

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-D-95-DB of 2011
Date of decision :- 15.5.2017**

Karan @ Matru and others

....Appellants

Versus

The State of Haryana

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Kamaldeep Singh Sodhi, Advocate
as Legal Aid Counsel for appellants – Karan @ Matru and
Manoj.

Mr.B.S. Saroha, Advocate
for appellant – Pardeep.

Mr.Ashok S. Chaudhary, Additional A.G., Haryana.

H.S. MADAAN, J.

This appeal has been preferred by appellants – accused, namely, Karan @ Matru, Manoj and Pardeep against the judgment dated 21.12.2010 passed by the Court of learned Additional Sessions Judge, Faridabad vide which they were convicted for offences under Sections 302/364/395 IPC and order dated 24.12.2010 vide which they were sentenced as under:

Offence under Section	Sentence Awarded
Section 302 IPC	Imprisonment for life and to pay a fine of Rs.20,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of six months.
Section 364 IPC	Rigorous imprisonment for a period

	of ten years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of four months
Section 395 IPC	Rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of four months

All the substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court, pray that the appeal be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it came out during the trial is that police of Police Station Khurja Dehat, District Bulandshahar (U.P.) came across dead body of a person and another unknown person being injured within its jurisdiction, therefore, FIR No.158 dated 3.8.2007 for offences under Sections 302/307 IPC was registered against unknown persons with that police station. During the course of investigation, it came out that the dead body found was that of Ravi Kumar son of Balbir Singh, resident of Asawati, Police Station Palwal, District Faridabad and injured person was Mamraj son of Kanha Prajapat, resident of Asawati, Police Station Palwal, District Faridabad (Haryana). Later on said injured (Mamraj) had also succumbed to the injuries.

The factual position as it came out was that on 2.8.2007,

four/five persons hired Scorpio vehicle bearing registration No.HR-29N-5818 at 5:00 p.m. from Mohalla, Subhash Colony near Lal Kothi, Ballabgarh; which vehicle was being driven by Ravi Kumar and Mamraj was also with him; that the accused persons had done so with intention of killing Ravi Kumar and Mamraj; that they were seen by Dharam Pal Singh (wrongly mentioned as Dharambir Singh) son of Har Parshad, resident of Asawati, Police Station Ballabgarh; that on the same day at 5:30 p.m. the scorpio vehicle being driven by Ravi Kumar with Mamraj sitting therein besides the accused was seen by Prempal and Surender at village Seekri while proceeding from Ballabgarh to Palwal. As a matter of fact it was a case of kidnapping.

The investigation was therefore transferred from Police Station Khurja Dehat, Bulandshahar (U.P.) to Police Station Ballabgarh City, District Faridabad and necessary documents were sent to the former police station. During investigation, it came out that Ravi Kumar and Mamraj had been killed by shooting from firearms. FIR No.465 dated 1.10.2007, under Sections 364, 302, 34 IPC was registered. One Manvinder Singh son of Surender Pal Singh had been arrested in this case but his involvement was not found to be there, as such, he was discharged. Since some evidence came that scorpio vehicle, which had been looted was used by Pardeep Chauhan @ Kaliya for committing robbery of Rs.12 lacs, he was ordered to be summoned through production warrants from District Jail, Bulandshahar, but he was not produced. On 14.1.2008, SI Randhir Singh, who was investigating the matter had received a phone call from witness Dharam Pal that out of 4-5 boys, who had hired the scorpio vehicle on 2.8.2007, one of them was

standing near Subhash Colony, Sabji Mandi, who had been engaged in talking by him and Mahender. Accordingly, SI Randhir Singh along with other police officials reached at the disclosed place and apprehended that boy, who on being inquired disclosed his name as Karan @ Matru son of Nanak Singh, resident of Farana. He was formally arrested in this case. During the course of interrogation, Karan unfolded the story that he along with Manoj son of Rewati, Isrile son of Noor Mohammad, Pardeep son of Rambir, residents of Farana, and Vishal @ Bengali son of Bhim Sain, resident of Jaalpur had hired the scorpio vehicle for a sum of Rs.1,500/- with Ravi Kumar as its driver and Mamraj as his companion; that they had taken the vehicle to jungle of Mubarikpur, where they fired shots at them and fled with the scorpio. The disclosure statement of Karan @ Matru led to recovery of silver ring belonging to Mamraj.

