the motorcycle had followed the van till the western gate of the Jawahar Lal Nehru Stadium. The aforesaid error made by PW-7, to us, would not be determinative and a factor to hold that her deposition identifying the appellant Parmod Kumar is make-believe or should be rejected. There are other minor contradictions as Upasana (PW7) has stated that the driver H.P. Pandey during their stay at Pragati Vihar had also stayed there for about 30-45 minutes or that Sham Verma had reached the western gate of the Jawahar Lal Nehru Stadium along with child Varun. These can be attributed to memory lapse or imperfect recollection and do not affect her main or core testimony. We cannot be oblivious to the fact that the deposition of Upasana (PW-7) was being recorded in the year 2000, nearly five years after the occurrence as the appellant Parmod Kumar had earlier absconded.

14. Sham Verma (PW-7A) has deposed that on receipt of telephone call, he had proceeded to the western gate of the Jawahar Lal Nehru Stadium and had seen his nephew Sumit and niece Upasana crying. He was informed about the occurrence and how 4-5 persons on the motorcycle had killed their father and others and had looted their belongings. Clothes worn by Sumit and Upasana were blood stained. He had then taken Sumit and Upasana to the house of his brother, which was nearby and thereafter, had returned to the spot. On cross-examination by the Additional Public Prosecutor, PW-7 clarified that he did not remember whether he had only taken Upasana to his brother's residence and returned and whether the statement of Sumit was recorded in his presence. On cross-examination by the appellant, PW-7A has stated that he was at his brother's house at Pragati Vihar since 8/8.30 P.M. PW-7A, however, claimed that when he had reached the spot, the dead bodies had already been removed by the police. He

was confronted with his earlier statement given in Sessions Case No. 98/1996, which was contrary to the said assertion. In answer, PW-7A had deposed that whatever was stated by him in the court on that day was correct. This divergence would not materially affect or dent the prosecution version. Presence of Sumit (PW-6) and Upasana (PW-7) is established. Whether and when the dead bodies were removed is an insignificant part/ portion of PW7A's testimony.

15. On the question of presence of Sumit (PW-6) and Upasana (PW-7) at the western gate of the Jawahar Lal Nehru Stadium, we have corroborative statements of the police officers attached to PCR van Eagle-16 Head Constable Charan Singh (PW-18), PCR van Eagle-20 Head Constable Arjun Singh (PW-26) and PCR van Eagle-14 Head Constable Naresh Kumar (PW-28). They had in unison deposed that on reaching the Jawahar Lal Nehru Stadium, they had noticed one Maruti Van DNB 1698 standing at some distance and there one boy and one girl, namely, Sumit and Upasana were standing. The children had narrated the occurrence. In addition, we also have evidence of Uma Kant Mishra (PW-58), the security guard, who was posted at the Jawahar Lal Nehru Stadium on 5th July, 1995 and had seen a boy coming towards him. The boy had asked him for help stating that his father had been shot. The boy had given a telephone number of his relative. PW-58 had called the said number and had also made a call to the police on number 100. When PW-58 had returned after making the calls, he had noticed one police vehicle which had reached. Two other vehicles reached thereafter. Inspector Shivji Tiwari (PW-59) has stated that he had reached the Jawahar Lal Nehru Stadium at about 9.40/9.45 P.M. and he had seen the Maruti Van and a boy standing there. Similar statement is made by SI Sunil Srivastava (PW-27), who has affirmed presence of Sumit (PW-6) and the fact that he had

recorded his statement marked Exhibit PW-15/A, upon which *rukka* was prepared by Inspector Shivji Tiwari (PW-59) and thereafter he along with Inspector Shivji Tiwari (PW-59) had gone to Pragati Vihar where they had recorded the statement of baby Upasana (PW-7).

