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

+ **CRL.A. 202/2002**

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Reserved on: February 08, 2018
Date of decision: February 26, 2018

TRILOCHAN SINGH @ HAPPY Appellant

Through: Mr. S.S. Gandhi, Sr. Advocate with
Ms. Alka Joshi, Advocate and Mr.
Sumer Kumar Sethi, Advocate
(Amicus Curiae)

versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP with Insp.
Bhanu Prakash, S.I. Jai Chand, P.S.
Mukherjee Nagar.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

JUDGEMENT

I.S.Mehta, J.

1. The instant criminal appeal is arising out of the impugned judgment dated 31st January, 2002 and order on sentence dated 1st February, 2002, wherein the learned Additional Sessions Judge, has convicted the appellant under Section 302/34/411 IPC and under Section 27 of the Arms Act and sentenced him to undergo life imprisonment along with fine of Rs.5,000/- for the offence punishable under Section 302/34 IPC, in default of payment

of fine, to undergo rigorous imprisonment for one year and rigorous imprisonment of one year for the offence punishable under Section 411 IPC, and has sentenced to undergo three years of rigorous imprisonment and a fine of Rs. 1000/- for the offence punishable under Section 27 of the Arms Act and in default of payment of fine, to undergo further rigorous imprisonment for three months. All these sentences have been ordered to run concurrently.

2. The appellant aggrieved by the aforesaid judgment and order on sentence preferred the present appeal.

3. The facts emerging from the record is that a DD was registered on 18/19.11.1990 wherein PW-1 Ranga Singh has stated that:

"He was a resident of H.No. 50, Nirankari Colony, Delhi along with his servant Dayal Chand Pandey. One Kartar Singh resident of Haryana, Sonapat was also residing with him for the last 15 days in the aforesaid house. Another person Tirlochan Singh @ Happy had also joined with them on the aforesaid date. On the aforesaid date Ranjit Singh @ Kaka Sirsewala along with Harvinder Singh @ Bittoo also visited the aforesaid house and Ranjit Singh had brought along with him two bottles of liquor i.e. Salute India and raw chicken. The servant cooked the raw chicken. All of them started drinking liquor. PW1 Ranga Singh left for Delhi Railway Station at 8:30 pm to see of his sister-in-law Rajinder Kaur wife of his brother Budh Singh, who had to board her train for Kota, Rajasthan at 10:20 pm. PW1 Ranga Singh when he came back to his house at 11 pm, he found the door of his main gate bolted from inside. Then he rang the bell but nobody opened the main gate. Thereafter, he jumped over the main gate and entered into his house. The door

*of the larger room too was closed, he pushed the door and saw Ranjit Singh @ Kaka lying dead on the cot. He further saw one bullet shot on the right hand side of his forehead and blood was oozing from there. He did not see his servant, Tirlochan Singh @ Happy, Kartar Singh @ Kartara, Harvinder Singh @ Bittoo at his house. The rear door of the house was open and he found that his motorcycle DIX 6785 was missing. When Ranjit Singh @ Kaka visited his house, he saw that Ranjit was wearing a gold chain, gold rings in both his hands fingers. He also saw that Ranjit Singh was carrying a bag containing enough money, a licensed revolver, a suitcase and a bag containing clothes- all of them were missing. The murder has taken place in his absence and information was sent by calling police at 100 number. One sandal of said Kartar was lying under the cot on which the dead body was lying and another sandal of Kartar was lying near the double bed.
Statement read over.*

*sd/-
18/19.11.1990"*

4. On the basis of Daily Diary (D.D.) No. 16A, an FIR No. 168/1990 under Section 302 IPC was registered. Crime team was called at spot and the crime team report was prepared. Blood sample was lifted from the spot and the same was put in phial and converted into parcel and seized vide seizure memo i.e. Ex.PW23/B
5. The dead body of the deceased was sent to the mortuary and post-mortem of body got conducted i.e. PW14/A.
6. The seizure memo of the quilt, kara, bed sheet and pillows were seized

vide seizure memo i.e. Ex.PW23/C/D/E.