On 27.1.2008, SI Jagminder Singh had arrested accused Pardeep son of Rambir, resident of Farana, whereas on 5.2.2008 ASI Ravinder Kumar arrested accused Bhura son of Gajraj, resident of Chilawati, to whom scorpio vehicle was said to have been sold. Further as Manoj, Isrile, Vishal, @ Bengali were stated to be lodged in District Jail, Bulandshahar, therefore their production warrants were obtained so as to get their appearance caused in the Court. Manoj son of Rewati, resident of Farana was arrested on 5.3.2008, Vishal @ Bengali and Isrile were arrested on 11.3.2008 by SI Randhir Singh. Accused Pardeep during the course of his interrogation had got recovered watch belonging to deceased Ravi Kumar whereas Manoj while being interrogated had suffered statement under Section 27 of the Evidence Act leading to

recovery of driving licence of deceased Ravi Kumar. Isrile had made a disclosure statement leading to recovery of a country-made pistol of .315 bore and a live cartridge of same bore, whereas disclosure statement of accused Vishal @ Bengali also led to recovery of a country-made pistol of .315 bore along with live cartridge of same bore. The accused had identified the place where they had taken the scorpio vehicle for selling, firstly the house where Bhura was working, thereafter Bhura had taken them to house of Vikram and Vikram had identified Ashok Medical Store of Sunil, where scorpio vehicle was sold. However, Vikram and Sunil could not be arrested. After completion of investigation and other formalities, challan against accused Karan @ Matru, Pardeep, Bhura, Manoj, Isrile and Vishal @ Bengali was prepared and filed in the Court of Judicial Magistrate Ist Class, Faridabad.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Faridabad, he supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 364, 302, 307 IPC are exclusively triable by the Court of Sessions, learned Judicial Magistrate Ist Class, Faridabad vide his order dated 28.3.2008 committed the case to the Court of learned Sessions Judge, Faridabad from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

On receipt of case in the Court of learned Additional Sessions Judge, Faridabad, observing that charge for offences under Sections 364, 395, 302 IPC against Karan Singh @ Matru, Pardeep,

Manoj, Isrile and Vishal @ Bengali, under Section 412 IPC against accused Karan Singh @ Matru, Pardeep, Manoj and Bhura and charge for the offence under Section 25 of the Arms Act was disclosed against accused Isrile and Vishal, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as twenty nine witnesses as per details below:

PW1 Prem Pal deposed that on 20.1.2008, he and Tulsi had gone to CIA Office Sector 21, Faridabad in connection with this case. He deposed regarding disclosure statement Ex.PA suffered by accused Karan alias Matru, who was interrogated by the police in their presence.

PW2 Anwar son of Rashid Khan deposed that he did not know anything about this case and also did not make any statement to the police. Then on the request of learned Public Prosecutor for the State that the witness was suppressing the truth and be declared hostile and he be allowed to cross-examine him, permission was granted to learned Public Prosecutor. In the cross-examination conducted by learned Public Prosecutor, this witness denied having made statement Ex.PB before the police.

PW3 Nehru Lal, who on 15.8.2007 was associated in the inquest proceedings being conducted by the police in respect of deceased Mamraj deposed regarding what had transpired in his presence, inquest proceedings report being Ex.PF. He had identified the dead body of Mamraj.

PW4 Dharam Pal complainant deposed as per the

prosecution story.

PW5 Mahender also deposed on the similar lines as deposed by complainant - PW4 Dharam Pal. In addition to that this witness also deposed that on 19.1.2008, he went to CIA office and then to village Farana (U.P.) along with the police accompanied by accused Karan @ Matru from where accused Karan got recovered one silver ring from his house which according to this witness belonged to Mamraj since word 'M' was inscribed on it, and that ring was taken into possession vide recovery memo Ex.PH, ring being Ex.P1. This witness further deposed that on 27.1.2008, he and Shiv Kumar went to CIA, Faridabad to inquire about the progress of the case. He further deposed regarding suffering of disclosure statement Ex.PI by accused Pardeep in his presence. He further stated that police asked them to come on 31.1.2008. According to this witness, while returning from village Farana, accused Karan @ Matru had identified the place of occurrence where they had killed Ravi and Mamraj and police had prepared the demarcation memo as Ex.PJ in that regard.

PW6 HCP – 30 Subhash Chand deposed that on 3.8.2007 while posted at Police Station Khurja Dehat, District Bulandshahar, he recorded FIR Ex.PK on receipt of ruqa Ex.PK/1. He further deposed that on 7.8.2007, the case property was deposited with him in malkhana vide memo Ex.PL and that on the application of Dharam Pal, he made an entry in the GD and added Sections 364/395 IPC in the investigation proceedings. He proved copy of GD as Ex.PM.

