
(2013) 08 DEL CK 0259
In the Delhi High Court
Case No : Criminal A. 1439 of 2012

Bikal Bhanot @ Vicky

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 386, 386(1)(b)
Penal Code, 1860 (IPC) — Section 302, 397

Citation : (2013) 8 AD 178 : (2013) 4 JCC 2470

Hon'ble Judges : G.S. Sistani, J;G.P. Mittal, J

Bench : Division Bench

Advocate : K. Singhal, for the Appellant; Rajdipa Behura, APP., for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.—This Appeal is directed against the judgment dated 27.09.2012 and order on sentence dated 28.09.2012 passed by the learned Additional Sessions Judge("ASJ") in Sessions Case No. 58/2008 FIR No. 153/2008 P.S. Janak Puri whereby Appellant Bikal Bhanot was convicted for an offence punishable u/s 302 and Section 397 IPC and was sentenced to undergo rigorous imprisonment (RI) for life and to pay a fine of Rs. 20,000/- and in default to undergo simple imprisonment (SI) for three years for the offence punishable u/s 302 IPC and RI for ten years and a fine of Rs. 10,000/- and in default to undergo SI for two years for the offence punishable u/s 397 IPC. According to the prosecution, the appellant along with his mother's brother(mama), co-accused Madan Sharma (since acquitted) committed murder of his father's sister's husband Bias Dev Sharma at his house on 15.05.2008 sometime between 12:30 to 3:30 pm. According to the prosecution version, deceased Bias Dev Sharma and his wife Raksha Sharma were planning to visit their two sons who were permanently settled in U.S.A. For this purpose, they recently withdrew a sum of Rs. 1 lakh from the bank. It is alleged that the appellant, being a close relation, was aware of the same as also of availability of cash and other valuables in the

house. The motive for commission of the crime was robbery. It is the case of the prosecution that the appellant and the co-accused being close relations of the deceased gained friendly entry to the house, slit Bias Dev Sharma's throat and decamped with valuables including Indian currency over Rs. 1 lakh, US \$1000 and U.K. ? 500.

2. The case was registered on the basis of statement of Smt. Raksha Sharma. The prosecution filed a charge sheet against the appellant and co-accused (Madan Sharma) on the basis of circumstantial evidence. The prosecution version can be extracted from para 2 of the impugned judgment hereunder:

2. Prosecution case is that SI Srikrishan and Ct. Ashok, on receipt of DD No. 26A on 15-08-2008, reached first floor, C-4, H/20, Janakpuri, Delhi where a big crowd had already assembled. A person was lying dead in pool of blood. Iron almirah placed in the room was found open and ransacked and some articles were found scattered on the bed. SHO and District Crime Team also came to the spot and identity of the deceased came to be known as Bias Dev Sharma. Complainant Smt. Raksha Sharma, wife of deceased made statement to the effect that she was residing in the said flat with her husband and her both sons were settled in USA for last 20 years. On that day i.e. on 15-5-2008 at 10.00 A.M. she went to Mahadev Temple, Mansarovar Garden in the company of her husband and his friend Vishwanath Arora. Both returned home after leaving her in the temple. When she returned home at 3.15 PM, she received no response despite pressing the call bell. The door was not bolted from inside and hence gave way on push. When she entered the house she found her husband lying dead on floor. His neck was slit with sharp edged weapon. Further statement is that iron almirah kept in the same room was found open and articles were lying on the bed. Locker was also found open. When she checked almirah and locker, cash of Rs. 1 lac (in the denomination of Rs. 1000/-, Rs. 100/-, Rs. 20/- Rs. 10/-, Rs. 5/- and Rs. 1/-) one thousand US Dollars, 500 pounds and some FDRs were found missing. Her husband's golden chain and bracelet were also missing. At that time she could not know what else was missing from the house.

