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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRIMINAL APPEAL NO. 1450/2012

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Reserved on: 24th September, 2015

Date of Decision: 18th December, 2015

PRANAV

....Appellant

Through: Mr. Deepak Gupta, Advocate.

Versus

THE STATE OF NCT OF DELHI

...Respondent

Through: Mr. Varun Goswami, APP along with
Inspector Jitender Kumar, PTS Dwarka, SI
Pratap Singh, P.S. Uttam Nagar & Head
Constable Rad Ram, Uttam Nagar.

CRIMINAL APPEAL NO. 161/2013

RAKESH

....Appellant

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Manoj Pant & Mr. Sharukh Hussain,
Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI)

...Respondent

Through: Mr. Varun Goswami, APP for the State.

CRIMINAL APPEAL NO. 122/2013

BHARAT

....Appellant

Through: Ms. Inderjeet Sidhu, Advocate.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Varun Goswami, APP for the State

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

1. The subject matter of challenge in Criminal Appeal No.1450/2012 [Pranav Vs. State of NCT of Delhi], Criminal Appeal No.161/2013 [Rajesh Vs. State (Govt. of NCT of Delhi)] and Criminal Appeal No.122/2013 [Bharat Vs. State (NCT of Delhi)], is the judgment dated 12th December, 2002, convicting the appellants Rajesh and Pranav under Sections 307/186/353 of the Indian Penal Code, 1860 (IPC for short) and Section 25 of the Arms Act, 1959 and the appellant Bharat under Section 216-A of the IPC.
2. The aforesaid conviction arises out of the charge sheet filed in FIR No.121/2002, P.S. Uttam Nagar registered under Section 307/186/216A/353/468/471/34 IPC and under Section 27/54/59 of the Arms Act. The said FIR was registered on the basis of a statement made by S.I. Raj Kumar of the Special Staff and relates to a police encounter in the intervening night between 3rd and 4th of March, 2002 on the second floor of House No.704, Janta Flats, Hastal, Uttam Nagar, where the police team had gone in search of and to locate and apprehend perpetrators of the crime of murder and heist, subject matter of FIR. No. 62/2002, Police Station Anand Parbat. As per the prosecution case, one Sanjeev Verma had died in the police encounter and the three appellants Rakesh, Pranav and Bharat were arrested.
3. The appellants Rakesh and Pranav by the order on sentence dated 15th December, 2012 have been sentenced to undergo rigorous imprisonment for a period of four years, fine of Rs.5,000/- and in default to undergo simple imprisonment for six months for the offence under section 307 IPC; rigorous imprisonment for three months, fine of Rs.5,000/- and in default of payment

of fine, to undergo simple imprisonment for 10 days for the offence under section 186 IPC; and rigorous imprisonment of two years, fine of Rs. 3,000/- and in default of payment of fine to undergo simple imprisonment of three months for the offence under Section 353 IPC. For the offence under Section 25 of the Arms Act, appellants Rakesh and Pranav have been sentenced to undergo rigorous imprisonment of three years, in addition to fine of Rs.1,000/- and in default of payment of fine to undergo simple imprisonment for one month. Bharat has been sentenced to rigorous imprisonment of one year, fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment of three months for the offence under Section 216A IPC. The sentences would run concurrently and it is observed that Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) would apply.

4. In terms of orders dated 14th February, 2012 and 5th August, 2014 in Appeal No.149/2013, filed by Vijay @ Rajesh, Criminal Appeal No. 160/2013, filed by Rakesh and Criminal Appeal No. 162/2013, filed by Om Prakash, the present set of Criminal Appeal No. 161/2013, filed by Rakesh, Criminal Appeal No. 1450/2012, filed by Pranav and Criminal Appeal No. 122/2013 filed by Bharat were listed and have been decided by this bench. We had accordingly heard arguments in the two sets of appeals and, by separate judgments pronounced today, are disposing of the two sets of appeals.
5. Criminal Appeal No. 149/2013, filed by Vijay @ Rajesh, Criminal Appeal No.160/2013, filed by Rakesh and Criminal Appeal No. 162/2013, filed by Om Prakash, arise out of the charge sheet filed in FIR No.62/2002, police station Anand Parbat involving murder of Mohan Lal Bansal as a result of gunshot wound and robbery of Rs. 25,00,000/- on 28th February, 2002.

6. The prosecution case in the present set of appeals is primarily predicated on the occural testimonies of police officers. We begin by examining the testimony of SI Raj Kumar (PW-25), who has deposed that at about 8:30 p.m., he along with S.I. Rajesh Kumar, ASI, Jai Bhagwah, ASI Kanwar Pal, Head Constable Mukesh, Head Constable Mahavir, Constable Bachu Singh, Constable Laxman and others, in search of Sanjeev Verma and Rakesh who were wanted/ required for interrogation, had visited house No.704, Janta Flats, Hastal, Uttam Nagar, Delhi. They had knocked at the door on the first floor, where they met and spoke with one of the appellants, Bharat. The said Bharat took the police team to the second floor, where Bharat knocked at the door, and spoke in coded words. The door was opened by Sanjeev Verma, who on realizing that the police had come, started grappling. Two other persons, present in the room on the second floor, thereupon took out two fire-arms from under the pillows and started firing. The police team retaliated and fired in self-defence. Sanjeev Verma was injured as a result of the firing and died. The appellants Pranav and Rakesh, who were the other persons in the room, were arrested. The appellant Rakesh injured his leg when he ran down the stair-case and fell. Bharat was also arrested, while he was trying to flee.
7. Two fire-arms i.e. a pistol each from Pranav and Rakesh were recovered and sketches, marked Ex.PW-4/F and PW-4/C respectively, were drawn. These fire-arms were taken into possession vide seizure memos, Ex.PW-4/G and Ex.PW-4/E respectively. A revolver used by Sanjeev Verma (since deceased) with five used cartridges and one live cartridge was taken into possession vide seizure memo Ex.PW-4/D and a sketch of the revolver marked Ex.PW-4/B was prepared. SI Raj Kumar (PW-25) identified the pistol recovered from Rakesh as Ex.PW-4/PX1; pistol recovered from

Pranav as Ex.P-1 and the revolver which was used by Sanjeev Verma (Since deceased) as Ex.P-2. 11 empty or fired cartridges of uniform shell size lying in the balcony outside the room, were sequestered vide seizure memo Ex.PW-4/L. They were identified in the Court and marked Ex. PW-4/ PX3 to 13. Another set of 11 used cartridges, of varying shell size, were also found and seized vide seizure memo Ex.PW-4/M. These were identified and marked in the court as Ex. PW-4/PX4 to 14. 12 leads were also seized vide seizure memo Ex.PW-4/M and identified and marked in Ex- PX5-26. Pages of Nav Bharat Times dated 1st March, 2002 with blood stain were seized vide seizure memo Ex.PW-4/L, were identified and exhibited as PX2.

