

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

**RESERVED ON: 26.07.2011
PRONOUNCED ON: 29.07.2011**

+ **Crl.A. No.178/2005**

JAGDISH Appellant

Through : Mr. Rajesh Mahajan, Amicus Curiae

Vs.

STATE Respondent

Through : Mr. Jaideep Malik, APP for the State.

Crl.A. Nos.498-502/2005

RATTAN SINGH & ORS. Appellants

Through : Sh. Sumeet Verma Amicus for Appellant Nos. 1 to 3.
Mr. Vivek Sud, Advocate for appellant No.5.
Appellants No. 3 to 5 in person.

Vs.

THE STATE (GNCT) OF DELHI Respondent

Through : Mr. Jaideep Malik, APP for the State

CORAM:

**MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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1. These appeals challenge the common judgment of the learned ASJ in S.C. No. 24/2001 and 153/2001 and the order on point of sentence dated 05.02.2004. The effect of the impugned judgment and order was to convict the appellants of the offences punishable under Sections 395/396 and 460 IPC, and to sentence them to undergo life imprisonment as well as to pay a fine of ₹ 2,000/-.

2. The prosecution alleged that the appellants had, at about 01.30 am on 28.08.2000 trespassed into Sukhmayi Jeevan Sansthan (hereafter referred to as “Sansthan”) in Narela, Delhi. Maharishi Bhardwaj used to reside in the Sansthan together with his mother, the manager, and his servant Hari Singh. It was alleged that Jasbir Kaur (later testified as PW-2), heard the dogs barking at 01.30 AM. When she opened her room door she saw three persons outside, she tried to close the door but they forced it open, entered the room, searched and took money after breaking-open the *almirah*. It was also alleged that four more assailants entered the room; one was armed with a “Paya”, the leg of a cot and the others were armed with sticks. The prosecution alleged that the appellants were wearing “*kachcha baniyan*”. They forced PW-2 out of her room, enquired about the money in the Sansthan, and started searching the adjoining room after forcing open its lock. It was also alleged that the accused took Rs. 8,000/- and PW-2’s jewellery. They also looted some gold items which belonged to Maharishi Bhardwaj as well as looted some gold items from his mother. The accused also broke open the “*Daan Patra*” and looted money from it. PW-2 was confined in a room; after the accused left, she raised an alarm and one of the servants in the Sansthan opened the door. She found Maharishi Bhardwaj lying dead there. The police were informed.

3. The prosecution alleged that in the course of investigation, the accused appellants were arrested on different dates. Pyarelal and Rattan Singh was arrested on 13.09.2000, they allegedly made disclosure statements regarding their involvement in the looting of the Sansthan and the death of Maharishi Bhardwaj. The appellant Jagdish @ Nar Singh was arrested on 18.11.2000 and Jagdish @ Bagga was arrested by the North-East District police on 09.10.2000. The other accused, i.e. Abhimanu and Surajbhan were arrested on 15.11.2000. The prosecution alleged that the other six accused could not be arrested. The Court declared them as Proclaimed Offenders by the order dated 07.03.2001.

4. After concluding investigation, the Appellants were charged with committing offences, including those punishable under Sections 395/396/460 IPC. They pleaded not guilty and claimed trial.

5. The prosecution examined 30 witnesses in support of its case, besides marking several exhibits. In their statements U/S 313 Cr.P.C., the accused/appellants were questioned about the incriminating circumstances brought out during the trial. The appellants relied on the oral testimony of four defense witnesses. After considering these materials and hearing submissions, the Trial Court convicted the appellants and sentenced them in the manner indicated above.

6. Learned counsel for the appellants and *amicus* appointed by the court (since some of the accused did not respond to the notices issued for hearing) urged that the Trial Court's findings are unsustainable because the prosecution did not establish beyond reasonable doubt the circumstances which unerringly implicated the appellants as the offenders and none else. Learned counsel for all the Appellants unanimously urged that since the case was substantially based on circumstantial evidence and the identity of the appellants was unknown to any of the witnesses, who claimed to have seen them, the prosecution was under a duty to not only ensure that the assailants, who committed the crime were identified beyond reasonable doubt, but also that the circumstances claimed by it as implicating the appellants too were fully and conclusively proved.