SI Srikrishan prepared rukka and sent to police station through Ct. Surender consequent of which FIR was registered and investigation was handed over to SHO. During investigation, Crime Team inspected the spot and dead body, photographer clicked photographs from different angles, finger print expert lifted the chance prints. Dead body was sent to DDU hospital mortuary for postmortem. From the spot, three towels, one Rado watch, one golden and one silver ring from the left hand of the deceased, one golden ring from the right hand finger and locker were taken into possession. A note of Rs. 5/- denomination was also seized. One golden ring which was lying near the neck of the dead body was also taken into possession. Other articles seized from the spot included blood scattered on the spot, blood stained sunmica and simple sunmica. All recovered articles were sealed with the seal of RKK and were deposited in the malkhana. After postmortem, the doctor handed over blood sample and clothes

of the deceased to the IO which were also deposited in the malkhana. Till this stage police was clueless about the culprits. Accused Bikal Bhanot was arrested on 16-5-2008, made disclosure statement that he had concealed robbed cash, Pounds and US Dollars in the dicky of his car. Consequently cash of Rs. 20,659/- including some notes of Rs. 5/- and 302 US Dollars and 65 UK pounds were recovered on 16-5-2008 itself. In the meantime second accused Madan Sharma was arrested on 22-5-2008 and he made disclosure statement on 23-5-2008 about his blood stained shirt, knife and two robbed cameras. Next day i.e. 24-5-2008 two cameras, blood stained shirt and one knife were got recovered by him. Accused Bikal Bhanot made second disclosure statement on 23-5-2008 about watch and debit card which were recovered on his pointing out on 23-5-2008. Debit card is of Bank of America and bears photograph of the deceased and watch bears words "25 years service". Accused Madan Sharma made second disclosure statement on 26-5-2008 about the robbed cash and got recovered Rs. 5000/- on the same day from the roof of his house kept under bricks. He pointed out the place i.e. ring road Prembari Bridge, near Punjab Kesri Newspaper Office saying that he had thrown some papers there after tearing them. Second pointing out is of the place of occurrence. Accused Bikal Bhanot pointed out the place of murder and the shop "M/s. Chopra Bartan Bhandar" from where both accused had purchased knife used in the commission of murder. After examining the knife, the doctor opined that injuries were possible by that weapon and injury Nos. 2 & 3 were sufficient to cause death in the ordinary course of nature. Two cameras, watch and debit card which were recovered at the instance of accused were identified by the complainant before Ld. Metropolitan Magistrate. Supplemenatary statements of complainant were also recorded in which she stated that accused Bikal Bhanot was the son of her real brother and used to visit her house frequently and was aware of routine of her family. He was also aware that the cash, foreign currency and jewellery, were kept in the iron almirah. About cameras and debit card, she stated that when she checked the house thoroughly she found these articles also missing. About the foreign currency she made statement that whatever currency was left unexchanged during the visit of her sons to India, that was kept at home. Alto car was also recovered from accused Bikal Bhanot and it was registered in the name of his father i.e. Dharampal Bhanot.

3. In order to establish its case, the prosecution examined 21 witnesses. PW2 Vinay Chopra, proprietor M/s. Chopra Bartan Bhandar; PW6 V.N. Arora, the deceased's friend; PW7 Raksha Sharma, the deceased's wife; PW14 HC Shiv Lal; PW17 SI Sri Krishan; PW20 SI Surender and PW21 Inspector Ramesh Kumar, Investigating Officer are the crucial witnesses examined by the prosecution.

4. Raksha Sharma (PW7) is the complainant and wife of deceased Bias Dev Sharma. She deposed that on 15.05.2008 at 9:30 am, she along with her husband and her husband's friend V.N. Arora went to the temple in Mansarover Garden. She was dropped there at about 10:00 am and remained there till 1:30

pm. She reached home at about 3:15 pm. She did not get any response on pressing the call bell. On pushing the door, it opened as it was unbolted from inside. She saw her husband lying on the floor in a pool of blood. On her raising an alarm, her tenants and neighbours reached there. She further deposed about the injury marks on the neck of her husband, about the iron almirahs lying open and the house ransacked.