8. The aforesaid occurrence and the arrest of the three appellants is affirmatively, and emphatically, deposed to by Inspector J.L. Meena (PW-21), Head Constable Mahavir Singh and Head Constable Bachu Singh (PW-26) and finds collaboration and reinforcement in the testimonies of S.I. Jitinder (PW-4), Constable Rambir (PW-7), Head Constable Shoki Sahni (PW-23), Inspector Rajbir Sharma (PW-17) and Dr. Bhavna Saxena (PW-24), Medical Officer, DDU Hospital. We shall also refer to the autopsy report of Dr. L.K. Baruah (PW-2) and Dr. M.M. Naranaware (PW-8).
9. To avoid prolixity, we are not in detail referring to the almost identical versions given by Head Constable Mahavir Singh (PW-22) and Head Constable Bachu Singh (PW-26) and limit ourselves to significant assertions made by them as members of the raiding party. PW-26 and PW-22 who had visited house No.704, Janta Flats, Hastal, Uttam Nagar, Delhi at 9:45 p.m. on 3rd March, 2002 have scenically narrated and described the firing incident. Head Constable Mahavir Singh (PW-22) had remained downstairs and had apprehended the appellant Bharat, when he attempted to exit the building. Appellants Rakesh and Pranav were also apprehended. The

fourth occupant of the house, Sanjeev Verma was found lying injured in the room and was taken to hospital in the PCR van. Local Police came to the spot. Head Constable Bachu Singh (PW-26) has testified that two groups were formed, and he was a member of the team headed by S.I. Raj Kumar (PW-25). Inspector J.L. Meena (PW-21) was the incharge of the second team. It was S.I. Raj Kumar (PW-25) who had knocked at the door of the first floor flat and had spoken with Bharat, who had proclaimed that he did not know Sanjeev Verma and Rakesh or their whereabouts. However, on further inquiry, Bharat had revealed that some tenants were residing on the upper floor. S.I. Raj Kumar (PW-25) and Bharat had proceeded to the second floor where Bharat had knocked at the door, which was opened by Sanjeev Verma. Two more persons namely, Rakesh and Pranav were also present in the room. The threesome had fired at the police party. The police team, to save themselves, had clambered underneath the window and had warned the three not to fire and to surrender. As the three continued to fire, SI Raj Kumar had fired in retaliation, while still urging that the three should surrender. In the retaliatory fire, one person inside the room had sustained injuries. This person was later identified as Sanjeev Verma. Rakesh had slipped while trying to run downstairs and sustained injuries on his right leg. Rakesh was apprehended by the Head Constable Bachu Singh (PW-26) and Constable Yatender and a pistol made in China, marked Ex. PX1, was recovered from him. Pranav was also apprehended and, from him, one pistol with the marking Browning Bulgeria 9 mm was recovered. One revolver, marked Ex. PX2, with five used bullets, marked Ex. PX2/1-5, and one live cartridge, marked PX6, were recovered from Sanjiv Verma.

10. The said witnesses also identified the newspaper dated 1st March, 2002, 11 empty shells comprising of 7 shells of 9 mm and 4 shells of 7.62 x 25 and

12 leads of used bullets recovered from inside the room and 11 empty cartridges found lying in the balcony. Local police from the Police Station Uttam Nagar was called.

11. S.I. Jitinder (PW-4) avers that DD Entry NO.40B Ex.PW-4/A, recorded at about 10:15 p.m. on 3rd March, 2002, was assigned to him for investigation and he had proceeded to the flat in question at about 10.30 p.m. PW-4 had prepared the sketch of the revolver PW-4/B along with the cartridges; the sketch of the pistol Ex.PW-4/E; and the sketch of another pistol Ex.PW-4/F. Two pistols and one revolver were taken into custody. At the behest of the appellant, Rakesh and pursuant to his disclosure statement, marked Ex.PW-4/P, Rs.1.65 lacs was recovered from his house at No.C-195, Amar Colony, Nangloi, Delhi. This money was kept in a box and concealed in the diwan. The money consisted of 16 wads of denomination Rs.100 and one wad of Rs. 50 denomination with slips of Federal Bank. The currency notes were sealed and taken into possession vide seizure memo Ex.PW-4/Q and a photocopy of these notes marked Ex.PW-4/PX-28 (Colly) were identified by PW-4. On reaching the spot, PW-4 had seen Sanjeev Verma (since deceased) being removed to the hospital. When PW-4 had learnt that Sanjeev Verma had expired, he had filled up the inquest form, marked Ex.PW-4/R, and moved the autopsy application, Ex.PW-4/V, with the request for constitution of a Medical Board vide application Ex.PW-4/W. A motor cycle, marked Ex. PW4/Y, was also seized. PW-4 identified the pistol (Ex.P-1), recovered from Pranav, the pistol (Ex.PW-4/PX1) recovered from Rakesh and the revolver (Ex.P-2), statedly recovered from Sanjeev Verma (since deceased). The vest and shirt worn by Sanjeev Verma (since deceased) were taken into possession by S.I. Jitinder (PW-4) from Constable Dinesh in the sealed parcel vide Ex.PW-4/R; these clothes were marked P-1

and P-2. PW-4 has accepted as correct that photographs of the place of occurrence, marked Ex.PW-21/DX1 were taken on his instructions. One photograph is of some importance in view of the contention raised that no blood spill was to be seen in the said room. We shall deal with this contention subsequently.

12. It is clear from the testimony of PW-4 that he had not seen the firing or the encounter but had visited the place of occurrence immediately after the said encounter. Inspector J.L Meena (PW-21)'s deposition is on the identical lines and affirms the statement of S.I. Jitinder (PW-4). PW-21 had inspected the site in question at about 10:45 p.m. when S.I. Jitinder Kumar (PW-4) was already present and had noticed leads, used cartridges and the blood stained newspaper. In his presence, S.I. Raj Kumar (PW-25) had handed over one revolver made in USA to S.I. Jitinder (PW-4), stating that the same had been recovered from Sanjeev Verma (since deceased). On checking the revolver, five used cartridges and one live cartridge was found in the chamber. Two pistols were also handed over by S.I. Raj Kumar (PW-25) to S.I. Jitinder (PW-4). S.I. Jitinder Kumar thereafter had prepared the *Rukka* and had sent the same for registration of the FIR. PW-21 has also affirmed that 7 used cartridges had the markings KF 9mm engraved thereon and four cartridges were embossed with the markings 7.62x25 and bullet leads were seized. PW-21 in his court testimony has identified the revolver, pistols and the cartridges etc. By the time PW-21 had reached, Sanjeev Verma (since deceased) had been taken to the hospital for treatment. He affirmed that the appellant Rakesh had suffered injuries on his leg and was also sent to a hospital for treatment but could not tell the time.
13. Head Constable Shoki Sahni (PW-23) had received a phone call on 3rd March, 2002 at about 10:09 p.m. from police control room, to proceed to

house No.704, Janta Flats, Hastal, Uttam Nagar, Delhi, as firing had taken place there. On reaching the spot, he had met S.I. Raj Kumar (PW-25) and, on his instructions, had taken an injured and unconscious person to the hospital. In his cross-examination, PW-23 clarified that he had seen the injured person on the second floor of the said Janta Flat, but could not recall how many injured persons were present at the spot.