PW7 ASI Dharam Singh, who on 14.1.2008 was posted on General Duty at CIA Sector 30 Faridabad, deposed regarding what had

taken place in his presence on that day.

PW7 SI Jagminder Singh (again numbered as PW7), while posted at CIA Sector 30, Faridabad, who had joined the investigation on 21.1.2008 and 27.1.2008, testified regarding what had transpired in his presence.

PW8 Shiv Kumar deposed that on 27.1.2008, he went to CIA Faridabad in connection with the inquiry of this case about 3:00/4:00 p.m.; that when he reached at police station, accused Pardeep was interrogated by police in his presence and he suffered a disclosure statement Ex.PI. He further deposed that thereafter police asked him to come again on 31.1.2008 and on that date, he went to CIA Faridabad; that he along with 2/3 police officials and accused Pardeep went to village Mahamayee, where accused identified the house of Jitender Pachauri, then they went to village Nanhu where house of Vikram was identified by accused Pardeep; thereafter they went to Mubarikpur jungle, where accused Pardeep identified the place where deceased Ravi and Mamraj were shot by them, then they went to village Farana from where accused Pardeep got recovered a wrist watch make Sonata from his house taking it out from almirah, which according to this witness belonged to his brother Ravi and the same was taken into possession vide recovery memo Ex.PO.

PW9 SI Rishi Om who was associated with investigation of the case, testified regarding what he had done in this case .

PW10 ASI Balwan Singh, who on 5.3.2008 and 6.3.2008 was a member of the police party headed by ASI Ravinder, deposed regarding what had taken place in his presence on those dates.

PW11 HC Phool Kumar, who was member of the investigating team on 31.1.2008 and 9.3.2008 deposed as to what had taken place on that dates in his presence.

PW12 Dr.Sumit Tellewar, Senior Resident, Forensic Medicines, Safdarjung Hospital, Delhi deposed that on 15.8.2007, while he was posted as Senior Demonstrator at GTB Hospital Mortuary, New Delhi, he conducted post-mortem examination on the dead body of Mamraj son of Kanha Ram, resident of village Asawati, Tehsil Palwa, District Faridabad and in his opinion cause of death was shock due to ante-mortem craneo cerebral injury produced by the projectile from a firearm. This injury was sufficient to cause death in ordinary course of nature. He proved copy of post-mortem report as Ex.PV.

PW12 ASI Rajender Singh, CIA Staff, Sector-30, Faridabad (wrongly numbered as PW12) tendered in evidence his affidavit Ex.PX.

PW13 ASI Om Parkash deposed that on 1.10.2007 while posted as such at Police Station City, Ballabgarh, he received a letter Ex.PY from S.P. Bulandshahar through S.P., Faridabad, upon which he recorded FIR Ex.PY/1 and made his endorsement Ex.PY/2 on ruqa. He sent the special report of this case to the higher officers through Constable Satish Kumar and handed over the police file to Inspector, CIA Sector-30, Faridabad for further investigation.

PW14 ASI Rajender Singh deposed that on 4.4.2008 while posted as Draughtsman at CIA Staff, he prepared scaled site-plan Ex.PZ of the place of occurrence on the demarcation of PW Dharampal and on the direction of ASI Siri Kishan.

PW15 Inspector (Retd.) Maya Chand, who had carried out

the investigation of this case on 7.10.2007 deposed regarding his part.

PW16 Pritam Singh Rawal deposed that on 3.8.2007, he was posted as Sub-Inspector at Police Station Khurja Dehat, District Bulandshahar, U.P.; that on that day, a case was registered vide crime No.152/07, under Sections 302/307 IPC of village Mubarikpur; that he along with Indresh Pal Singh, Station Officer visited village Mubarikpur, where they found two persons, one was injured and unconscious and one was dead and that he got admitted the injured/unconscious person in G.T.B. Hospital, Shahadra.

PW17 Sub-Inspector Ravinder Kumar, CIA, Sector-30 Faridabad, who had joined the investigation on 5.2.2008, 6.2.2008 and 5.3.2008, testified regarding what had transpired in his presence.

PW18 Constable Pardeep Kumar, CIA Sector-30, Faridabad tendered in evidence his affidavit Ex.PW18/A submitting that the same be read as a part of his evidence.