7. The dead body of the deceased was found wearing gold *kara*, which *kara* was seized vide seizure memo PW23/F. The cloth of the deceased was seized vide Ex.PW23/K and memo of cloth of Kartar Singh were seized vide Ex. PW23/M/K.

8. Five glasses having smell of liquor were also seized vide exhibit PW23/J and the *attaché* was seized vide exhibit PW23/N and all the seizure memo bears the signature of PW1 Ranga Singh and PW23 Vir Singh. All the seizure memos were deposited in the *malkhana* by PW24 P.P. Singh.

9. The supplementary statement of Ranga Singh was recorded. P.P. Singh IO interrogated Dayal Chand Pandey, Harvinder Singh @ Bittoo, Kirpal Singh. The scaled site plan was prepared on 20.09.1990. The IO received secret information on 26.11.1990 with respect to the whereabouts of accused persons and he prepared a raiding team. Consequently, the accused persons i.e. Trilochan Singh @ Happy and Kartar Singh @ Kartara were arrested on 26.11.1990 and motorcycle DIX 6785 was recovered from their possession. The accused persons placed fake registration no. on the bike i.e. DIX 8985. The revolver- weapon of offence was .32 bore Webles Scott A-59696 along with 6 live cartridge of .32 bore, one gold chain weighing 1.18 gm, four gold rings weighing 300 mgs were got recovered from possession of accused persons. After completing the investigation. A charge sheet was registered under Sections 302/380/411/34 IPC read with Sections 27/59 Arms Act was filed.

10. Subsequently, the Court below framed charge under Sections 302/34 IPC and 380/34 IPC against the present appellant and Kartar Singh (Proclaimed Offendor) and they have pleaded not guilty.

11. The prosecution in support of its case examined 24 witnesses and after hearing the arguments, the learned Additional Sessions Judge passed the impugned judgment and order on sentence.

Hence the present appeal.

12. The learned Additional Public Prosecutor Mrs. Radhika Kolluru has submitted that in the instant case the deceased Ranjit Singh @ Kaka was murdered at House No. 50 Nirankari Colony on 18/19.11.1990 in absence of PW1 Ranga Singh by Trilochan Singh @ Happy and Kartar Singh @ Kartara.

13. The deceased Ranjit Singh @ Kaka on the relevant date i.e. 18.11.1990 was carrying on a revolver to the house of PW1 Ranga Singh and after taking liquor along with Trilochan Singh @ Happy, Kartar Singh @ Kartara and Harvinder Singh @ Bittoo, Trilochan Singh took out revolver and shot at Ranjit Singh and took his four gold rings, one gold chain and his money along with licence of revolver and fled away on motorcycle of PW1 Ranga Singh i.e. DIX 6785 from the house of Ranga Singh. Subsequently, both the accused persons were arrested on 26.11.1990 and recovery of 4 gold rings, one gold chain, motorcycle and revolver along with live cartridge and later on its license was recovered and the Court below rightly convicted both the accused persons on the basis of evidence available on record and appeal of appellant is without merit and same deserves to be dismissed.

14. Per contra, the learned senior counsel Mr. Gandhi on behalf of the appellant has pointed out that PW1 Ranga Singh, PW9 Praveen Kumari, PW12 Harvinder Singh @ Bittoo, PW18 Dayal Chand Pandey are themselves suspects in the present case.

15. The learned senior counsel has further pointed that the star witness PW21 Kirpal Singh is an introduced witness by the prosecution.

16. The learned senior counsel has further stated that the recovery as alleged from the possession of accused persons are concerned the same are planted subsequently there is no sufficient evidence to bring home the guilt of the accused.