16. SI Sunil Srivastava (PW-27) has deposed on how they worked out and solved the case after they had seized the Yamaha motorcycle RX 100 on 10th July, 1995, which was taken into custody under Section 102 Cr.P.C. Thereafter, they had approached one painter Ramesh Kichi, who had informed them about Mahesh, a resident of 168 K, Dakshin Puri, who had got number plate DL 1SC 1211 painted for him. The said Mahesh was interrogated. On leads given by him, Lokesh was first to be arrested along with a scooter and from the dickey of the scooter silver jewellery and bill book of M/s Sri Ram Jewellers and other papers were recovered. The said jewellery was identified by him as Exhibit P-1 to P-8/1 to 2. Thereafter, Mukesh Soni, who had a jewellery shop by the name of Gir Raj Jewellers was arrested along with jewellery items, which was seized vide seizure memo Exhibit PW-28/H. The jewellery items were identified as Exhibits P-9 to P-13. Subsequently, on 16th July, 1995, they had arrested Rajeev and from him also jewellery articles marked P-23 to P-33 were seized. From Rajeev, pass book and counterfoil marked Exhibit PW-3/A and pay in slip marked Exhibit PW-3/B were seized. Similar statement with regard to recovery of the Yamaha motorcycle has been made by Head Constable Dashrath (PW-29), who has deposed that on 11th July, 1995 he was posted at Police Station Ambedkar Nagar and one motorcycle Yamaha make was deposited by SI Raman Lamba. SI Raman Lamba (PW-11) has affirmed recovery of the motorcycle in question and that it did not have any front number plate. On inspection of motorcycle, blood stains were noticed and

Crime Branch and CFSL officers were called. They had lifted five blood stains from the motorcycle, a fact which is also affirmed by Kaushal Kumar (PW-12), who had lifted the said blood stains. In cross-examination, PW-12 has deposed that they had lifted the blood stains with the help of thread and saline water. The said blood stains were not fresh but dried. Lifting of the blood stains from the motorcycle affirms that the statement made by Sumit (PW-6) and Upasana (PW-7) as to the occurrence was correct. Only a person who had seen the occurrence could state that the perpetrators had come on a motorcycle of the said make and colour.

17. Ramesh Khichi (PW-32) has accepted that he was running a paint shop for last 10 or 12 years, but claimed that he could not state whether he had painted the number plate DL 1 SC 1211. However, he has accepted that the police had recorded his statement and on being cross-examined by the public prosecutor, also accepted that the said number plates were shown to him by the police. Further, the police had brought one person in their custody to his shop and he had stated that number plates were prepared from his shop. We do not think that the said statement in any way helps the appellant and clear indications are that the said witness did try to help the appellant, but to no avail. Motorcycle in question was stolen one as deposed to by Kalal Mitra (PW-39). The scooter which was driven by Lokesh was registered in the name of Paul and Paul Builders Limited as accepted by Daljit Singh (PW-20). The said scooter was given to Babu Lal (PW-19), an employee of the said company. Babu Lal (PW-19) had turned hostile, but has accepted that he had taken the scooter on *superdari* by an order of the court. On the cross-examination by the Public Prosecutor, PW-19 accepted that he knew Bobby, his neighbour and had family relations with him and that his scooter had been seized by the police.

PW-19 voluntarily stated that the scooter was seized by the police from his house, a day after the police had brought Lokesh to his residence. PW-19 has however, denied as incorrect that Bobby and Lokesh were his neighbours and good friends and Lokesh had taken the scooter from Bobby and did not return it for some days. PW19 has, however, accepted as correct that Lokesh his neighbour was arrested by the police.

18. Sanjay Yadav (since deceased) was arrested and from him one country made pistol marked Exhibit P-39 along with live cartridges Exhibit P-40/1 to 4 and Exhibit P-41/ 1 to 3 were seized. One led cartridge, which was seized from the roof of the van marked Exhibit P-55 and one fired led bullet recovered from the body of Anil Kumar Shokal marked Exhibit P-58 on ballistic examination by Roop Singh (PW-38), Principal Scientific Officer vide report Exhibit PW-51/A were found to have been fired from the pistol marked Exhibit P-39 recovered from Sanjay Yadav (since deceased).