7. It was urged that the impugned judgment heavily relied upon the testimony of PW-2 whose deposition is suspect to say the least. In this connection, it was argued that the prosecution version was that the incident took place in the early hours of the morning. The prosecution did not lead any evidence as to whether the place where the dacoity and robbery occurred, was well-lit. Elaborating on this, learned counsel urged that the crime took place in residential premises. It was not as if the dacoity and attack occurred in full view in a street as to entitle the Court to reasonably deduce availability of adequate light. However, since the attack took place in residential premises, having regard to the normal state of human affairs, the premises would have been dark since lights would normally be switched off at that time. Such being the considerations, urged the Counsel, in the absence of an explanation about the existence of light, adequate and sufficient to identify, the culprits and assign roles to each of them, the prosecution cannot be said to have proved that PW-2 actually witnessed the incident.

8. It was urged that none of the witnesses, PW-2, 3, 4 and 5 actually knew any of the accused. In these circumstances, PW-2s claim that she could identify all the accused - even to the extent of naming them during the trial was not only doubtful but in fact amounted to falsehood. In this regard, learned counsel urged that in the statement recorded by the police under Section 161 Cr.P.C, PW-2 had merely described in the most general and vague manner about the build and physical appearance of the accused. She significantly omitted any knowledge about the names or specific identities which she later on went to assign to each one of them. This contradiction was serious enough to impeach her credibility as a fair and trustworthy witness.

9. Learned counsel for the appellants urged that the testimony of PW-2 also established that even before the TIP could be conducted; the appellants had been shown to the witness. This was the reason why TIP was refused. Having first seen the accused/appellant in police custody, the witness (PW-2) had no difficulty in later identifying them during the course of the trial. It was urged that the Trial Court fell into an error in glossing over this aspect and on the contrary holding that PW-2 was trustworthy and her testimony, truthfully.

10. Learned counsel for the appellants urged that the circumstances surrounding the arrest of the accused, four of them being allegedly implicated in offences (which are subject matter of other FIR/cases, concerning the same police station, i.e. PS Narela) was dubious. The prosecution was unable to produce any independent witness in support of their arrest. Such being the case, the prosecution could not establish any link between the accused/appellants and the crime. All the counsels placed heavy emphasis upon the omission to recover any article or object which linked the appellants with the crime so as to constitute a strong suspicious or incriminating circumstance.

11. Learned counsel submitted that several judgments have now established that the identification of accused during the trial for the first time is from its very nature inherently of a weak character. Reliance was placed upon the decision reported as *State of H.P. v. Lekh Raj* 2000 (1) SCC 247; *Mohanlal Gangaram Gehani v. State of Maharashtra* 1982 (1) SCC 700; *Mulla v. State of U.P.* 2010 (3) SCC 508; *Rabindra Kumar Pal v. Republic of India* 2011 (2) SCC 490. It was urged that there is no thumb rule that the TIP is essential in every case. Yet the holding of one in a criminal case where an eyewitness claims to have seen the incident, would lend an assurance to the prosecution version. In the present case, the identity of the appellants

was unknown to all the witnesses, including PW-2. Since she specifically assigned and attributed particular roles to each of the appellants, it was necessary that the prosecution led some evidence to corroborate her version. Identification in a TIP would have lent further weight to the prosecution allegations. The fact that PW-2 had seen the accused before whilst they were in police custody lent a vital blow to the prosecution version. The Trial Court did not take these aspects into consideration at all while convicting the appellants.

12. Learned counsel urged that the delay in holding the TIP (since some of the accused were arrested as early as in September 2000 and the others were arrested in October 2000, the attempt to hold TIP on 13.11.2000) constituted a grave and unreasonable delay. Unless the prosecution proved the cogent reason for it, the time-lag was a circumstance adverse to the prosecution. In this regard, the decision reported as *Ravi v. State* 2007 (15) SC 372 and *Mulla (supra)* were relied upon. It was next urged by the learned counsel for the appellants that the prosecution had in an early part of the investigation alleged that finger prints were discovered in the premises. These finger prints were developed and sent for analysis and a report by the finger print expert, obtained. However, this significantly did not result in adverse circumstance because the report furnished did not match the specimen finger prints of the appellants. Relying upon the Division bench ruling in *Lala Ram v. State* 2008 (1) JCC (of a Division Bench of this court) it was urged that the failure to prove that the finger prints lifted from the premises were that of the appellant or any of them, improbabilized the prosecution story, which the appellants were entitled to benefit. In ignoring the law laid down by this Court and in proceeding to convict the appellants, the impugned judgment committed an error of law.