17. Perusal of the record shows that the case of the prosecution is based on circumstantial evidence. The circumstances relied upon by the prosecution is as under: -

- (i) The place of incident is House No.50, Nirankari Colony, Delhi and PW1 Ranga Singh and his servant PW18 Dayal Chand Pandey were residing at the aforesaid house. The accused Kartar Singh too is also stated to be staying in the aforesaid house with PW1 Ranga Singh.
- (ii) On 18/19.11.1990 deceased Ranjit Singh along with Harvinder Singh @ Bittoo visited the aforesaid house along with two bottle of liquor and raw chicken at about 5:30 pm.
- (iii) PW21 Kirpal Singh, the elder brother of the deceased came from Haryana to Delhi and went to the house of the deceased at

R.K. Puram. There he met PW9 Praveen Kumari, who gave him the address of PW1 Ranga Singh i.e 50, Nirankari Colony, Delhi. Kirpal Singh reached at the house of Ranga Singh at about 9 pm on 18.11.1990 and saw the deceased in company of Tirlochan Singh @ Happy and Kartar Singh @ Kartara. They were taking liquor. PW 21 left the house within five minutes.

(iv) The servant of the house PW18 Dayal Chand Pandey cooked the chicken and thereafter, Trilochan Singh @ Happy, Kartar Singh @ Kartara, Harvinder Singh @ Bittoo, Ranjit Singh and Ranga Singh started drinking liquor till 8:30 pm. Ranga Singh alleged that he left the aforesaid house under the pretext of seeing off his sister-in-law i.e. Rajinder Kaur who was to board a train for Kota from Delhi Railway Station at 10:20 pm.

(v) PW1 is alleged to have returned home from Railway Station at 11 pm and found the main gate of the house bolted from inside and the door of larger room was closed from inside. When PW1 Ranga Singh rang the bell and no response came from inside he jumped over the main gate and got into his house. On finding the larger room closed, he pushed the door and saw the deceased lying dead on the cot in pool of blood and found that Trilochan Singh @ Happy, Kartar Singh @ Kartara, Harvinder Singh @ Bittoo and Dayal Chand Pandey were missing from the house and found that one gold chain, four gold rings which deceased was wearing. His money bag was also missing. The revolver along with licence of deceased was missing. The motor cycle of Ranga Singh which was

parked at his house was also missing.

18. This is a case based on circumstantial evidence. The law relating to circumstantial evidence is well settled that the effect of all the circumstances must be so proved to indicate that it was only the accused and no one else who committed the offence. In this regard, the following observation in the decision of the Hon'ble Supreme Court in ***State of Tamil Nadu v. Rajendran***, (1998) 8 SCC 679, are relevant:

"6. ..the law is fairly well settled that in a case of circumstantial evidence, the cumulative effect of all the circumstances proved must be such as to negative the innocence of the accused and to bring home the charge beyond reasonable doubt. "

19. Similarly, in the case of ***Ram Avtar v. State (Delhi Administration, 1985 (Supp) SCC 410***, the Hon'ble Supreme Court has made the following observation:

"18. ...where circumstantial evidence consists of a chain of continuous circumstances linked up with one another, the court has to take the cumulative effect of the entire evidence led by the prosecution before acquitting or convicting an accused."

LAST SEEN EVIDENCE

20. The prosecution in order to prove that deceased soon before his death was seen in the company of the accused persons i.e. Tirlochan Singh and Kartar Singh examined PW1 Ranga Singh and PW21 brother of the deceased Kirpal Singh as star witnesses. PW1 Ranga Singh has specifically stated that PW18 Dayal Chand Pandey was his servant and was residing at House No.50 Nirankari Colony and accused Kartar Singh was also staying

with them for the last 15 days. On 18.11.1990 deceased Ranjit Singh @ Kaka along with PW12 Harvinder Singh @ Bittoo came to visit PW1 Ranga Singh on that day at about 6 pm along with two bottles of liquor and raw chicken and his servant PW18 Dayal Chand cooked the chicken and meal. At about 8:30 pm PW1 Ranga Singh had gone to the railway station to see off his sister-in-law Rajinder Kaur. He returned at 11 pm and found the main gate of his house was open and back door of his house was closed. He also saw that many people had gathered near his house. Ranjit Singh @ Kaka was lying dead on a cot inside of his house room. PW 1 did not meet at his house Trilochan Singh @ Happy, Kartar Singh @ Kartara, Harvinder Singh @ Bittoo and Dayal Chand Pandey. He reported the matter to the police.