14. Dr.Bhavna Saxena, Medical Officer, DDU Hospital, deposing as PW-24, has stated that she had examined one unknown male patient aged about 25 years at 11:15 p.m. on 3rd March, 2002 and had prepared the MLC Ex.PW-24/A. The patient was declared 'brought dead' and the body was sent for a post mortem examination.
15. Questioning arrest and the encounter at flat No.704, Janta Flats, Hastal, Uttam Nagar, Delhi, the following contentions have been raised by the appellants:-

- (1) Public witnesses were not joined and have not deposed about the encounter, arrest and recovery;
- (2) Police versions are contradictory. Head Constable Bachu Singh (PW-26) has deposed that Inspector J.L. Meena was a member of the raiding team, whereas the Inspector J.L Meena (PW-21) himself states that he was not a member of the raiding team.
- (3) The impugned judgment does not refer to the defence witnesses namely, Jagbir Singh (DW-1), Om Prakash (DW-2), Vijay Dutt (DW-3), Head Constable Vinod Kumar (DW-4), Mukesh (DW-5), Constable Hari Om (DW-6), R.K. Dubey (DW-7), Head Constable Prahlad (DW-8), Suraj Bhan Chauhan (DW-9), Rajnish Kumar (DW-10) and Raj Kishore (DW-11) and the contention of the defence that appellant Pranav was detained in the evening of 3rd March, 2002 and

falsely implicated, appellant Rakesh was picked and detained at about 12 / 12:30 p.m. on 4th March, 2002 by Nangloi Police and Rakesh was tortured as a result of which he had suffered fracture of his legs. Rakesh was taken to the Tagore Garden Office of the Special Staff.

Appellant - Bharat's assertion is that he was lifted by the police officers from his house and taken to police station Rajouri Garden and then the Police Station Uttam Nagar on 3rd March, 2002.

- (4) The alleged encounter resulting in death of Sanjeev Verma, is false and fabricated. One of the photograph marked Ex. PW-21/DX1 and as per the police version only one drop of blood on the piece of newspaper could be seen and was found at the spot. Blood had not spilled and spread in the entire room. This factual position stands accepted by Jitinder (PW-4) and Head Constable Bachu Singh (PW-26) in their depositions. If this was a case of genuine encounter and Sanjeev Verma had actually suffered the gun-shot injuries at the spot, blood spillage and splashes should have been visible on the floor, walls etc.
- (5) MLC discloses and shows blackening, therefore, the assertion that the firing from a distance of 10 ft. as deposed by S.I. Raj Kumar (PW-25), was a wrong avowal and a false statement. Sanjeev Verma (since deceased) was shot from a near point blank range. It is not a case of firing in self-defense. None of police officers had suffered any injury, whereas Sanjeev Verma (since deceased) had sustained four bullet injuries, on vital parts of his body. For the said reasons, conviction under Section 307 IPC and other offences cannot be sustained and is contrary to law.

- (6) There was delay in sending the weapon of offence and fired cartridges and bullets for forensic examination to the forensic science laboratory. Weapons etc. were sent for examination nearly 51 days after the occurrence on 4th March, 2002 and were received in the laboratory on 24th April, 2002. The FSL report, Ex.PW-1/A, is dated 24th March, 2003.
- (7) FSL report mark Ex.PW-1/A does not support the prosecution case, as recovered used leads or bullets EV-2 to EV-7 of 9 mm do not match with the pistols recovered from the appellants. FSL report Ex.PW-1/A opines that a country-made pistol was examined, whereas the prosecution witnesses have testified about recovery of foreign made pistols. Seizure memo of the pistol Ex.PW-4/G in the case of Pranav does not have his signatures.
- (8) There was delay in recording of FIR which was registered at 2:40 a.m. on 4th March, 2002, whereas the occurrence had taken place at about 9:45 p.m. on 3rd March, 2002.
- (9) Head constable Mukesh (PW-18) had appeared before the court to testify, but his testimony was not recorded and was given up as an unnecessary witness. Failure to record his testimony would justify an order of acquittal, as the seizure of the weapon of offence from the appellant Pranav was not proved.
- (10) The weapon of offence i.e. the pistols or the revolver were not examined by a finger print proficient.

16. We begin with the primary contention raised before us that no blood stains or spill was found in the room in question and only a drop of blood was noticed on the newspaper. The said assertion is factually correct and had

bothered and was an aspect that had confronted and was of concern. After the judgment was reserved on 27.03.2015, we came across certain passages in Modi's Medical Jurisprudence and Toxicology, 23rd Edition at page 761. As the said passages had not been referred to us during the course of argument of the present appeal and connected appeals, the appeals were re-listed for hearing and arguments were re-heard and the judgment was then reserved on September 24, 2015.

17. Counsel for the appellant Rakesh, during the course of hearing had referred to 24th Edition of Modi's Medical Jurisprudence and Toxicology at page 565 under the heading "Differences between wound inflicted during life and after death", wherein it has been observed:

“.....There is copious haemorrhage in all external wounds or those in a body cavity, except in lacerated wounds, when it may be very little (sic. bleeding). Sometimes, when the victim dies immediately from a severe fatal injury and shock, the effused blood is forced into the tissue interspaces in the vicinity of the wounds, and is found infiltrated in the cellular and muscular tissues. There is consequent staining of the edges of the wounds and the neighbouring tissues, which cannot be removed by washing. The staining caused by the blood effused from post-mortem wounds is, however, easily removed by washing.....

There will also be signs of spouting of arterial blood on the body, clothing or its vicinity. It should, however, be remembered that there may be absence of bleeding following an extensive or fatal wound, in the event of death occurring rapidly or immediately.....”

18. The aforesaid passage supports the prosecution case that sometimes in cases of instantaneous death as a result of severe fatal injuries and shock, effused blood may infiltrate and collect in the cellular and muscular tissues and not exude from the body. The Post Mortem Report, marked Ex. PW-2/A, it has been recorded that the chest cavity was filled with liquid and clotting blood.