PW19 Constable Sukhbir Singh, CIA Staff, Sector-30, Faridabad, a formal witness also tendered in evidence his affidavit Ex.PW19/A. He further stated that on 10.3.2008, he was associated with investigation of the case being conducted by SI Randhir Singh and deposed regarding what had transpired in his presence.

PW20 Dr.A.P. Singh, Medical Superintendent, Dadri, District Gautambudh Nagar, U.P. deposed that on 4.8.2007, he was posted as Medical Officer at Police Hospital, Bulandshahar; that on that day, dead body of an unknown person was brought to the hospital by two Constables, namely, Jahan Singh and Jagpal Singh for post-mortem examination; that the dead body was of male, aged about 22 years, the

length of the body was 5'8". He proved post-mortem report as Ex.PW20/A, inquest report as Ex.PW20/B and request for conducting post-mortem as Ex.PW20/C. In his opinion, the cause of death in this case was shock and haemorrhage as a result of ante-mortem injury.

PW21 ASI Krishan Kumar, CIA Staff, Sector-30, Police Line, Faridabad tendered in evidence his affidavit as Ex.PW21/A praying that the same be read as part of his evidence. He further deposed that on 14.3.2008 and 15.3.2008, he was associated with investigation of the case being conducted by SI Randhir Singh and he testified regarding what had transpired in his presence.

PW22 SI/SHO Siri Kishan, Police Station Hodal, District Palwal deposed that on 4.4.2008 while posted as such at Police Station City, Ballabgarh, he got prepared scaled site-plan of the place of occurrence through Ashok Kumar, Draughtsman on the demarcation of complainant Dharampal.

PW23 Inspector (Retd.) Randhir Singh, who had carried out the investigation in this case to a major extent deposed in that regard proving various documents.

PW24 SI Indrishi Pal Singh, who had joined the investigation on 3.8.2007 and 5.8.2007, testified regarding what had taken place in his presence.

PW25 Inspector Om Parkash deposed that on 5.4.2008, while posted as Inspector/SHO at Police Station City, Ballabgarh, on completion of investigation of this case, he prepared challan against the accused.

PW26 Dr.Sumit Tellewar, Assistant Professor, Department

of Forensic Medicines, Ary College of Medical Sciences, Delhi Cantt. was already examined as PW12.

PW27 Dr.Parmeshwar Ram deposed that on 3.8.2007 while he was posted as CMO at G.T.B. Hospital, Shahadra, Delhi, one unknown person was medico-legally examined by Dr.Yogesh Mittal, who was also working as a Junior Resident in casualty along with him. He had identified the signature of Dr.Yogesh on the MLR Ex.PW27/C, the signature of Dr.Maneesh Kumar Dhiraj on the death certificate Ex.PW27/B and on the death summary Ex.PW27/C.

PW28 ASI (Retd.) Hukam Singh deposed that on 19.2.2008 while posted as ASI at Police Station Dilshad Garden, Police Post Guru Teg Bahadur Hospital, Shahadra Delhi, he handed over the post-mortem report of deceased Mamraj son of Kahna Ram along with sample seal bearing the seal of Medical Officer of GTB Hospital, Delhi to ASI Ravinder of CIA Staff, Faridabad and the same were taken into possession vide recovery recovery memo Ex.PW28/A.

PW29 Bijender Singh, Ahlmad in the Office of District Magistrate brought the original file pertaining to issuance of sanction orders. He identified the signatures of the then District Magistrate, Faridabad on the sanction orders Ex.PW29/A and Ex.PW29/B, respectively in respect of accused Isrile and Vishal.

Then learned Public Prosecutor closed the evidence of the prosecution.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations

contending that they were innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence despite availing ample opportunities.

After hearing arguments, learned trial Court acquitted all the accused including Bhura of the charge under Section 412 IPC but convicted accused Karan, Pardeep, Manoj, Isrile and Vishal @ Bengali for the offences under Sections 364, 302, 395 IPC and accused Isrile and Vishal were also convicted for the offence under Section 25 of the Arms Act and sentenced as detailed above, which left accused Karan @ Matru, Pardeep and Manoj aggrieved and they have filed the present appeal. However, accused Isrile and Vishal @ Bengali did not prefer any appeal.

We have heard learned counsel for the appellants-accused-convicts and learned Additional Advocate General for the State of Haryana besides going through the record and we find that there is no merit in the appeal.