21. During cross-examination, PW1 Ranga Singh admitted that when he left for the railway station, both the accused persons also left the house in his presence. He stated as under:

“When I left for the railway station both the accused had also left my house in my presence”

22. PW1 Ranga has further admitted that he had not informed the wife of Ranjit Singh @ Kaka or any other relative about the murder of Ranjit Singh @ Kaka and he knew Ranjit Singh @ Kaka was residing at R.K. Puram. He stated:

“I had not informed the wife of Ranjit Singh @ Kaka and any of his other relatives about the murder of Ranjit Singh @ Kaka. I knew that Ranjit Singh @ Kaka was living at R.K. Puram.”

23. PW1 further admitted that he has also taken the liquor which Ranjit

Singh @ Kaka had brought after reaching at his house. He stated: -

"It is correct that we had started taking liquor which was brought by Kaka after I reached my house at about 6 pm."

24. The statement of PW1 Ranga Singh does not inspire confidence. The prosecution has not examined Rajinder Kaur, the sister-in-law of PW1 Ranga Singh to corroborate his version. There is nothing on record except his oral testimony to corroborate that in fact he left the house at 8:30 pm for the railway station. Even his servant PW18 Dayal Chand Pandey has not seen PW1 Ranga Singh leaving the house for the railway station at 8:30 pm on the said date. The prosecution did not procure the railway ticket or any other document to suggest that Rajinder Kaur boarded the train to Kota on the said date.

25. There is a material improvement in the statement of PW1 Ranga Singh on his saying that when he came back from the railway station, the main door of his house was opened and the back door of his house was closed. Whereas in the DD No.16A dated 18.1.1990 i.e. Ex.PW1/A which is the basis of FIR No.168/1990 i.e. Ex.PW19/A, PW1 Ranga Singh stated when he came back to his house No.50, Nirankari Colony, Delhi he saw his main gate was bolted from inside and rang the bell and when none opened the door he jumped over the main gate and entered into the house and saw the larger room closed.

26. The prosecution case, too, is that when PW1 Ranga Singh came back from railway station, the main door of the house was closed.

27. The Crime Team Report is Ex.PW24/B which is reproduced hereunder:-

"Case FIR No. 168 Dt. 19.11.1990 u/s. 302 IPC P.S. Mukherjee Nagar

Brief Facts

Brief facts of the inquest are that an information was received about a murder having taken place at house No.50 Nirankari Colony Delhi was received at P.S Mukherjee Nagar vide DD No.16A dated 18.11.1990 P.S. Mukherjee Nagar. Sh. Vir Singh along with staff went to the spot where he found the dead body of Ranjeet Singh @ kaka sirsewala S/o Harman Singh R/o House No. 1017 Sector- 12, R.K. Puram laying on a cot and covered with a quilt , the deceased had bullet wounds on the right side of the his forehead and blood was oozing out of these wounds. Sh. Ranga Singh occupier of House No.50 Nirankari Colony Delhi got his statement recorded to the effect that the deceased Ranjeet Sing @ kaka sirsewala had visited his house in the evening of 18.11.1990 accompanied by one Bittoo. Kartar and Happy both friends of Ranga Singh were already with him at his house. Ranjeet Singh @ kaka sirsewala had bought 2 bottle of whisky and some chicken.which was cooked by his servant Dayal. All these persons enjoyed drinks, in the midst Ranga Singh left them as he had to see off his relative at Delhi Railway station. When Ranga Singh came back at about 11 pm he found Ranjeet Singh @ kaka Sirsewala lying dead on a bed inside one of the rooms at House No. 50 Nirankari Colony Delhi. Blood was oozing out from the right side of forehead. None of the persons mentioned above was found inside the house. Rear Gate of the house was found open , while front side main gate was bolted from inside. Valuables i.e. 4 Rings weigh 6 tolas and Gold chain Weigh 4 tolas , Revolver of Ranjeet Singh @ kaka sirsewala and a bag containing cash belonging to the deceased alongwith the Motar cycle DIX-6785 of the complainant was found missing. The present case has been registered in this connection and investigation is in progress. Wrist watch of the

deceased and case Rs. 15,000/- approximately was also been found missing.