13. The learned Counsel for the State of NCT, (hereafter State Counsel) urged that the findings – of conviction and the sentence imposed does not call for any interference. It was urged that the contention regarding adequacy or otherwise of light in the premises at the time of attack, was not even a contention argued by the defence before the Trial Court. Learned State counsel submitted that the testimony of PW-2 was corroborated by those of PWs 3 and 4, who were also in the Sansthan at that time. Although PWs 3 and 4 did not see the entire incident, they supported PW-2's version regarding the time and the nature of the attack by the assailants. Their testimony further proved that apart from the seven assailants seen by the PW-2, there were 5 others. Learned counsel urged that all the assailants, including the appellants broke into the Sansthan,

clothed in undergarments around 01.30 AM. They forced PW-2 to part with cash and her personal valuables; thereafter they looted jewellery and gold items which belonged to the deceased as well as his mother. The dacoity/robbery was not only witnessed by PW-2 but by PW-3 and 4. Underlining this aspect, learned PP submitted that while PW-2 was forced to take-out cash and jewellery, the other two witnesses, i.e. PW-3 and 4 were made to lie down and a sheet was placed over them. As a result, they could not see all the events. Nevertheless, when PW-2 was let-out from her room (where she had been confined by the assailants/appellants after they looted all the valuables and cash), she noticed that the Maharishi, who used to sleep and had slept the previous night outside on the verandah had been killed. All these had to be seen as part a of one single transaction.

14. Learned APP urged that during trial, PW-24, who conducted the TIP was not even cross-examined. This clearly indicated that the defence of previous identification by a witness, which would have rendered the procedure academic and futile was an afterthought and is an argument made for the first time in appeal. It was emphasized that none of the accused stated during the trial or even while questioned under Section 313 Cr.PC as to which date they were seen by PW-2 before the TIP was offered. Having regard to these circumstances, and most significantly that the appellants Surajbhan and Abhimanu had joined the TIP and were duly identified by PW-2, the appellant's argument is of no avail. It is submitted that the prosecution leveled similar allegations against all the six accused. However, four of them chose not to participate in the TIP alleging either they had been photographed previously and their identity leaked to PW-2 or that she had seen them while in police custody, the fact that two of them were fairly identified without any difficulty clearly establish that she had witnessed the incident. Learned PP further submitted that the appellants have not shown any reason why PW-2 would have falsely implicated them. All of the appellants/accused had admitted to cross-examining her, suggesting that she was to inherit property from the deceased, nothing came out of it because during the trial it transpired that the deceased had other heirs. Having regard to these circumstances, the question of false implication of the accused by PW-2 was clearly ruled-out.

15. It is argued that there cannot be any assumption that a normal individual would not be able to recognize and identify more than a certain number of persons under these circumstances. Relying upon the decision reported as *Brij Mohan v.State of Rajasthan* 1994 (1) SCC 413, it was

argued that in case of individual witnesses, a crime such as dacoity, which spans over nearly an hour, the events leave a lasting impression on the memory of the one who witnessed it. Thus, it is possible for the witness to recollect these events as well as the distinct identities of the assailants. Learned PP also argued - relying on the decision reported as *Munna v. State of NCT 2003 (10) SCC 599* that while appreciating the defence of false implication based on a delayed TIP or where the accused allege that they were shown to the witness, it was highlighted that the Court also has to be alive to the conduct of the accused. In this case argued the PP, four of the appellants – did not cross-examine PW-24, who conducted the TIP. Furthermore, their theory of false implication on account of their identities being revealed to PW-2 was falsified because other two accused Abhimanu and Suraj not only participated in the procedure but were even identified by PW-2. In these circumstances it was illogical for the prosecution to have implicated innocent persons even while catching hold of the real culprits. This contention stood reinforced by PW-2's testimony – she was an eye witness to the incident and had no reason to be partisan. Having regard to these facts, submitted the learned APP, the Trial Court's findings deserve to be affirmed.