19. The appellant-Parmod was arrested nearly three years after the occurrence when he surrendered in the court on 7th January, 1998, a fact deposed to by Inspector Ramesh Chander (PW-60). Earlier proceedings under Sections 82 and 83 of the Cr.P.C. were initiated against appellant-Parmod as he had absconded, a fact which has been deposed to by Inspector Tejpal Singh (PW-61). On 7th January, 1998, the appellant Parmod was sent to judicial custody till 12th January, 1998. (see Ex.PW55/A). Appellant-Parmod in his statement under Section 313 Cr.P.C. has stated that he had surrendered in the court on 7th January, 1998. Inspector Ramesh Chander (PW-60) has testified that on receiving information, the appellant had surrendered in the court and he had interrogated him in the court itself and arrested him. On a request made, TIP of Parmod was fixed for 9th January, 1998 vide

order dated 8th January, 1998 recorded on the application for TIP marked Ex.PW55/A. On the said date, PW-60 had reached Tihar Jail along with Sumit, but the appellant refused to take part in the TIP proceedings. Thereafter, on 12th January, 1998, two days' police remand was sought and detailed interrogation was undertaken. In his cross-examination, PW-60 has accepted that he had contacted Sumit (PW-6) on telephone and had taken him for the TIP on 9th January, 1998, but he was not sure whether Upasana had also come for TIP proceedings of the appellant. It is, therefore, clear that after the appellant-Parmod had surrendered on 7th January, 1998 and he was not shown to Sumit (PW-6) and Upasana (PW-7). The two eye witnesses did not have any occasion to interact or see the appellant-Parmod till the test identification proceedings, which were fixed on 9th January, 1998 as the appellant-Parmod had always remained in judicial custody or in the court complex. R.K. Chauhan (PW-55), who was then the Link Magistrate on 8th January, 1998 had allowed the application Exhibit PW-55/A for holding of TIP on 9th January, 1998 and had gone to Tihar Jail. The appellant-Parmod had appeared and refused to participate in the TIP proceedings though he was warned that the refusal may draw adverse inference. Statement of the appellant to the said effect was also recorded. PW-55 proved the TIP proceedings as PW-55/B, statement of the appellant-Parmod as PW-55/C and his certificate as to the TIP proceedings as Exhibit PW-55/D.

20. In the light of the aforesaid evidence, which is affirmative and critical, we do not think the error/mistake on the part of the police in not taking into custody the blood stained clothes worn by Sumit (PW-6) and Upasana (PW-7) should be a ground and reason to hold that the two children, who had seen the horrific death of their father Anil Kumar Shokal, uncle Vijender Kumar Shokal and their driver H.P.

Pandey is make belief or an illusion. Their presence at the spot and in the van at the time of the occurrence should be accepted as a truthful version and their narration and identification of the appellant-Parmod as correct and creditworthy.

21. It is submitted on behalf of the appellant Parmod Kumar that there has been violation of the right to fair trial and Article 21 of the Constitution, for the defence counsel engaged by the appellant did not take care and caution to confront any of the witness with their earlier testimonies when the co-accused Lokesh, Prem Shankar, Rajeev and Sanjay Yadav (since deceased) were tried. Reference is made to Section 145 of the Evidence Act, which permits cross-examination of witnesses with reference to their previous statement for the purpose of contradiction. It is submitted that it was the duty of the trial court to confront the said witnesses with their earlier testimonies. We do not find any merit in the said plea. Conviction of the present appellant is primarily predicated on the dock identification by Sumit (PW-6) and Upasana (PW-7). Appellant, it is obvious, had not appeared and could not have been identified in the earlier proceedings. The plea of absence or violation of right to fair trial, raised is a mere camouflaged and a facade. In the present case, Sumit (PW-6) and Upasana (PW-7) were extensively cross-examined on various aspects and have withstood the said questioning.