5. PW6 V.N. Arora corroborated PW7's testimony about their visit to the temple and their(the deceased and PW6's) return at about 12:30 pm. He deposed about his reaching the house of deceased Bias Dev Sharma on hearing noise. He also testified about the various articles lying at the spot including a five rupee currency note which was seized by the police by memo Ex. PW6/B.

6. SI Sri Krishan (PW17) reached the spot of incident on receipt of DD No. 26A by him through Constable Ashok Kumar (PW16). Amongst other things, he deposed about seizure of a five rupee currency note from the spot vide memo Ex. PW6/B. He testified that the police had come to know at the place of occurrence that the appellant had visited the house of the deceased in a white Alto car No. DL2CP7117. He deposed that a raid was conducted at the appellant's house on 15.05.2008 which proved futile. He testified about appellant's arrest on 16.05.2008 at about 6:45 pm from near a park close to his(appellant's) house, making of disclosure statement Ex. PW17/C by him and recovery of Indian currency amounting to Rs. 20,659/-, US \$302 and U.K. ? 65 in pursuance of the disclosure statement. He also deposed about the seizure of blood stained clothes worn by the appellant at the time of his arrest.

7. SI Surender (PW20) is a witness to the supplementary disclosure statement Ex. PW20/A purported to have been made by the appellant on 23.05.2008 and recovery of a debit card Ex. P13 and a wrist watch Ex. P12 in pursuance of the supplementary disclosure statement. This witness also deposed about arrest of co-accused Madan Sharma and making of disclosure statement Ex. PW20/C by him. The witness also deposed about the recovery of a blood-stained knife Ex. P1 at the instance of the appellant and the co-accused as also pointing out of Chopra Bartan Bhandar, Shop No. 24, C-4E Market, Janakpuri as the place wherefrom knife Ex. P-1 was purchased. He also deposed about recovery of two cameras Exs. P14 and P15 at the instance of co-accused Madan Sharma. PW20 also testified about making of a disclosure statement Ex. PW20/G on 26.05.2008 by co-accused Madan Sharma and recovery of Rs. 5,000/- in pursuance of the disclosure statement.

8. PW21 Inspector Ramesh Kumar is the Investigating Officer. He also deposed about recovery of a five rupee currency note from the spot as also recovery of various other articles at the instance of the appellant and the co-accused.

9. In his examination u/s 313 Cr. P.C. the appellant denied of having made any disclosure statement or any recovery in pursuance thereof. He stated that he was innocent and took up the plea that he had been illegally detained by the police

on 15.05.2008 at 5:30 P.M. at the instance of his uncle Raj Kumar and was falsely implicated in this case.

10. There was no direct evidence of commission of Bias Dev Sharma's murder by the appellant and co-accused Madan Sharma. The prosecution relied on various circumstances to connect the appellant and the co-accused with the commission of robbery and murder of Bias Dev Sharma. The circumstances relied upon against the appellant consisted of:-

(i) Recovery of a five rupee currency note No. 37P881203 Ex. P2 from the spot immediately after Bias Dev Sharma's murder on 15.05.2008 and recovery of Indian currency of Rs. 20,659/- from the appellant immediately after his arrest in pursuance of his disclosure statement Ex. PW17/C (on 16.05.2008), including twenty six currency notes of Rs. 5/- from the same series as the Rs. 5/- note recovered from the spot;

(ii) Recovery of Indian currency amounting to Rs. 20,659/- and foreign currency amounting to US \$302 and UK ? 65 in pursuance of the disclosure statement Ex. PW17/C made by the appellant;

(iii) The appellant's wearing a blood-stained trouser and a T-shirt at the time of his arrest on 16.05.2008;

(iv) Recovery of a debit card Ex. P13 and a wrist watch Ex. P12 from the Alto car on 23.05.2008 in pursuance of second disclosure statement Ex. PW20/A made by the appellant on 23.05.2008;

(v) Pointing out of Chopra Bartan Bhandar wherefrom the knife Ex. P-1 was purchased by the appellant and the co-accused.