16. The above discussion would reveal that the prosecution had relied mainly on the testimony of PW-2, which was sought to be supported by the depositions of PW-3, PW-4 and PW-5. All the Appellants have impeached the credibility of PW-2. The grounds for doing so are that she could not have noticed the faces and registered the identities of 6 individuals within a short span, and that there was insufficient light at that time. Emphasis was placed on the fact that in the previous statement made to the police, this witness did not (or could not) name the accused; yet in her court deposition, she named and ascribed distinct roles to them. Furthermore, the Appellants placed great emphasis on the fact that PW-2 had occasion to see them previously, in the police station, which is why they refused to participate in the TIP, and naturally, she could point them out in court.

17. The Court proposes to consider the question of TIP and identification by the witness in the police station, first. Here, the Appellants were arrested on three different dates. The information provided by PW-2 to the police was that she saw seven individuals; one's face was muffled. However, she was categorical that all of them were relatively young, i.e. 25-30 years, of slim build, and in their undergarments (*kaccha baniyan*). During cross examination, she was

able to recollect the three different periods when she went to identify the accused; she even went out of Delhi, to assist in their arrest. She denied a specific suggestion that she was able to identify the accused, because she had occasion to see them earlier in the police station. Significantly, she volunteered to say that she saw the accused and the distinct roles played by them, during the attack, as well as during investigation. The question therefore is, whether this witness could have been relied upon by the Trial court to rest its conviction, for the charges drawn against the Appellants. In this context, it would be useful to discuss the authorities cited by counsel for parties. In *Lekh Raj* (supra) the court held that:

"The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. This Court in Budhsen v. State of U.P. (1970 (2) SCC 128) held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. In such cases test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. Though the holding of identification proceedings are not substantive evidence, yet they are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime. The identification parade even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant.

4. The holding of identification parade in the instant case would have been irrelevant, had the name of Respondent 2 been mentioned in the FIR Exhibit P/D. The prosecutrix in her deposition before the trial court even denied the suggestion of Respondent 2 to the effect that Respondent 2 had been working at her place as a mason. It was, therefore, incorrect for the trial court to hold:

"So far as the identification of the accused is concerned that is not disputed at all, therefore, at the relevant time they could not have been identified by the prosecutrix."

The identify of Respondent 2 was, admittedly, not established during the investigation and it is not clear as to how the said respondent was put on trial along with Respondent 1. We agree with the finding of the High Court that accused Diwan Chand could not be

held guilty as no unimpeachable, reliable and satisfactory evidence was produced regarding his involvement in the commission of the crime."

A similar view was expressed in *Mohanlal Gangaram Gehani* (supra):

"..PW 3 (Shaikh) admits at p. 22 of the paper-book that he had not seen the accused or any of the three accused before the date of the incident and that he had seen all the three for the first time at the time of the incident. He further admits that the names of the accused were given to him by the police. In these circumstances, therefore, if the appellant was not known to him before the incident and was identified for the first time in the court, in the absence of a test identification parade the evidence of PW 3 was valueless and could not be relied upon "

Ravi @ Ravichandran (supra) and *Mulla* both judgments of recent vintage, have also echoed the same views, and elaborated that dock identification is *per se* not inadmissible. The courts have explained that TIP itself is not a substantive piece of evidence; it is to lend assurance to the investigation that the real culprits have been made to answer charges. In *Hem Singh* the court underlined the importance of a TIP where the accused were unknown to the witness, and had been seen at the crime scene for the first time. The decision was also when the offence had taken place in the darkness.

18. In this case, the first TIP proceeding took place on 24th September, 2000, in which the appellants Rattan Singh and Pyarelal refused to participate, saying that they had been shown to the witness. The prosecution case was that these two were arrested on 13th September, 2000, in connection with FIR Nos. 280 and 281, in the same police station. Their statements led to further investigation and other appellants being arrested. This is testified to by PW-28. They were produced for TIP within a week. In these circumstances, the question of delay does not arise, in the case of appellants Rattan Singh and Pyarelal. As far as the other accused are concerned, information about arrest of accused Jagdish @ Narsingh was received on 21.09.2000; production warrants were sought to be obtained. Information about arrest of the other Jagdish @ Bagga, was received on 10.10.2000. The TIP of these two, along with that of Abhimanu and Suraj Bhan, was sought to be conducted in the end of November, 2000. This delay is sought to be explained somewhat, by PW-28. He testified having applied for the TIP for Jagdish @ Bagga, on 17.10.2000, while confronting him after his production before the Ilaka Magistrate, and later getting transferred, on 03.11.2000, before the date fixed for TIP. PW-28 also deposed that the file had been taken away from him.