Referring to the said passage, two submissions were raised; firstly, the said text book was not relied and referred to by the two doctors, Dr. K.L. Baruah (PW-2) and Dr.M.M. Naranaware (PW-8), who had conducted the post mortem or by Dr.Bhawna Saxena (PW-24) the doctor who had examined Sanjeev Verma. This was contrary to the mandate of the Supreme Court in *Sunderlal v. State of M.P.*, AIR 1954 SC 28. Secondly, as per the post-mortem report marked Ex.PW-2/A, pant (tracksuit pant) and the blue underwear had blood-stains.

19. In *Sunderlal Vs. State of M.P.*, AIR 1954 SC 28, it was observed that the High Court for convicting the accused had relied upon certain passages from a textbook on medical jurisprudence and toxicology, though the said passages had not been put to the post mortem doctor, when he had testified in the witness box. The accused had challenged the said adverse conclusion of the High Court relying upon passages from the textbook. The Supreme Court had then observed that if the conviction of the accused-appellant was merely based upon the passages from the textbook, there would be something to say in his favour. The appeal in the said case was, however, dismissed after noticing other circumstantial evidence, which it was observed, was sufficient to uphold the conviction. Decision in *Sunderlal's* case (supra) was examined in *State of M.P. Vs. Sanjay Rai* (2004) 10 SCC 570 and it has been observed as under:-

“17. It cannot be said that the opinions of these authors were given in regard to circumstances exactly similar to those which arose in the case now before us nor is this a satisfactory way of dealing with or disposing of the evidence of an expert examined in this case unless the passages which are sought to be relied to discredit his opinion are put to him. This Court in *Sunderlal v. State of M.P.; AIR 1954 SC 28*, disapproved of judges drawing conclusions adverse to the accused by relying upon such passages in the absence

of their being put to medical witnesses. Similar view was expressed in *Bhagwan Das v. State of Rajasthan*; AIR 1957 SC 589. Though opinions expressed in textbooks by specialist authors may be of considerable assistance and importance for the court in arriving at the truth, they cannot always be treated or viewed to be either conclusive or final as to what such author says to deprive even a court of law to come to an appropriate conclusion of its own on the peculiar facts proved in a given case. In substance, though such views may have persuasive value, they cannot always be considered to be authoritatively binding, even to dispense with the actual proof otherwise reasonably required of the guilt of the accused in a given case. Such opinions cannot be elevated to or placed on a higher pedestal than the opinion of an expert examined in court and the weight ordinarily to which it may be entitled to or deserves to be given.”

20. In view of the second contention we had called and asked the prosecution to produce before us the original exhibits i.e. the lower pant and the underwear of Sanjeev Verma (since deceased). The said exhibits were produced on 24.09.2015 and were physically examined in the presence of the counsel. Although the Post Mortem Report, marked Ex. PW-2/A, states that the clothes of the deceased were blood stained, the aforementioned two garments did not have apparently visible blood stains. There were some spots or marks on the underwear, but we can state with certainty that the blood had not oozed and spilled out. Certainly, the track pant does not have any blood spots or marks. We had also called for the other clothes i.e. the vest and the shirt which were statedly produced before us, in sealed cover. As recorded in the order dated 24.09.2015, the counsel for the appellants had stated that the sealed parcels from the DDU Hospital should not be opened and examined by the Court as they were not proved before the trial court.
21. The first contention is also without any merit. In the present case we are not testing or reversing any opinion by an expert witness with reference to a contrary viewpoint recorded or mentioned in the Modi’s textbook. Reference

to *Sunderlal v. State of M.P.* (Supra) would be inappropriate and decision in Sanjay Rai's case is apposite. The medical experts in the present case i.e. Dr. K.L. Baruah (PW-2), Dr. M.M. Naranaware (PW-8) and Dr. Bhawna Saxena (PW-24) were not confronted or asked any question on how and why no blood stains were to be seen on the floor, walls etc. or why only one drop of blood could be seen in the photographs. Dr. Bhawna Saxena (PW-24) who had examined the patient immediately after the occurrence at about 11:15 PM on 3rd March, 2002 was the best person to be questioned as to when the injuries or death had occurred or whether the deceased had been subjected to torture or was physically abused. She was not questioned on these aspects. No external injuries or signs of torture, other than the bullet wounds, were noticed by PW-24. The MLC marked Ex-PW-24/A, or the post-mortem report, marked Ex.PW-2/A, does not record or mention any sign or indication of physical torture or abuse. There were two entry and two exit wounds and not four bullet wounds as suggested. We, therefore, reject the said contention of the appellants. Relying upon the aforesaid opinion expressed in Modi's Medical Jurisprudence and Toxicology 24th Edition, we are inclined to and accept the prosecution version and contention.

22. We are of the view that absence of blood on the walls, floor etc. does not nullify the prosecution case or establishes that this is a case of a fake encounter. In *Nirmal Singh v. State of Bihar*, (2005) 9 SCC 725, a contention about absence of blood-stained earth at the alleged place of occurrence was raised, challenging the veracity of the prosecution version. The contention was rejected, observing;-

“Eyewitnesses explained that on receiving the injury the deceased pressed his wound with his hands whereafter a piece of cloth was tied around the wound which soaked the blood which may have come out.

There was, therefore, no likelihood of the earth getting bloodstained. Counsel for the appellants submitted that the intestines were protruding as described in the inquest report, and in such a situation there must have been some bleeding. That may be so, but in view of the explanation offered by the prosecution witnesses it appears probable that no blood had fallen on the ground at the place of occurrence.”

In the aforesaid case, the Supreme Court did not reject the prosecution case, though the blood stained piece of cloth was not produced in the court or sent for chemical examination.

23. We would now examine other contentions. It is correct that public witness had not joined investigation or raid team. Albeit, it has to be observed that raid had to be conducted in secrecy, stealthy and swiftly. It had to be kept under wrap and executed with deftness, in silence. It would be fallacious and specious to discard the occural depositions of the police officers, for purported failure to ask neighbours or other public persons to join the undercover operations. Moreover, it is apparent that the police had bare and a few hints and clues, and did not have definitive information on the presence of the fugitives. Public witnesses invariably would have been reluctant to join and be spectators with the raiding team. The firing took place suddenly and had even taken the police raiding team by surprise. We have noted the factual assertions by members of the raiding team i.e. S.I. Raj Kumar (PW-25), Head Constable Bachu Singh (PW-26) and referred to the corroboration in the form of testimonies of Inspector J.L. Meena (PW-21), SI. Jitinder (PW-4) and Head Constable Shoki Sahni (PW-23). In addition, we also have the photographs of the spot, which were taken by PW-7 Constable Rambir, who has proved the photographs PW-7/1 – 30 and PW-7/31 – 60. The last witness had remained at the spot for one and a half hours.