11. Similarly, against co-accused Madan Sharma the prosecution pressed into service the circumstances of recovery of the bloodstained knife, two cameras and his own (Madan Sharma's) blood stained shirt on 24.05.2008 in pursuance of the disclosure statement Ex. PW-20/C made by him on 23.05.2008. The prosecution also relied on the second disclosure statement Ex. PW-20/G and recovery of five currency notes of Rs. 1,000/- denomination on 26.05.2008 as also the pointing out of Chopra Bartan Bhandar from where knife Ex. P-1, used in the commission of the offence, was purchased.

12. In addition, the prosecution relied on the friendly entry which was possible by the appellant and the co-accused being close relations of the deceased and the motive of robbery. The recovery of the blood stained knife, the blood stained shirt and two cameras and currency of Rs. 5,000/- from co-accused Madan Sharma was disbelieved by the learned ASJ. Co-accused Madan Sharma was, therefore, acquitted of the charge framed against him.

13. With respect to the appellant, circumstances (i), (iii), (iv) and (v) were disbelieved and rejected by the learned ASJ. Circumstances (ii) to the extent of recovery of foreign currency of US \$302 and U.K. ? 65 in pursuance of the

disclosure statement Ex. PW-17/C on the next day of the commission of the offence coupled with the possibility of friendly entry into the deceased's house by the appellant and the motive of robbery were taken as sufficient to exclude any other hypothesis except the appellant's guilt resulting in conviction of the appellant for the offence punishable u/s 302 and 397 IPC.

14. The learned counsel for the appellant argues that order of acquittal passed in respect of co-accused Madan Sharma having not been challenged by the prosecution, the findings which are common to the co-accused and the appellant have attained finality. The only circumstance taken to be established against the appellant is the alleged recovery of foreign currency from him which, even if, prosecution version with regard to this recovery is accepted will not be enough to sustain his conviction in view of the fact that even the foreign currency did not have any specific mark of identification, the alleged recovery thereof thus was of no consequence.

15. The learned counsel for the appellant contends that although the appellant was shown to be arrested from a place close to his house on 16.05.2008 at 6:45 P.M., yet in fact he was detained by the police in the evening of 15.05.2008 itself. Referring to the testimony of PW-6 and PW-7 the learned counsel for the appellant urges that these two witnesses have admitted about detention of the appellant on 15.05.2008. The appellant's detention was covered by channel Aaj Tak and was also widely reported in Times of India, Mid Day and Indian Express. The learned counsel for the appellant, during the course of arguments presented print outs and exhibited the links on his laptop to show that the appellant was detained on 15.05.2008 and thus he tried to demolish the prosecution version regarding appellant's arrest on 16.05.2008 at 6:45 P.M.

16. The learned counsel for the appellant submits that no independent witness was joined at the time of appellant's alleged arrest, and making of disclosure statement resulting in recovery of the foreign currency from the dickky of his Alto car No. DL-2CP-7117. The learned counsel also states that at the time of arrest and alleged recovery there were three other police officers claimed to be present with SI Sri Krishan (PW17) and Inspector Ramesh Kumar (PW-21), investigating officer of the case. The said three police officials were not produced to prove the arrest and the recovery which causes serious dent in the prosecution case with regard to appellant's arrest and the recovery. The learned counsel contends that since the appellant's arrest on 16.05.2008 is shrouded in mystery, the edifice of the prosecution case falls and the appellant is entitled to be acquitted.

17. Per contra, the learned APP while referring to the judgments of the Supreme Court in Sham Sunder v. Puran and Anr., AIR 1991 SC 8 and Brathi alias Sukhdev Singh Vs. State of Punjab, urges that although co-accused Madan Sharma's acquittal has not been challenged by the prosecution, yet the prosecution can very well rely on the circumstances which were not accepted or were rejected by the trial court as against the appellant or co-accused Madan Sharma. She

contends that powers of the appellate court while hearing an appeal against an order of conviction u/s 386(1)(b) of the Code of Criminal Procedure, 1973 are as wide as that of the trial court. The appellate court has full power to review the whole evidence. It is entitled to go into all relevant circumstances to arrive at its own conclusion irrespective of the finding in respect of any circumstance reached by the trial court.