19. The sequence of events spoken to by the witness, PW-2 are coherent and logical. She talked about the assailants forcing her to open the door of her room, looting cash and other articles, and later forcing her take them to different places, in the Samsthan, for the purpose of looting. Almirahs were opened, and the institution's *Daan Patra* (donation box) was also looted. Gold ornaments belonging to PW-2, the deceased, and other articles were also robbed. The witness stated, in her cross examination that the entire incident must have taken place in about half an hour. She was 44 years, when the deposition was recorded, which was two years after the incident. She ascribed specific roles to different individuals, and said that only one had muffled his face, out of the seven, and all except one were armed with *dandas* (sticks). One was armed with the leg of a cot (*paya*). This court notices that the witnesses' statement was recorded immediately after the incident. She no doubt gave a general description of the assailants; however, the deposition nowhere suggests lack of light at the time. Logically too, the possibility of the place being in darkness, or ill-lit, has to be ruled out, because the witness had to go to different places, and remove valuables as well as cash, to hand over to the attackers. She did not depose that though it was dark, the assailants had used a torch (flashlight) or something of that sort, to light up the way as well as facilitate the robbery. Furthermore, the depositions of PW-3 and PW-4 corroborate that an attack took place, and that they had seen the assailants. They did not of course, claim to know the attackers, or say that they could identify them.

20. The Trial Court, after analyzing the entire evidence, and considering the deposition of PW-2, concluded that the culprits stayed in the premises, for sufficiently long time, to enable her to recognize them. In this context, the court recollects the following observation of the Supreme Court, in *Brij Mohan v. State of Rajasthan*, (1994) 1 SCC 413:

"9. It was pointed out, on behalf of the appellants, that the aforesaid test identification was held virtually after three months of the occurrence and as such it was not safe to trust such identification. It is true that with lapse of time, the memory of the witnesses, who have seen the culprits at the time of the commission of the dacoity gets dimmer and dimmer, and the earliest the test identification is held, it inspires more faith about the fairness of the test identification. But no time-limit can be fixed for holding a test identification, after which the investigating officer will be debarred from putting the suspects for test identification. While accepting the position that such test identifications should be held at the earliest, at the same time it cannot be ignored that it is not always within the reach of the investigating officer or up to him to hold such test identification. Any test identification can be held only if some persons are arrested, who are suspected to have participated in the dacoity in question. The position will be different where in spite of such suspects being in custody, the test identification is postponed, there being no

reasonable cause for the same. Once the investigating officer suspects that persons arrested are accused in connection with a particular dacoity, they should be put up for test identification at the earliest. It is an imperative duty on the part of the investigating officer to put up such suspects at test identification without any delay. That gives sanctity to the test identification.

10. So far the present case is concerned, as the appellants were put on test identification within 24 hours of their arrest in connection with the present case, the identification made by the witnesses cannot be rejected merely on the ground that it was not possible for them to identify after lapse of a period of three months. This was not an ordinary case of dacoity; for commission thereof, four persons were killed, one of them being a lady. The gruesome and callous manner, in which the dacoity was committed by the culprits must have left a deep impression on the minds of the witnesses, who had occasion to see such culprits in the electric light during the course of commission of assault, firing and removal of the articles from the house in question. This deep impression will also include the facial impression of the culprits, which in normal course must not have been erased only within a period of three months."