24. Another important and relevant evidence, is the FSL report Ex.PW-1/A, by Dr. K.C. Varshney, Senior Scientific Officer, Ballistic Forensic Science Laboratory, who had appeared as PW-1. In the said report, Ex. PW1/A, and in his ocular testimony PW-1 has opined, that the two pistols and the revolver examined, were fire arms. One pistol was of 9 mm caliber; the second pistol was of .30 caliber and the revolver was of .360 bore. Five cartridge cases and one live cartridge found in the cartridge case, were of .360 bore. 7 cartridge cases of 9 mm and 4 cartridge cases of .30 mm and 12 deformed bullets were enclosed in different exhibits. The live cartridge Ex.A-1 was test fired through a country made revolver Ex.F-3. Examination of the cartridge case and the test fire bullet, affirmed and demonstrated, that the recovered cartridges cases, i.e. the cartridge case seized from the scene of occurrence, Ex.C-1 and C-5 were fired from the seized revolver marked PW.-4/D. However, individual characteristics of siration marks on the test fired bullet was found to be insufficient for comparison. Examination of the breach marks found on recovered cartridges numbered as EC-6 to EC-12 showed that they were fired through pistol F-1 and firing pin marks and breach face marks on fired cartridges numbered as EC-13 to 16, were identical with the test fired cartridge, fired from the pistol F-2. However, no opinion could be given with regard to the cartridges numbered as EVR-6 to EVR 12 on account of insufficient data. The report also opines that the bullets EV-2 to EV-7 were not identical to the bullet fired from the pistol F-1. The aforesaid report does not support the contention of the appellants, as submitted, but affirms and assures certitude as to the prosecution case. It is obvious that there was firing from both sides and therefore, all cartridges cases found and recovered rightly would not correspond and match with pin or other marks of the test fired cartridges of the recovered revolver or the

two pistols. In fact the report shows that the two pistols and the revolver were certainly used for firing, as the used/empty cartridge cases had matched and were linked to the recovered revolver and the two pistols.

25. There was delay in sending FSL report, but the delay in the present case was not significant or so inordinate so as to constitute a ground to discard the FSL report marked Ex.PW-1/A. Retired Head Constable Satyapal (PW-9), the Malkhana Incharge, has deposed that on 4th March, 2002 S.I. Jitinder (PW-4) had deposited 12 sealed parcels with him with the seal of 'RKM' and five sealed parcels with the seal of 'LKB'. On 24th April, 2002, four sealed parcels with the seal of RKM were handed over to Head Constable Ram Dhari (PW-16) for onward transmission to the FSL and he had made an entry at serial no.1941 in register No.19, marked Ex.PW-9/A. Constable Ram Dhari (PW-16) has testified corroborating the deposit of the said parcels in intact condition in the forensic science laboratory at Malviya Nagar vide RC 47/21.
26. We do not think the submission that there was tampering of the weapons is credible and merits acceptance. The said contention is entirely premised on the FSL report Ex.1/A i.e. opinion of Dr. K.C.Varshney (PW-1), who had test fired the two pistols and the revolver and has described the revolver as country made and not as a standard weapon manufactured by a licensed or recognized manufacturer. It is obvious that the revolver in question was a sophisticated fire-arm and not a country-made contraption. The drawing Ex.PW-4/A is instructive. The words 'USA' were engrossed on the weapon. Dr. K.C. Varshney (PW-1) had identified the three weapon of offence including the revolver. Hence, the plea of tampering is devoid of force and has no foundation.

27. The contention that the prosecution should have called fingerprint proficient and taken fingerprints on the weapon of offence is to be also rejected as far-fetched and facetious. The police raiding team had taken the firearms in their custody and possession, immediately after the encounter and detention of Rakesh and Pranav. The argument is guileless and unnatural for it is predicated on the assumption and foundation that the raiding team should not have dispossessed and disarmed the perpetrators and waited. The ocular depositions of the members of the raiding team are certain and categorical. The fact that the sketches and the seizure memos do not bear signatures of the appellants is again inconsequential. The seizure memos and sketches have the signatures of S.I. Jitinder (PW-4), SI. Raj Kumar (PW-25) and Inspector J.L Meena (PW-21), in addition to the signatures of Head Constable Mukesh.
28. Head Constable Mukesh was summoned and had appeared in the court as PW-18, but his testimony was not recorded after noticing and recording the submission that he was an unnecessary witness. As per the prosecution version, Head Constable Mukesh (PW-18) was a member of the raiding team. SI Raj Kumar (PW-25) and Head Constable Bachu Singh (PW-26) have deposed about the raid in detail. The prosecution did not withhold and give up Head Constable Mukesh. However, as other witnesses had already deposed on the relevant aspects/ facts, this witness (Head Constable Mukesh) was not examined to avoid duplication. Section 134 of the Evidence Act, negates the contention. The section stipulates that no particular number of witnesses are required for proof of any fact. It is not the case of the appellants that Head Constable Mukesh's version in the statement under Section 161 Cr.P.C. was distinct and different. In view of the deposition of the witnesses, PW-25 and PW-26, it was not felt necessary

and mandated that another witness should be examined. In the facts of the present case, we do not think that failure to record testimony of Head Constable Mukesh should result in adverse inference or acquittal of the appellants.

29. With regard to the contention of the appellants regarding the range from which the deceased was shot, we have examined the MLC Report, marked Ex. PW-24/A, and the Post Mortem Report, marked Ex. PW-2/A. We find that the wording of the MLC Report is ambivalent. With regard to the Entry Point no. 1, it is stated that the 'entry point seen bullet over mid-sternum, margins inverted. No blackening seen around wound over sternum. Corresponding entry point (semi-circular) seen over vest. Blackening seen over this point.' (emphasis added) With regard to Entry Point no. 2, it is written 'Margin is inverted, corresponding entry point seen over lower part of shirt- blackening seen over this entry point.' The language used in these portions of the MLC Report is vague and unclear, possibly mentioning blackening only with regard to the clothes of the deceased. For the exit points, the MLC records that 'no blackening is seen either over shirt or over wound'.
30. We have analysed the post-mortem report, which expositis a far more thorough examination of the wounds present on the deceased. This report has made a clear note of absence of blackening, charring and tattooing around the wounds. We have taken note that the puncture wound near the left hypochondrium exhibited around its margin, signs of burning and grayish discoloration. However, we are of the opinion that, such discoloration of the margins of the wound, in and by itself, is not sufficient of establishing a near-contact firearm injury. We place reliance on the judgment of the Supreme Court in *Mohan Singh v. State of M.P.*, (1999) 2

SCC 428, where the causes for black margins of wounds are discussed. The Supreme Court referred to Taylor's Principles and Practice of Medical Jurisprudence, (10th Edition) in distinguishing discoloration of wound margins from marks present due to gunshot powder. Further, we note that H.W.V. Cox on Medical Jurisprudence and Toxicology, (5th Edition), has, in Chapter 7, under the topic of 'Important facts about firearm injuries' on page 291, stated that 'the presence of clothing may prevent any soiling, burning etc. of the skin and this must be taken into account when examining a body which has already been unclothed.'