18. The learned APP very strenuously canvassed before this court that the trial court erred in disbelieving the recovery of the five rupee note from the spot on 15.05.2008 and Indian currency from the appellant on 16.05.2008; recovery of blood-stained clothes from the appellant on 16.05.2008 as also discovery of debit card and the wrist watch in pursuance of the second disclosure statement made by the appellant on 23.05.2008. The learned APP contends that recovery of foreign currency from the appellant immediately after the incident was a very strong circumstance against him. In the absence of any explanation regarding possession of the foreign currency, the trial court was justified in convicting the appellant for the offence punishable under Sections 302 and 397 IPC.

19. It is well settled that while exercising power u/s 386 Cr. P.C. in an appeal from a conviction, the High Court may reverse the finding and the sentence and acquit the accused or alter the finding maintaining the sentence. The powers of the High Court are as wide as that of the trial court and it can reach a different conclusion in respect of any particular finding while sustaining the other finding. We would extract para 8 of the judgment in Brathi (supra) hereunder:

8. We shall now examine whether the approach made by the High Court in judging the guilt of the appellant on the premise that the acquitted person also participated in the offence has introduced any error. The powers of the appellate court in dealing with an appeal against an order of conviction are defined u/s 386(1)(b) of the Code of Criminal Procedure, 1973 corresponding to Section 423(1)(b) of the Code of 1898. In the matter of appreciation of the evidence the powers of the appellate court are as wide as that of the trial court. It has full power to review the whole evidence. It is entitled to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or innocence of the accused. In *Sunder Singh and Others Vs. The State of Punjab*, this Court has held that the provisions of Section 423(1)(a) do not create a bar against the appellate court considering indirectly and incidentally a case against the person who was acquitted, if that becomes necessary when dealing with the case in the appeal presented.

20. Although, the learned counsel for the appellant relies on some newspaper reports which show that one Vicky was detained by the police on the day of the incident; we are, however, not inclined to attach much importance to the newspaper report, firstly because the newspaper report was not proved by examining any witness, secondly the source of the information received by the correspondent has not been proved and, thus, the news even if taken to be published on 16.05.2008 regarding detention of the appellant, the same cannot

be taken as a gospel truth.

21. While dealing with the recovery of currency note of Rs. 5/- bearing No. 37P881203, the trial court held as under:

PW6, PW17 and PW21 deposed that a 5/- rupee note Ex. P2 bearing No. 37P881203 lying near the dead body was taken into possession vide memo Ex. PW6/B. In this regard star witness is PW6. He identified that note as Ex. P2 and told its number as 37P881203. Reason of remembering that number for such a long time stated by PW6 is that at the time of recovery he had seen that note 5 to 10 times and that he had written its number on a piece of paper and he saw that paper more than 50 times. In order to know whether the number was written on any piece of paper or not, adjournment was granted to him to produce that paper but he could not produce. His memory was also checked by the defence counsels. He does not remember the house number where he used to reside as tenant in Rajouri Garden. He could not recollect that month when he shifted to his own house in Janak Puri. After thinking sometime, he stated that he shifted in the year 1981-82 after getting her eldest daughter married at Rajouri Garden. In further cross-examination he deposed that that was not the eldest daughter who was married off but the daughter of second number as his eldest daughter was still unmarried. Another note of rupee 5/- was shown to him during cross-examination for a sufficient time and he was asked to state its particulars. He could not tell the number and total digits of number on that note. He could not tell how many time the digit "5" and National Emblem was mentioned on that note. He could not recollect how many times the Governor of RBI had signed on the note recovered from the spot. He could not recollect the number of languages written on the recovered note and also the number of photographs of Gandhiji on the said note. The note was taken into possession on 15-5-2008 and he told number of that note in the court on 28-5-2009 i.e. after one year. He could not produce the paper on which he had written the number of the note. So, the testimony of PW6 on the point of number of note of rupee 5/- is disbelieved. In Crime Team report Ex. PW10/A it is nowhere mentioned that any note of rupee 5/- was lying on the spot. Photographs from Ex. PW3/1 to Ex. PW3/9 do not show the presence of rupee 5/- note on the spot.