In the cross examination, PW-2 mentioned that twice she sought to participate in TIP proceedings. However, significantly, the Appellants did not suggest that they had been shown to her, before the conduct of the procedure. She was able to identify two of the Appellants, i.e Suraj Bhan, and Abhimanu, who participated without demur in the TIP. The conduct of two Appellants, i.e Rattan Singh and Pyarelal, in refusing the TIP, when one was offered within two weeks of their arrest, also weighs against them, having regard to these circumstances. Furthermore, interestingly, a suggestion was given to PW-2 that she was acquainted with Pyarelal, since his son used to visit the school managed by the Sansthan; it was however denied. Having regard to the entire conspectus of circumstances, this court is of the opinion that the deposition by PW-2 that she had occasion to see some of the accused, before the TIP, is not a circumstance to reject dock identification in court. The experience that she underwent, evidently left a deep imprint in her mind, and she could recollect the events, their sequences, details of amounts and articles looted, the order in which she was forced to go to various places, to enable the robbery, as well as the specific role which the different appellants played, while the looting took place. She was not aged or infirm, and was possessed of normal faculties. She could identify two of the Appellants, who offered to participate in the TIP. She had no axe to grind, or implicate anyone falsely. On the other hand, she had sufficient opportunity to observe the assailants and note the role played by each of them. Therefore, this court concludes that the witness was credible, could be relied upon, and had deposed truthfully.

21. So far as the argument concerning the lack of finger print expert's positive report, being a strong circumstance to acquit the appellants, is concerned, it would be useful here to extract the observations in *Lala Ram* (supra):

"7. In our view, there is a vital infirmity in the prosecution case since the finger prints that were lifted from the spot were not matched with the finger prints of the accused. This throws grave doubt about the veracity of the prosecution evidence. The use of scientific methods have not been resorted to without any Explanation whatsoever quite contrary to the position of law laid down by the learned Single Judge of this Court in Abdul Subhan v. State (NCT of Delhi) 133(2006)DLT562 which we reiterate and endorse as follows:

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13.7. Proper investigation of such accidents would go a long way in aiding the criminal justice system in convicting those who are guilty and acquitting those who are innocent. A shoddy investigation will only point in one direction and that is in the acquittal of all whether they are guilty or whether they are innocent. Because, no criminal court would (and ought not to) convict any person merely on the basis of conjectures, assumptions, probabilities. All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case which when taken objectively would lead to the inescapable conclusion that a conviction is maintainable.

The fact that finger prints were not even brought on record by the prosecution leaves us no option but to draw an adverse inference against the prosecution for not producing objective scientific evidence which could have clearly established the guilt or exonerated and demonstrated the innocence of the accused. Thus the plea of the learned Counsel for the appellant that the substratum of the prosecution's case is destroyed in the absence of such scientific evidence stands justified. The innocence or guilt of he accused would have been established conclusively if the fingerprints of the appellant had been brought on record and matched."

It would be immediately apparent that the Appellants' fingerprints had not been brought on record in that case, though there was an opportunity to do so. In this case, the prosecution had lifted the chance finger prints, from the almirah, and two different places, and sent them to the expert. The report is not on record. At the worst, an adverse inference can be drawn that the expert found that the prints did not match with the Appellants' specimen. However, that itself cannot vitiate the entire prosecution, particularly since there is credible ocular testimony. There can be several reasons why the finger prints may not have matched; one strong reason being that the assailants were instructing PW-2 to open the almirah, and other storage places, where the valuables were kept. Naturally, in such an event their finger prints would not have matched with what were lifted from the spot.

22. Counsel for appellants had urged that the testimonies of PW-3 and PW-4 contradict each other, because one of them mentioned that the five assailants seen by them, asked them to lie down, and placed a sheet over them, whereas the other said that he was confined in a room. Here, the court is of the opinion that the discrepancy is minor, and not of such consequence as to imperil the prosecution version, or shake the credibility of PW-2's statement. All the witnesses saw one incident, but not in the same manner, or necessarily in the same sequence. Geographically and chronologically, the events were perceived by witnesses having regard to what occurred in their presence.

23. In view of the above discussion, we are satisfied that the Trial Court's judgment and order does not call for any interference; the appeals have to fail. The appellants who have been enlarged on bail, are hereby directed to surrender before the Trial court, on 29th August, 2011 and serve the remainder of their sentence. Appellant Pyare Lal was not appearing in the Court as he was not available at the given address. The Trial Court shall take steps to procure his attendance by coercive process. If any other appellant does not surrender by the date fixed, the Trial Court shall take coercive process against him/them too. The Registry is directed to transmit the original records to the Trial court, for ensuring compliance with these directions. The Appeals are dismissed, with the above directions.

(S.RAVINDRA BHAT)
JUDGE

JULY 29, 2011

(G.P. MITTAL)
JUDGE