22. It is stated that Sumit (PW-6), who in the trial of co-accused Lokesh, Prem Shankar, Rajiv and Sanjay Yadav (since deceased) had deposed as PW-15, had contradicted himself on the following aspects:-

(i) In the court testimony as PW-6, Sumit has stated that they had started from Madangir to their house at Rohini, whereas in the earlier trial, Sumit who had deposed as PW-15 had stated that they had started at about 8.30 P.M. from Madangir to go to Ajmeri gate.

(ii) PW-6 has deposed that his father was shot after the intruder entered the van, whereas PW-15 Sumit in the earlier trial had stated that one person had got down from the motorcycle and fired from a pistol on the temple of his father.

(iii) Sumit as PW-15 was silent on any threat extended to him or his sister or that pistol was shown to them.

(iv) Sumit as PW-15 in the earlier trial had stated that Ram Chander, his maternal uncle came to the spot, but as PW-6 he had not stated anything about Ram Chander and has referred to his other maternal uncle Sham Verma.

23. The so-called discrepancies pointed out are insignificant and only an attempt to look for small gaps and lapses attributable to failure to remember minute details, which is normal and natural. These cannot be treated as significant differences which would affect the final verdict.

24. Similarly, in the case of Upasana (PW-7), who in the earlier trial had deposed as PW-16, the following minor contradictions and diversions are pointed out:-

(i) As PW-7, Upasana had spoken about a scooter, whereas in the earlier trial, she was silent on this aspect.

(ii) As PW-16, Upasana had stated that the driver was shot first and thereafter her uncle Vijender Kumar Shokal was shot whereas, as PW-7 the order was opposite.

(iii) As PW-7, Upasana has accepted that her clothes were blood stained, whereas as PW-16, she was silent.

(iv) In the earlier trial as PW-16, Upasana could not identify any of the accused, whereas as PW-7, she identified the present appellant.

25. The first and the last assertions are not factually correct as Upasana in cross-examination had identified Prem Shankar; and in her examination-in-chief she had also identified Sanjay Yadav (since deceased). We have dealt with the question of dock identification of Parmod Kumar in detail above. Two other discrepancies, it is apparent and clear, are miniscule and of minor nature. Again, the divergence or difference as highlighted is unimportant and empty. These meaningless and trivial differences are typical and commonplace when one tries to recollect and narrate an occurrence.

26. In view of the aforesaid findings, we do not think the contentions raised on behalf of the appellant Parmod Kumar merit reversal of the verdict of his conviction pronounced by the trial court. We uphold the said conviction under Section 302 IPC read with Section 120-B IPC. The trial court has also convicted the appellant Parmod Kumar under Section 395 read with Section 120-B IPC. We have convicted the co-conspirators Prem Shankar, Rajiv(eev) and Lokesh in Criminal Appeal No.371/1998 filed by the State under Section 396 IPC read with Section 120-B IPC rather than Section 395 read with Section 120-B IPC. This is a case wherein the conspirators including the deceased (Sanjay Yadav) had conjointly committed three murders while committing dacoity, and, therefore, conviction under Section 396 IPC would be justified and appropriate. Prem Shankar, Rajiv (eev) and Lokesh have also been convicted under Section 120-B IPC. As per law, separate punishment in terms of section 120-B is mandated and required, even in the case of the present appellant Parmod Kumar. However, the State has not preferred any appeal or raised the said contention before us, either for conversion of conviction from section 395 to 396 IPC or for separate conviction and sentence under Section 120-B IPC. Noticing the fact that the appellant Parmod

Kumar has been sentenced and awarded imprisonment for life under Section 302 IPC read with section 120-B IPC and under Section 395 read with Section 120-B IPC, we are not modifying the order of conviction and sentence in the case of Parmod Kumar.

27. The appeal is accordingly, dismissed and the order of conviction and sentence are upheld. The appellant, who is on bail, will surrender within a period of 15 days to undergo the remaining sentence. In case, the appellant Parmod Kumar does not surrender, the trial court will take steps in accordance with law, including issue of notice and proceedings against the surety (ies). The appeal is accordingly, dismissed.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

SEPTEMBER 23, 2015
NA/VKR