So, recovery of one note of rupee 5/- from the spot is doubtful. Even if the recovery is believed, this note is in no way connected with the other notes of rupee 5/- recovered from accused Bikal Bhanot because its number is 37P881203 and number of recovered notes are 37P881209, 37P881211 to 37P881234 and 37P881241. The recovered note is not in the continuing series. Police did not account for the missing notes from numbers 37P881204 to 37P881209.

22. Not only this, although photographs of the site of occurrence were taken by the photographer of the crime team as deposed by the IO (PW21) from different angles, yet the currency note of Rs. 5/- does not appear in any of the photographs. The trial court has given strong reasons for disbelieving the

recovery of Rs. 5/- from the spot as also recovery of twenty six currency notes of Rs. 5/- of the same series from the accused. We do not find any reason to take a different view. Thus, we hold that the recovery of five rupee currency note from the spot on 15.05.2008 was rightly disbelieved by the trial court.

23. With regard to the recovery of blood-stained pant and shirt worn by the appellant Bikal Bhanot at the time of his arrest on 16.05.2008, the trial court held as under:

Police took into possession pant and shirt of accused Bikal vide seizure memo Ex. PW17/H claiming that he was wearing the same clothes at the time of commission of the murder and these were stained with blood. These clothes were sent to FSL. Blood lifted from the spot and blood sample of the deceased taken by DDU hospital were also sent to FSL. FSL report Ex. PZ is to the effect that blood group of deceased was "O" and on the pant and shirt of accused Bikal Bhanot, only human blood was traced. Blood group could not be detected. So, prosecution has failed to relate the blood stained pant and shirt of accused Bikal Bhanot with the crime.

24. Thus, the trial court did not consider the blood-stained pant and shirt worn by the appellant at the time of his arrest to be of any consequence in view of the fact that the blood group thereof could not be detected. Apart from this, it has to be borne in mind that the murder of deceased Bias Dev Sharma took place sometime after 12:30 pm and before 3:30 pm on 15.05.2008. Thus, the appellant was arrested more than twenty seven hours after Bias Dev Sharma's murder. It is highly improbable that an accused will continue to wear the same blood-stained clothes even after twenty seven hours of the commission of the offence particularly when he had an opportunity to change the clothes. Thus, we are of the view that the trial court rightly declined to believe that the appellant was wearing blood-stained clothes at the time of his alleged arrest on 16.05.2008.

25. Similarly, the recovery of the debit card and the wrist watch belonging to deceased Bias Dev Sharma were rightly disbelieved by the trial court. The trial court noted that the statement u/s 161 Cr. P.C. of the complainant regarding theft of debit card and the wrist watch was recorded only on 30.07.2008, that is, 76 days after the incident. The trial court also noted that the statement was recorded even after four days of holding of the TIP. Not only this, we are not inclined to believe the recovery of the debit card and the wrist watch at the instance of the appellant for some reasons in addition to what has been held by the learned ASJ. It may be noted that the first disclosure statement was made by the appellant on 16.05.2008 immediately after his arrest. According to the prosecution, the second disclosure statement was made on 23.05.2008; what was the occasion or special circumstance to make this second disclosure statement has not been explained by the prosecution. Admittedly, the Alto car was thoroughly searched at the time of appellant's arrest on 16.05.2008. The prosecution wants us to believe that in spite of thorough search, the debit card