*Sd/-
SHO/P.S. Mukherjee Nagar
19/11/1990 "*

28. The fact emerging on record is that when crime team report was prepared none of the relatives of deceased Ranjit Singh @ Kaka were present or any other person except Inspector Vir Singh along with his staff and information given in brief facts pertaining to the ornaments weight and amount is on the basis of personal knowledge of PW1 Ranga Singh.

29. It is because of these reasons the investigating agency put PW1 Ranga Singh to be one of the suspects in the present case which is admitted in his cross-examination which is reproduced here under: -

“The police kept me with them up to 20th of that month and I was given several beatings by the police during that period I do not know what proceedings were conducted by police during that period .”

30. The prosecution in order to corroborate the statement of PW1 Ranga Singh and PW21 Kirpal Singh elder brother of Ranjit Singh @ Kaka who has stated that he came to Delhi on 18.11.1990 pertaining to their land dispute from their native place and went to the house of Ranjit Singh @ Kaka who was residing at R.K. Puram. His wife Parveen @ Pinki met him there and told him that Ranjit Singh had gone to meet Ranga Singh at 50, Nirankari Colony, Delhi and took the address of Ranga Singh Pehlwan and went there at 9 pm. The door was open and after hearing the voice of Ranjit Singh @ Kaka he went inside the room where he saw his younger brother

i.e. Ranjit Singh @ Kaka was taking liquor with Trilochan Singh @ Happy and Kartar Singh @ Kartara. They asked him to sit down but he did not accompany them and left the place after 5 minutes and he left for Ghaziabad in his own vehicle.

31. During the cross-examination PW21 Kirpal Singh has stated that deceased Ranjit Singh @ Kaka was a property dealer and he has also admitted that he was involved in a case of passport in Delhi and also involved in a case of dacoity. During cross-examination he has further admitted that he had come to Delhi at 11 am on 18.11.1990 and gone to his younger brother's house at R.K. Puram where he met his wife, who has given the address of PW1 Ranga Singh i.e. H.No. 50, Nirankari Colony, Delhi which is reproduced here under: -

“I had come to Delhi at 11:00 A.M. and had gone to the house of my brother Rajinder Singh straight away. xxxxx On my inquiry wife of Kaka Ranjit Singh had told me address of Ranga was 1/50, Nirankari Colony.”

32. What is emerging on record is that PW21 Kirpal Singh elder brother of deceased did not know the address of PW1 Ranga Singh.

33. PW21 Kirpal Singh claims that he reached the house of PW1 Ranga Singh prior to the incident and on the basis of address given by wife of deceased Ranjit Singh i.e. PW9 Parveen Kumari. Whereas PW9 Parveen Kumari has not stated anything with regard to her meeting with PW21 Kirpal Singh on 18.11.1990.

Kirpal Singh would not have reached to the house of PW1 Ranga Singh unless he knew the whereabouts of his own brother through his wife.

As per PW9 Praveen Kumari version on 18.11.1990, she along with her husband and children went to her parent's house at Majnu Ka Tilla. Her deceased husband left them at 5 pm and told that he will come back soon and left for the house of PW1 Ranga Singh i.e. House No. 50, Nirankari Colony, Delhi along with Harvinder Singh @ Bittoo.

34. What is emerging is that PW21 Kirpal Singh did not know the address and whereabouts of Ranjit Singh and source of information of the address is PW9 Parveen Kumari wife of deceased. PW9 Praveen Kumari does not even state that she met PW21 Kirpal Singh on 18.11.1990. This falsifies the version of PW21 Kirpal Singh that he visited the house of PW1 Ranga Singh at about 9 pm on 18/19.11.1990. Therefore, the claim of PW21 Kirpal Singh that he went to House No.50, Nirankari Colony is false.

35. The prosecution story that the incident took place on 18.11.1990 at the house of PW1 Ranga Singh and that soon before the death of deceased, he was seen in the company of accused persons i.e. Trilochan Singh @ Happy and Kartar Singh @ Kartara between 9:30 pm - 11pm on 18/19.11.1990 is not proved, on account of the admission of PW1 Ranga Singh himself that the accused persons i.e. Trilochan Singh @ Happy and Kartar Singh @ Kartara left the house prior to his leaving for the railway station.