31. In case of encounter of this nature, Sanjeev Verma (since deceased) was initially possibly standing at the door itself or, after receiving the first firearm injury, moved forward towards the police officers, challenging them. In view of the aforesaid discussion, we do not accept the contention that the MLC Report, marked Ex. PW-24/A, and the Post Mortem Report, marked Ex. PW-2/A, negate or nullify the prosecution version of an encounter having taken place.
32. The contention that there was delay in recording of the FIR, which was registered at 2:40 a.m. on 4th March, 2002, whereas the occurrence had taken place between 9:30 a.m. and 10:00 a.m. on 3rd March, 2002, is fallacious and flawed. It is noticeable that the firing had taken place and one of the perpetrators, namely, Sanjeev Verma, being seriously wounded had to be taken to the hospital. Another, i.e. Rakesh, had also suffered injuries. Senior Officers had to be informed. The raid in question was conducted by the Special Cell of Delhi Police, but the FIR had to be registered at the concerned police station by the police officers of the said station i.e. Police Station Uttam Nagar. The FIR as per the said document marked DW-11/A was registered at 2.40 AM. The time gap between the occurrence and the

registration of the FIR is not substantial, in the given facts, to accept and hold that the FIR was deliberately delayed to introduce and record false facts and insinuations. Delay in registration of the FIR is matter of concern, where allegations of cover up, interpolation and fabrication are made to frame innocents. In the facts of the present case presence of Sanjeev Verma at the spot in question is certain. As far as Rakesh is concerned, his contention in defence is that he was lifted at about 12:00 / 12:30 a.m. in the intervening night between 3rd and 4th March, 2002. Rakesh had suffered injuries as per the prosecution version when he had tried to escape from house No.704, Janta Flats, Hastal, Uttam Nagar, Delhi. Sanjeev Verma (since deceased) was examined in the hospital at 11.15 PM vide MLC marked Ex.PW24/A. Appellants Pranav and Bharat were also detained at the spot itself. Pranav has claimed that he was lifted and detained from his residence in the East of Kailash in late evening on 3rd March, 2002. The fact that the occurrence had taken place in house No.704, Janta Flats, Hastal, Uttam Nagar, Delh, is undebatable and should be affirmed, in view of the ocular statements and the photographs. We have already examined the question whether it is a case of fake encounter in some detail and accepted the police version and rejected the contention that this is a case of a fake encounter. N.R. Sharma, Chief Accounts Officer, MTNL as PW-5, has affirmed that telephone number 25642293 was installed in the aforesaid flat in the name of one Bharat Lal. Reference in the bill is to the appellant Bharat. The said phone was installed on 28th July, 1998 and was disconnected on 7th May, 2002. PW-5 had produced the original subscriber record, which was marked Ex.PW-5/A. Suraj Bhan, SDM Patel Nagar, PW-6, the then Sub-Divisional Magistrate, Patel Nagar, has testified being informed about the occurrence between at about 3 – 4 p.m. on 4th March,

2002. Rajbir Singh, SHO P.S. Uttam Nagar, had moved an application for constitution of a medical board for performing autopsy on Sanjeev Verma. PW-6, had given directions that the autopsy be conducted by a team of two doctors of DDU Hospital, vide order/direction marked as Ex.PW-6/A. Appellant Bharat in his statement under Section 313 Cr.P.C. has accepted that aforesaid flat was owned by his wife. He has also accepted that his wife had inducted a tenant on the second floor through a property dealer and a rent agreement was executed. Pertinently, Bharat does not state and give the name of the tenant. Bharat has accepted the phone no.25642293 was installed in his flat. On the question of arrest, Bharat claimed that he was taking meals when the police officers came and took him to the police station Rajouri Garden and thereafter, to the police station Uttam Nagar. He did not in his statement under Section 313 Cr.P.C. dispute the date and time of arrest as such.

33. Contention on behalf of the appellant Rakesh that he was picked up from his house in the midnight between 3rd and 4th of March, 2002, is a rather faint and feeble attempt to show his innocence, and in fact, on deeper examination would only affirm the prosecution case. There is sufficient evidence to show that firing had taken place at house No.704, Janta Flats, Hastal, Uttam Nagar, Delhi, as is clear from contemporaneous recordings in the DD entry and the ocular statements of the witnesses especially S.I. Raj Kumar (PW-25) and Head Constable Bachu Singh (PW-26). Reference can be made to DD entry No.40B Ex.PW-4/A, DD entry No.41B Ex.PW-15/A, DD entry No.27A Ex.PW-15/B, DD entry No.29/A Ex.PW-15/C as well as MLC of Sanjeev Verma (since deceased) marked Ex.PW-24/A recorded at 11:15 p.m. on 3rd March, 2002. It would be rather inane and farcical to accept that the police had arrested appellant Rakesh from his residence post the

occurrence, and after Sanjeev Verma (since deceased) was taken to the hospital at about 11.15 p.m. on 3rd March, 2002 and was declared as brought dead. At this stage, we would like to deal with the defense evidence, lead by the appellants Rakesh and Pranav.

34. Jagvir Singh (DW-1) proclaims that he had known the appellant Rakesh for last 17-18 years and on 3rd March, 2002 at about 10.30 p.m., he had gone to the house of Rakesh to attend a marriage party in the house of Rakesh's *bhua* (aunt). At that time Rakesh was alone and other family members had already left to attend the marriage. Rakesh had prepared tea for DW-1 and told him that he would go to the marriage only when someone from the family would return. The same night at about 12.30 a.m., suddenly 4-5 police officers came to the house of Rakesh and had taken him away stating that he was required for an inquiry. DW-1, had then made a call to Rajesh (brother of Rakesh) and had also spoken to the father of Rakesh, narrating the occurrence, who had asked DW-1 to wait at home. In his cross-examination, DW-1 accepted that he was not summoned to appear as a witness and that he had not made any telephone call on number 100. DW-1 had also not made any complaint in writing to senior police officers. He did not have the marriage card with him. He did not remember the telephone number of Rajesh to whom he had allegedly made a call. DW-1 fractiously proclaimed that he came to know that Rakesh had been arrested in this case, 2-3 days after Rakesh had been lifted by the police.
35. Om Prakash (DW-2) is the father of Rakesh. In his testimony, DW-2 has referred to an occurrence on 1st June, 1998, when an altercation took place between Rakesh and police officers. DW-2 claims that he had then intervened and urged the police officers to not beat Rakesh and to not be vindictive or revengeful. A few days thereafter, there was an occurrence in