In the instant case six accused namely Karan @ Matru, Pardeep, Bhura, Manoj, Isrile and Vishal @ Bengali had been sent up to face trial. However, Bhura was acquitted of the charge framed against him whereas accused Karan @ Matru, Pardeep, Manoj, Isrile and Vishal @ Bengali were convicted for offences under Sections 302, 364 and 395 IPC. In addition to that, Isrile and Vishal @ Bengali were convicted for the offence under Section 25 of the Arms Act. Accused Isrile and Vishal @ Bengali have not preferred any appeal against judgment of their conviction and sentence whereas accused Karan @ Matru, Pardeep and

Manoj have knocked at the door of this Court by way of filing the present appeal.

It may be mentioned here that in this case, no eye-witness account of the incident is available, rather the case is based upon circumstantial evidence. However, the chain of events is complete and strong motive is established for the incident, which does not leave any doubt in mind about participation of the appellants – accused in the crime.

The first and foremost incriminating circumstance connecting the appellants – accused with the incident is that on 2.8.2007 PW4 Dharam Pal had observed them and other accused sitting in scorpio vehicle in question being driven by Ravi Kumar and Mamraj sitting besides him. Ravi Kumar had stopped the vehicle and on being asked had informed Dharam Pal that he was going to Khurja Dehat and would return back late night. PW4 Dharam Pal has deposed in that regard in no uncertain terms stating that after 2-3 days, he came to know that Ravi Kumar and Mamraj had been killed in jungle of Mubarikpur. Thus it comes out that the deceased had been seen in the company of accused for the last time before their deaths.

The entire story was unfolded when on 14.1.2008, PW4 Dharam Pal and PW5 Mahender had observed accused Karan @ Matru near Sabji Mandi, Subhash Colony, Ballabgarh and they identified him to be the person who was sitting in the scorpio vehicle of Ravi Kumar. Then Karan @ Matru was engaged in talks and police was informed, which came and arrested Karan @ Matru, who during interrogation then revealed that he along with Manoj, Pardeep and other 3-4 persons had

killed Ravi Kumar and Mamraj in forest area of Mubarikpur and sold the vehicle. Karan @ Matru had also suffered a disclosure statement which led to recovery of silver ring belonging to deceased – Mamraj. PW4 Dharam Pal, PW5 Mahender and PW7 SI Jagminder Singh (again numbered) deposed in that regard. It also comes out that accused Karan @ Matru had identified the place in Mubarikpur where Ravi Kumar and Mamraj had been killed and the place where they had gone to sell the scorpio vehicle. Demarcation memos Ex.PN and Ex.PO had been prepared in that regard.

Then besides Karan @ Matru getting recovered silver ring belonging to Maraj from his possession, accused Pardeep when arrested was interrogated and had made statement under Section 27 of the Evidence Act leading to recovery of wrist watch of Ravi Kumar deceased, whereas Manoj after being arrested and interrogated had suffered a similar disclosure statement leading to recovery of driving licence of Ravi Kumar from his possession, whereas country-made pistols were got recovered by accused Isrile and Vishal @ Bengali which had been used in committing murders of Ravi Kumar and Mamraj. Section 114 of the Indian Evidence Act provides that Court may presume existence of certain facts. It dilates that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. As per illustrations given below the provisions, the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the

goods knowing them to be stolen, unless he can account for his possession. In this case accused Karan @ Matru was found in possession of silver ring of Mamraj deceased, Pardeep in possession of wrist watch of Ravi Kumar deceased and Manoj in possession of driving licence of Ravi Kumar. Such articles come within the definition of stolen articles. The three accused, who were found in possession of such articles could not account for their possession of the same which leads to the inference that either they had received the goods knowing those to be stolen or had committed theft thereof. In this case, the second eventuality comes out to be much more probable and natural, that means the accused had committed theft of the articles belonging to the deceased. The murder of Ravi Kumar and Mamraj had taken place at or around that very time. Section 6 of the Evidence Act deals with relevancy of facts forming part of same transaction providing that facts which though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occur at the same time and place or at different times and places. This section deals with principle of *res gestae*. Applying this principle, it can safely be inferred that it were the accused who had committed the murder of Ravi Kumar and Mamraj after looting their articles. The disclosure statements made by the appellants – accused – convicts leading to recovery of stolen articles actually belonging to the deceased and their pointing the places where Ravi Kumar and Mamraj had been done to death and where the scorpio vehicle had been disposed of makes the picture absolutely clear leaving no doubt in the mind that accused – convicts had actively participated in the incident in which Ravi Kumar driving

his scorpio vehicle with Mamraj sitting therein as his associate were kidnapped and such kidnapping was done in order that Ravi Kumar and Mamraj would be murdered and as a matter of fact they had committed offence of dacoity punishable under Section 395 IPC besides committing murder of Ravi Kumar and Mamraj punishable under Section 302 IPC. The motive for the incident is proved to be of looting valuables from Ravi Kumar and Mamraj besides the scorpio vehicle which as it comes out was sold and then the proceeds were distributed by the accused *inter se*.