POST MORTEM REPORT

36. On 19.11.1990, PW14 Dr. L.T. Ramani conducted the post mortem i.e. Ex.PW14/A. The cause of death of deceased Ranjit Singh as per post mortem report is the injuries caused on his person through fire arm which is

reproduced as under:

"The injuries were ante-mortem caused by a fire-arm projectile, fired from contact range. Injuries to the skull were sufficient to cause death in the ordinary course of nature. The death was 12 hours."

Therefore, it stood proved that the death was homicidal.

CFSL REPORT

37. The prosecution has examined PW 24 P. P. Singh, who has sent the exhibits seized from the spot on 18.11.1990. The reports are Ex.PA/PB/PC and PD. However, the aforesaid reports do not connect the accused persons with the crime.

RECOVERY OF ARTICLES

38. So far the recovery of four gold rings, one gold chain, revolver and motorcycle is concerned, the prosecution has again relied upon PW21 Kirpal Singh as star witness. PW21 Kirpal Singh is admittedly the elder brother of deceased Ranjit Singh @ Kaka who was living separately. PW21 Kirpal Singh is residing in Village Vaidwala, District Sirsa, Haryana whereas the deceased got separated from his elder brother about 15-16 years back.

39. The recovery alleged to be got effected is on 26.11.1990. On the basis of the secret informer, the raiding team was constituted wherein IO did not join any respectable local persons or shop keeper or the passerby in the raiding team. However, the IO claims that PW21 Kirpal Singh met him on the way, while they were on their way to search accused persons Tirlochan

Singh and Kartar Singh on the basis of secret information. The alleged recovery of revolver as per prosecution is from Trilochan Singh @ Happy who is alleged to have been coming from Haryana side on motorcycle DIX-8965. The raiding party along with PW21 Kirpal Singh chased the said motorcycle near Mukandpur Bridge. The motorcycle struck against the bridge and the raiding team members overpowered the accused persons and searched out one .32 bore revolver loaded with 6 bullets found in the right dub of the pant of accused Trilochan Singh @ Happy.

Whereas the personal search memo of accused person Ex.PW21/J and Ex. PW21/M does not show the same. The personal search memo of accused Trilochan Singh @ Happy dated 26.11.1990 i.e. Ex.PW21/J showed one handkerchief, Rs.320 and a helmet and the personal search memo of pillion rider Kartar Singh @ Kartara dated 26.11.1990 i.e. Ex.PW21/H showed Rs. 45/- and one handkerchief.

40. The witnesses of recoveries were PW21 Kirpal Singh, PW22 Inspector Prithi Singh, and PW23 SI Vir Singh, none of whom in their statements state that the raiding team members have given their personal search to the accused persons before their i.e. Tirlochan Singh and Kartar Singh's personal search at the spot i.e. near Mukandpur Chowk to avoid false plantation of revolver on his person.

The prosecution further alleges that the four gold rings, a gold chain was recovered from the cavity of the aforesaid motorcycle.

The story of prosecution is that the deceased was wearing four gold rings and one chain in his hands and neck and after committing his murder, aforesaid articles of gold were removed by the accused persons i.e.

Trilochan Singh @ Happy and Kartar Singh @ Kartara.

41. The crime team report i.e. Ex.PW24/C shows that the dead body of the deceased was lying on a cot wearing one *banyan* and *checkdaar loongi* of brown colour.

It is a matter of record, that the dead body was having gold *kara* on his hand and it is utterly surprising to believe in the story of the prosecution that the assailants took the four gold rings from the fingers of the dead body, but left behind the gold *kara*.

42. It is further the case of the prosecution that the assailants had removed the revolver along with its licence and after committing the murder of deceased, they went to the house of PW5 Satya Dev i.e. village Gopalpur Delhi and handed over the aforesaid licence to him on 18.11.1990 at about 8:30 pm. He is examined as PW5 and does not supports the prosecution version and stated that the accused persons did not know the address of his house.