which many boys were involved and FIR No.401/1998 was registered on 4th July, 1998. On asking of one SI Randhir Singh, a case was planted on Rakesh who had remained in jail for 5-6 months and then released on bail. Subsequently, vide judgment dated 2nd September, 1999, Ex. DW-2/A, Rakesh was acquitted. However, even thereafter policemen from Police Station, Nangloi had continued to harass Rakesh and other family members. They had made complaints against the said harassment. Rakesh was once again picked up by Inspector Inder Singh on being posted as the SHO at the Police Station Nangloi with effect from 1st August, 2001. DW-2 had then met SI Bijender Singh Chillar and requested that Rakesh should not be harassed. Subsequently, PW-2 had learnt from SI Bajender Singh that Rakesh had been taken away to some place by SI Randhir Singh. Next morning, SI Randhir Singh came to their house and had picked up Rajesh, Rakesh's brother. On 4th August, 2001, they had sent a telegram to National Human Rights Commission and the Commissioner of Police, Delhi. Consequent thereto, the SHO has assured that they would not be harassed, but on 12th September, 2001, Rakesh was again picked up and SI Randhir Singh had told them to wait to see what would happen as Rakesh would be implicated in the Keshavpur robbery case. Only when the complainant had failed to identify Rakesh, he was set free. On 13th February, 2002 SI Randhir Singh had again visited DW-2's house in connection with the robbery that had taken place in Nangloi, but at that time, Rakesh was not at home. In the evening, DW-2 alongwith Rakesh had visited the police station but were asked to return by the SHO Inder Singh. DW-2 claimed that on 28th February, 2002, SI Randhir Singh had picked up Rakesh from their house. Rakesh was once again picked up from their house at around midnight on 4th March, 2002, when he (Rakesh) was alone as they had gone to

attend a wedding. At that time, DW-2 has received information from Jagbir Singh (DW-1) that police officers from Nangloi had detained Rakesh and taken him away with them. They had then sent a complaint to National Human Rights Commission and the Commissioner of Police dated 4th March, 2002. On inquiry, they had learnt that Rakesh had been sent to Police Station Tagore Garden. They had gone to the said police station but were not allowed/ permitted to enter. On 4th March, 2002, Rakesh was produced in Court No.30 on a wheel chair as he had suffered injuries on both legs. He was sent to jail. DW-2 claims that on 6th March, 2002, officials of Police Station Nangloi and others in civil dress, had come to his residence and had taken him to Police Station Nangloi and then to Halalpur Ashram, District Sonapat. Rakesh was present there along with the police officials. Rakesh had asked DW-2 to make payment of Rs.2,00,000/- to the police officers for otherwise Rakesh would be shot. DW-2 did not get time to arrange the amount and was taken to Tagore Garden. On 7th March, 2002, DW-2 was taken to his village Mahem District, Rohtak where inquiries were made about DW-2, before being brought back to Tagore Garden and, from there, he was taken to the Police Station Anand Parbat by Inspector V.S.Meena. He was made to sign on some blank papers and detained in the police station till 9th March, 2002 and on the same day produced in the Court and sent to judicial custody. DW-2 proclaimed that Rakesh had been falsely implicated in FIR No.332/2001 and FIR No.125/2002. He was acquitted in the said FIRs vide judgments marked as Ex.DW-2/B and DW-2/C.

36. Ex.DW-2/B is an order on charge, passed in relation to FIR No.125/2002, Police Station Nangloi. It is a two page order referring to an occurrence on 13th February, 2002 when Rs.2,00,000 were looted from one Rajender Kumar Mahajan by three boys who had come on a motorcycle and had

pointed a revolver/pistol at the complainant who was in his car. In the TIP proceedings, the complainant/ victim Rajender Kumar Mahajan could not identify the accused. The accused Rakesh was therefore discharged. The judgment dated 13th January, 2002 marked as Ex. DW-2/C in FIR No.332/2001 Police Station Keshav Puram, convicts two of the accused but acquits Rakesh on the ground there was no evidence except the disclosure statement and no recoveries were made from him. This case was registered on the complaint of Atul Garg who was driving the car and had been robbed by two boys who had got down from another car and were carrying pistols. Besides these two boys, there was a third person who was sitting in the Santro car in the driving position.

37. Substantial portions of the versions given by Jagvir Singh (DW-1) and Om Prakash (DW-2) are, according to us, mere falsehoods and pretences. Jagvir Singh (DW-1) neither produced his telephone nor did he report the matter to the senior police officers. Jagvir Singh (DW-1) and Om Prakash (DW-2) both confirm that there was a wedding in the family of the house of the *bhua* of Rakesh in the intervening night between 3rd and 4th March, 2002. They accept that the appellant Rakesh had not attended the marriage. We find it strange that appellant Rakesh would not go to attend the family wedding, because he was waiting for someone else to return to the house. The reason given is not plausible for they could have asked any third person or acquaintance to remain in the house, if Rakesh did not want to lock the house and leave it unattended. Om Prakash (DW-2) in his version has tried to cover up and show presence of Rakesh on 28th February, 2002 at the police station i.e. at the time when the heist and murder of Mohan Lal Bansal had taken place. We have referred to the two judgments. We do not

find that the judgments would anywhere support the versions given by DW-1 or DW-2.

38. Vijay Dutt (DW-3) had produced printout from a micro film which was certified by a third person who was incharge of the reference section at the Navbharat Times. He had also seen the original paper dated 4th March, 2002 in a torn condition and the original paper was marked as Ex.DW-3/A1. However, DW-3 has accepted that he did not have any personal knowledge of the contents of Ex. DW-3/A. The receipt of Rs. 60/- marked as Ex.ZB is for telegrams booked at 1:13 hours on 4th March, 2002. However, copy or contents of the telegram have not been placed on record. Mark-Z and ZA refer to telegrams dated 4th August, 2001. The contents of these telegrams are not relevant. As per the prosecution version, the firing in the present case had taken place at about 9.30 / 10.00 p.m. at Flat No.704, Janta Flats, Hastal on 3rd March, 2002 and Sanjeev Verma (since deceased) was taken to the hospital and examined vide MLC Ex.PW-24/A at 11.15 p.m. on 3rd March, 2002. Thus, the telegram with reference to the Ex.ZB were sent only after Rakesh had already been arrested in the present case and this information was with Om Prakash (DW-2).
39. Head Constable Virender Kumar (DW-4) has referred to the complaint submitted by Rakesh dated 10th June, 2000 which is of no relevance to the facts of the present case. Mukesh, Section Officer, NHRC (DW-5) has referred to a complaint marked as DW-5A, received in their office on 4th March, 2002 from Rajesh Kumar son of Om Prakash in respect of Rakesh. Notice was thereupon issued by the Commission. However, DW-5 could not say anything about the complaint dated 4th March, 2002, i.e. the contents, as the said complaint had been weeded out. The complaint on merits was closed by the National Human Rights Commission and intimation was sent

to the complainant vide letter dated 11th June, 2002. Thus, the contents of the complaint have not come on record.