Keeping in view the facts and circumstances of the case, the delay in lodging of the FIR is not of much consequence, rather earlier FIR No.158 was registered at Police Station Khurja Dehat, District Bulandshahar since dead body of Ravi Kumar and Mamraj in injured condition were found from jungle of Mubarikpur within jurisdiction of that police station, however, the case was subsequently transferred to Police Station Ballabgarh, where FIR was registered and matter was investigated and then challan was prepared and filed.

Learned counsel for the appellants had raised certain contentions, first being that no independent witness was joined at the time of recording disclosure statements of accused or effecting recoveries from them, therefore, the recoveries become doubtful. However, we find it difficult to accept this argument. It is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to

the police station in connection with investigation and to attend hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses. We find that the evidence adduced by the prosecution as regards accused – convicts suffering disclosure statements and getting recoveries effected at their instance do not suffer from any weakness or infirmity on any account and are bound to be relied upon and accepted.

The next argument advanced was that no weapon was recovered from the appellants. However, this argument does not cut any ice since it comes out from the record that besides appellants – accused – convicts several other persons like Isrile and Vishal @ Bengali were involved in the incident. Isrile and Vishal @ Bengali had got the country-made pistols recovered from their possession. They were accordingly convicted for offence under Section 25 of the Arms Act. Every accused is not supposed to be having weapon with him. Therefore, non-recovery of any weapon from the appellants – accused – convicts does not lessen their criminal liability.

Another argument advanced was that the scorpio vehicle of Ravi Kumar deceased has not been recovered from any of the accused which affects the credibility of the prosecution story. Again, we are not impressed by this contention as it has come on record that the accused – convicts had sold off the scorpio vehicle after committing murder of Ravi Kumar and Mamraj. The purchaser Sunil, who had purchased the vehicle could not be arrested and as such the scorpio vehicle could not be recovered from him but that does not provide any advantage to the appellants – accused – convicts because it is proved on file that such

scorpio vehicle had been sold off by the accused after looting that from Ravi Kumar and Mamraj.

The medical evidence in this case corroborates the ocular evidence. PW12 Dr.Sumit Tellewar, Senior Resident, Forensic Medicines, Safdarjung Hospital, Delhi, who on 15.8.2007 while posted as Senior Demonstrator at G.T.B. Hospital Mortuary, New Delhi had conducted post-mortem examination on the dead body of Mamraj stated that in his opinion cause of death was shock due to ante-mortem Cranio cerebral injury produced by the projectile from a firearm and that injury was sufficient to cause death in ordinary course of nature. He proved copy of post-mortem report as Ex.PV. He stated that after post-mortem examination, he had handed over to police blood on gauze of deceased and bullet recovered from the body. PW20 Dr.A.P. Singh, Medical Superintendent, Dadri, District Gautambudh Nagar, U.P. deposed that on 4.8.2007, he was posted as Medical Officer at Police Hospital, Bulandshahar; that on that day dead body of an unknown person was brought to the hospital by two Constables for post-mortem examination. It was dead body of male, aged about 22 years. The cause of death in his opinion was shock and haemorrhage as a result of ante-mortem injury. This post-mortem was conducted on the dead body of Ravi Kumar as it came out later. If we see reports from FSL Ex.PE, Ex.PE/1 to Ex.PE/3, then it comes out that the country-made pistols recovered from Isrile and Vishal @ Bengali which were found to be chambered for .315 cartridges, are firearms as defined in Arms Act. Further, that those pistols had been fired through. Although no definite opinion could be formed regarding the linkage of .315 fired cartridge cases Marked C/1 to

C/3 in respect of country-made pistols marked W/1 and W/2 but it was opined that C/1 to C/3 had been fired from country-made firearms. Opinion regarding further fired bullets was also not given but it does corroborate the prosecution story that the country-made pistols had been used in the incident. The involvement of accused – convicts in the incident stands fully proved from the cogent and convincing evidence brought on file by the prosecution.

There is nothing to point out that it is a case of false implication. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction. The investigation in this case seems to have been carried out in a fair and impartial manner.

The judgment of conviction and order of sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment of conviction and sentence is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

Necessary intimation be sent to the quarter concerned.

15.5.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No