43. There is nothing proved on record that the accused persons knew the address of PW5 Satya Dev and they did visit the house of PW5 Satya Dev on 18.11.1990.

44. Admittedly, the incident is at House No. 50 Nirankari Colony between 8:30-11:00 at the house of PW1 Ranga Singh. PW1 Ranga Singh PW1, PW18 Dayal Chand Pandey, PW12 Harvinder Singh @ Bittoo are the witnesses who themselves are suspected in the present case.

45. PW18 Dayal Chand Pandey alleges to have been in rear portion of the

room and has stated that nothing is visible inside the larger room which is reproduced as under: -

"..It is correct that from the rear portion room nothing is visible inside the larger room"

46. The PW18 Dayal Chand Pandey is also one of the suspects in the instant case and during his cross-examination he has admitted that the police detained him in police station for three days and investigated him for all the three days and the police had not taken his signature on any document which is reproduced hereunder: -

"The police detained me in the police station for three days. The police have been interrogating me all the three days. The police had not obtained my signatures on any paper."

47. PW18 Dayal Chand Pandey during the cross-examination has stated after taking the utensils from bigger room he had not gone to the said room on that night. The prosecution version that PW18 Dayal Chand Pandey saw both the accused persons running away on the motorcycle of PW1 Ranga Singh on the aforesaid night is not proved for want of evidence.

48. Further, no finger print or chance-print either on the motorcycle, revolver, five glasses and *almirah* were taken, which, creates doubt over the basic prosecution story of recovery.

MOTIVE

49. Instant is a case based on circumstantial evidence where the motive assumes great importance to prove each factor of the facts connecting to the

accused person to show its guilt on the basis of consistency which results ultimately to prove that it is the accused and no one else has committed the offense.

50. The observation of the Apex Court in this regard, in the case of ***Rishipal v. State of Uttarkhand, (2013) 12 SCC 551***, are relevant:

"It is fairly well settled that while motive does not have a major role to play in cases based on eyewitnesses account of the incident, it assumes importance in cases that rest entirely on circumstantial evidence. "

51. The statement of PW18 Dayal Chand, to the extent that deceased Ranga Singh used to taunt Tirlochan Singh @ Happy *ipso facto* cannot be a ground to take such a hard step in absence of further quarrel between the parties. No such incident is reported or available on record. Therefore, the prosecution fails to prove robbery is the motive *qua* Tirlochan Singh.

CONCLUSION

52. For all the aforementioned reasons, none of the circumstance, pointing to the guilt of the accused, has been proved by the prosecution beyond reasonable doubt. Consequently, the appellant-accused is acquitted for the offence under Sections 302/34/411 IPC and under Section 27 of the Arms Act on the basis of benefit of doubt. The impugned judgment dated 31st January, 2002, convicting the appellant-accused for the aforesaid offences, as well as the order on sentence dated 1st February, 2002 are hereby set aside.

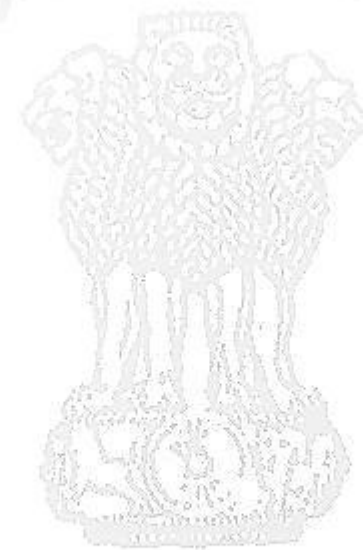
53. The appeal is accordingly allowed, with no orders as to costs. Unless wanted in any other case, the appellant-accused shall be released forthwith. He will comply with the requirement of Section 437A Cr.P.C by furnishing a bond to the satisfaction of the trial court for the amount as may be determined by the Trial Court.

54. The Trial Court record be returned together with a certified copy of this judgment to the trial Court.

**I.S.MEHTA
(JUDGE)**

**S.MURALIDHAR
(JUDGE)**

FEBRUARY 26, 2018



न्यायमेव जयते