40. R.K. Dubey, (DW-7) has produced the original newspaper dated 5th March, 2002, marked as Ex. DW-7/A.
41. Head Constable Prahlad (DW-8) was asked to produce the log book of police station Nangloi dated 4th March, 2002, but he has deposed that the same could not be produced as the same and was not traceable. The said statement was recorded on 17th January, 2012.
42. Suraj Bhan Chauhan (DW-9) has deposed about certain telegrams sent on 4th August, 2001 and 12th September, 2001. Records of the said telegrams had been destroyed.
43. Rajnish Kumar, (DW-10) has deposed as a witness of the appellant Pranay (sic). He has stated that they i.e. Rakesh and DW-10 had studied together in Deshbandhu College in the year 1991 and Pranay (sic) was from District Supaul, Bihar. On 3rd March, 2002, Pranay (sic) had returned to Delhi by Magadh Express and DW-10 had gone to the railway station to pick him up. At that time, Pranay (sic) used to live in Prakash Mohalla, East of Kailash, New Delhi, where DW-10 had dropped him. DW-10 asserted that they had planned a dinner in the house of Pranay (sic) and, accordingly at 8.00 p.m., he had gone to the residence of Pranay (sic). He found that Pranay (sic) was descending the stairs and on inquiry learnt that the others present were police officers. The police officers on query had stated that Pranay (sic) would come back within 5-10 minutes. DW-10 had waited for 1½ hours but Pranay (sic) did not return. He had then visited the Police Post Garhi and Sant Nagar. He had also made a call on Pranay's (sic) mobile phone, which was switched off. DW-10 had informed the brother of Pranay (sic) on 3rd March, 2002, and on 5th March, 2002 they had learnt about the arrest of

Pranay (sic) and that one Sanju had been murdered. In his cross-examination DW-10 accepted that he was residing at Greater Kailash, Part-1, Delhi but sometimes would reside with his friends also. He claimed that sometimes Pranay (sic) would live in Sadhik Nagar but could not give the full address. DW-10 did not remember the mobile phone he was having on 4th March, 2002 and could not recollect the phone number of the appellant Pranay (sic). He did not try and find out about Pranay (sic), when he came to know about his arrest from the newspaper. He professed that he had a small child who used to remain ill and had to taken to the doctor everyday. Besides, he had to work. He also claimed that one Chhotu was working as a servant in the resident of Pranay (sic). The said Chhotu has not deposed. The version of Vijay Dutt (DW-10), for apparent reasons and facets on record, is unacceptable.

44. Conviction under the Arms Act, is challenged, on the ground that a supplementary charge-sheet was filed. In terms of the order dated 4.03.2004, charges under section 186/353 and 307 IPC were framed against Rakesh and Pranav and under section 216 (sic. 216A) against Bharat. No charge under section 25/ 27 of the Arms Act was framed. Subsequently sanction was accorded under the Arms Act and supplementary charge-sheet was filed for contravention of the provisions of section 25 of the Arms Act. Order dated 14.03.2011 was passed and a charge under Section 25 of the Arms Act was framed against Rakesh and Pranav. The supplementary charge-sheet was filed during the pendency of the trial and would be in accordance to law. The contention that the prosecution under the Arms Act is void, for want of sanction or not being a subject matter of the first charge sheet, is untenable and rejected.
45. The ocular testimony of the witness and evidence on material on record are firm and prove that the police team had raided second floor of the house

No.704, Janta Flats, Hastal, Uttam Nagar, Delhi, and at that place firing had taken place. The flat on the second floor was rented out and as per the ocular testimonies of S.I. Raj Kumar (PW-25) and Head Constable Bachu Singh (PW-26), Sanjeev Verma (since deceased), Rakesh and Pranav had fired and had obstructed and prevented the police team from entering the premises. Thus the involvement of Rakesh and Pranav stands proved beyond doubt and debate.

46. However, with regard to the role of appellant Bharat it is noticeable that the police witnesses have not deposed that Bharat had fired. Bharat was not armed. There is no evidence and material to establish previous association and relationship of Bharat with Rakesh, Pranav or with Sanjeev Verma (since deceased). S.I. Raj Kumar (PW-25) in his examination in-chief has accepted that Bharat had opened the door on the first floor on asking of the police team. Bharat had not given any clue about Sanjeev Verma (since deceased) and Rakesh. On enquiry, Bharat had taken the police team to the second floor flat, which was tenanted. S.I. Raj Kumar (PW-25) professes that Bharat had knocked at the door of the second floor flat and had spoken something in coded words. However, H.C. Bachu Singh (PW-26) has not testified or claimed that Bharat had used coded words. As per PW-26, Bharat had stated and told them that some tenants were residing at the second floor. SI Raj Kumar had then asked the appellant Bharat to come with them to the second floor to check and identify the occupant/tenant. Bharat had accompanied them and had knocked at the door, which was opened by Sanjeev Verma (since deceased). The depositions do not indicate or reflect that Bharat had acted suspiciously or was hesitant. His demeanor and conduct was not unusual and demonstrative of his involvement. It is not the case that Bharat was involved with the heist. The looted money was not

recovered from him or at his behest. The police version does state that Bharat did run down the stairs, but this was natural in the given facts as there was firing and assault on the police team. In the facts, we do not think the prosecution has been able to prove the charge under section 216A IPC, against Bharat. It has not been proved and shown that Bharat knew and had harbored appellant Rakesh and Sanjeev Verma (since deceased) knowing that they had committed robbery and looted Rs.25.0 lacs from Mohan Lal Bansal or were involved in any crime punishable with death. Acquittal of Bharat, however, would not affect our finding on the question of involvement of appellants Rakesh and Pranav.

47. In view of the aforesaid discussion, we would allow Criminal Appeal No.122/2013 preferred by Bharat. Consequently, conviction of Bharat under Section 216A IPC is set aside. The said appellant Bharat is already on bail, as the sentence was suspended. The Criminal Appeal No.1450/2012 preferred by Pranav and Criminal Appeal 161/2013 preferred by Rakesh are dismissed. Order of sentence with respect to the Pranav and Rakesh is also affirmed. Appellant Pranav whose sentence was suspended vide order dated 09th May, 2013 passed in Criminal Appeal No.1450/2012, will surrender within a period of fifteen days from today to undergo the remaining sentence. The appeals are disposed of.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

DECEMBER 18th, 2015 VKR/SSN