and the wrist watch could not be found on 16.05.2008 because these were stuck with cello tape between the dash board and the stereo fixed in the car. As per the prosecution version, the currency notes were concealed by the appellant in the dickey of the car; then, what was the necessity to conceal an insignificant article like a wrist watch at a different place and that too with a cello tape. This was, obviously, done by the police because they could not have shown the recovery of the debit card and the wrist watch from any other place in the car as the police was expected to have searched the car thoroughly as all the stolen articles had not been found from the stolen car on 16.05.2008 and the car was in police custody since 16.05.2008. It is also intriguing to note that although the Alto car from which the debit card and the wrist watch was allegedly recovered on 23.05.2008 was in police custody and was parked in the police station, yet no evidence was led by the prosecution as to how the car was opened when the keys of the car were lying deposited with the MHC(M) since 16.05.2008, and it is neither the prosecution case that the keys were taken from the MHC(M) on 23.05.2008 nor the keys were taken from the MHC(M) as per the entries in the Malkhana register. It is, therefore, evident that the recovery of the debit card and the wrist watch on 23.05.2008 was planted by the police.

26. The only circumstance found by the learned ASJ to nail the appellant was the recovery of foreign currency, that is, US \$302 and UK ? 65 from the appellant on 16.05.2008 immediately after the appellant's arrest. It goes without saying that this is a very strong circumstance. We will not attach much importance to the contention raised on appellant's behalf that the foreign currency in the nature of American dollars and U.K. pounds sterling did not bear any specific mark of identification and, therefore, these are easily available for the reasons that the appellant has not come forward with any explanation as to how he came in possession with the foreign currency. At the same time, the appellant's arrest on 16.05.2008 is shrouded in mystery. Admittedly, the appellant is the nephew (brother's son) of PW7 the complainant whose husband Bias Dev Sharma was murdered on 15.05.2008. It has come in the testimony of PW7 that the appellant and appellant's father had reached the complainant's house after 1/11/2 hour of complainant's giving information to the appellant regarding her husband's murder. The IO (PW21) and SI Surender (PW17) were specifically questioned in their cross-examination that the appellant was very much present at the spot after the murder and that the police had met the appellant. Both these witnesses were evasive about the presence of the appellant at the spot. In his cross-examination PW17 deposed that "it was not in his knowledge that on that day we were at the spot, Bikal Bhanot had come at the spot and had met us and wife of deceased and when he learnt that the dead body had been removed to mortuary, he left the spot. Again said, Bikal Bhanot did not meet me. It is wrong to suggest that accused Bikal Bhanot had met me and wife of deceased at the spot that day and at that time dog squad was also present." Similarly with regard to the appellant, PW21 deposed that "CDR of Bikal Bhanot accused was not obtained. Bikal Bhanot was not found on the spot but his wife was there. On inquiry she

told that Bikal had left after dropping her at the place of incident. She did not know of his whereabouts. Inquiry was conducted around 4.30-5.00 pm. Attempt was made locally to nab the accused Bikal Bhanot. I must have asked the mobile number of the accused, but I do not remember from whom I asked this question..... It is wrong to suggest that I was having a Santro car during those days. I remained on the spot for about four hours. Arrival entry was made in the police station. No wireless message about Bikal Bhanot was flashed." Thus, as per PW17, he was not sure about visit of the appellant to the spot on the date of the incident, whereas PW21 was sure that he did not come to the spot on the date of the incident. At the same time, both PWs17 and 21 had strong suspicion about involvement of the appellant in the offence. PW17 in his cross-examination stated that they "had idea of involvement of Bikal Bhanot till the time I remained at the spot. I came to know this through from (sic) SHO but I do not know from where SHO came to know about it....It is not in my knowledge that on that day we were at the spot, Bikal Bhanot had come at the spot and had met us and wife of deceased and when he learnt that the dead body had been removed to mortuary, he left the spot. Again said, Bikal Bhanot did not meet me. It is wrong to suggest that accused Bikal Bhanot had met me and wife of deceased at the spot that day and at that time dog squad was also present." Similarly, PW21(IO) in his cross-examination deposed that "I had made secret inquiries from the local residents of the area to trace the clue or culprits. There was some commotion between the neighbours that nephew of deceased i.e. accused Bikal Bhanot present in court today (correctly identified) with one another person was seen sitting in his white Alto car near flat of deceased during day time. Roughly the number of said Alto was DL2CP7117 had also come to my notice. At about 11.45 pm we returned to PS and (deposited sic) case property with the MHC(M). I had made efforts to trace accused Bikal Bhanot but he could not be traced that day. We visited his house 9/45, Subhash Nagar, Delhi and same was found locked." Thus, from cross-examination of PWs17 and 21, it was very much clear that there was a needle of suspicion against the appellant as far as the investigating agency was concerned. When we turn to the statement of PW6 Shri V.N. Arora, the deceased's friend and who had left the deceased at his house at about 12:30 pm, he deposed that when appellant Bikal Bhanot reached the spot the police and dog squad were already present there. Thus, he was very sure about presence of the appellant at the spot after the incident. Not only this, PW6 stated in his cross-examination that the police had not arrested Bikal in his presence. He was, however, taken by the police the same night. The admission of appellant's detention not only come from PW6 as has been stated above, even complainant (PW7) admitted about presence of the appellant and his father at the spot. She also admitted the detention of the appellant by the police on 15.05.2008 when she deposed that wife of Bikal had informed her that Bikal had been detained in the police station. She stated that she did not meet Bikal thereafter.

27. Thus, what comes through the testimony of PWs6 and 7 is that the appellant

was very much present at the spot after the incident although PWs17 and 21 deny having met him at the spot. PWs17 and 21 say that the appellant was suspected to be involved in the crime and that they were in his search, so much so that PW21 says that the appellant's house was raided the same night at 11:35 pm but the appellant was not found there and the house was found locked. In other words, PW21 wanted to convey that the appellant had absconded and that is why a trap was laid for his arrest on the next day at 6:00 pm, whereas PW6 stated about the appellant's apprehension by the police on the night of the incident itself. PW7, the complainant also admits the appellant's wife informing her about the appellant's detention. Admittedly, there is no independent witness to the appellant's arrest on 16.05.2008. It is expected of the police to join some independent witness to arrest a suspect provided they have knowledge of his arrival, as some incriminating article may be recovered from the accused at the time of his arrest. At the same time, the testimony of police officer cannot be rejected merely on the ground that no public person is present at the time of the arrest of an accused and consequent recovery; provided the testimony of the official witness is found to be trustworthy. As per PWs17 and 21, they had laid a trap to apprehend the appellant on 16.05.2008 in the evening. There is some discrepancy about the time of the trap. The same may not be very material. Both PWs 17 and 21 were completely silent in their examination-in-chief if any attempt was made to join any public witness before laying the trap. In cross-examination, PW17 deposed that three-four public persons were asked to join the investigation in the park(where the trap was laid) but they declined. PW17 deposed that their names and addresses were not recorded nor any notice was given to them, whereas PW21 took shelter of his memory and stated that he did not remember if any public person was asked to join the appellant's apprehension. Thus, in view of PWs6 and 7's testimonies that the appellant was detained on the same night, it would be difficult to believe PWs 17 and 21's statement that the appellant was absconding or that he was arrested only on the next day at 6/6:45 pm after laying a trap. Since we disbelieve the appellant's arrest on 16.05.2008 in the manner as stated by the prosecution and do believe that he was detained on the night of the incident itself, the making of disclosure statement immediately after the arrest and consequent recovery of some currency including some foreign currency will fall to the ground.

28. In view of above discussion, we are of the view that the prosecution case against the appellant is full of doubts. The appellant's arrest is purported to be made on the basis of a trap in the evening of 16.05.2008, whereas there are reasons to believe that he was detained by the police in the night of 15.05.2008 itself. It is also proved that the appellant was very much present at the place of incident in the evening of 15.05.2008 and if he was suspected to be involved in the commission of the offence, the IO would have known about his presence at the spot on 15.05.2008. The IO(PW21) and SI Sri Kishan(PW17) feigned ignorance about his presence at the spot in the afternoon/evening of 15.05.2008

although, as stated above, we have reason to believe that he was detained by the police on the same evening/night. In view of foregoing discussion, the order of conviction cannot be sustained. The appellant is accordingly acquitted of the charge framed against him. The appeal is allowed in above terms.