* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 17.02.2014
Date of Decision: 24.02.2014

\+ **CRL.A. 181/2013**

IKRAM ANSARI ..... Appellant

Through: Mr. K.S. Singh, Adv.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

\+ **CRL.A. 330/2013**

USMAN ..... Appellant

Through: Mr. Imran Ali, Adv.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

\+ **CRL.A. 398/2013**

MEHFOOZ ISLAM ..... Appellant

Through: Mr. K.K. Malhotra, Mr. K.K. Bhalla and Mr. Nikhil Bhalla, Advs.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

+ **CRL.A. 642/2013**

FARID ..... Appellant

Through: Mr. Vikas Padora, Adv.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

+ **CRL.A. 709/2013**

NADIM @ MATIN ..... Appellant

Through: Mr. Jatin Rajput and Mr. Anupam Dubey, Advs.

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

+ **CRL.A. 523/2013**

AZHARUDDIN BADAR ..... Appellant

Through: None

versus

STATE (NCT OF DELHI) ..... Respondent

Through: Mr. Satish Kumar Verma, APP for State

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

On 10th July, 2006, Police Control Room was informed regarding a theft in House No.45, Gagan Vihar, Mandawali. Police Control Room transmitted the said information to Police Station Preet Vihar where it was recorded vide DD 23A and a copy of the said DD was given to ASI Rajender Prasad for necessary action. On reaching House No.45, Gagan Vihar, ASI Rajender Prasad met the complainant Ruchi Gupta, wife of Shri Alok Jain and recorded her statement Ex.PW1/A . The complainant informed the police officer that on 6th July, 2006, she had lodged a complaint with Videocon with respect to malfunctioning of their AC. On Saturday, at about 2.30 pm, two boys visited their house at the time she was alone, and after examining the AC, they promised to come on Monday to rectify the fault. She further stated that on 10th July, 2006 at about 2.45 pm, two boys came to their house and told her son Kunal, who was standing outside, that they had come to repair the AC. On being informed in this regard by Kunal, she brought them inside and showed the AC installed in the room to them and then went back to the kitchen. Kunal came to the kitchen and informed her that the boys were asking for water. She took out the water bottle from the fridge and had poured the water into the glasses when one of the boys aged about 24-25 years came inside, covered her mouth with one hand and showed a knife to her with the other hand. Being scared, she screamed, whereupon that person threatened to kill her, in case she raised alarm. She thereupon asked him to

spare her and her children and take whatever they wanted. He then took her to the room where she found both her sons having been made to sit in the position of a cock. The other boy who was wearing a grey colour check shirt showed a pistol as well as bullet to her and threatened to shoot her. Being scared, she told them about the cash and gold chain. The boy took out Rs.12 lakhs from the almirah besides one gold chain, one mobile of Samsung make, one watch and a purse containing Rs.10,000/-, in cash. She and her children were ushered in the attached toilet and tied with a cloth string(*nada)* and a bed sheet. After some time, her maid servant came there and released them. On coming out, she found that the telephone wires had been disconnected. On the next day, she gave a list of other articles, which she found stolen from her house.

2. The case of the prosecution is that on making enquiry at the Service Centre, the IO came to know that on 8th July, 2006, the appellant Badar @ Azharuddin and one Sumit were sent to attend to the complaint made by Smt.Ruchi Gupta and they had fixed 10th July, 2006 to repair the fault. This is also the case of the prosecution that the appellant Badar @ Azharuddin was interrogated on 11th July, 2006 and during interrogation he claimed that he was with the appellants Nadim and Ikram Ansari. This is further the case of the prosecution that a number of contradictions were noticed on interrogating Nadim and Ikram Ansari. It was also found that Nadim was a bad character of P.S. Mandawali. Thereupon, the appellant Badar @ Azharuddin was

further interrogated on 13th July, 2006 and in the night of 13/14th July, 2006, he led them to House No.B-175 Gali No.5, Mandawali and got recovered Rs.1,35,000/-, in cash, besides one silver glass from a *dewan* kept in his house. This is also the case of the prosecution that the appellant Nadim, when interrogated by the police made a disclosure statement and got recovered 1,07,000/- , in cash besides one gold chain from a wooden canopy in his house No.B-210, Gali No.3, Mandawali. One knife is also alleged to have been got recovered by him. The case of the prosecution is that thereafter they interrogated the appellant Ikram Ansari who got recovered Rs.1,09,300/- , besides one pair of silver *pajeb* from his house. The appellant Nadim, according to prosecution led the investigating officer to the house of the appellant Fareed in Lahori Gate and a sum of Rs.3,02,000/-, in cash, besides one pair of silver *kada* is alleged to have been recovered from the kitchen of his house.

According to the prosecution on 19th July, 2006, the appellants Mohd. Usman, Mehfooz and one Najish(a juvenile) were arrested pursuant to a secret information received by them. The cash amounting to Rs.1 lakh, besides 5 silver coins are alleged to have been found in the pocket of the appellant Usman wherefrom Mehfooz is alleged to have got recovered Rs.1 lakh, in cash, besides one silver bowl from B-248, Gali No.2, Mandawali.

3. The appellants Nadim, Fareed, Mehfooz and Usman refused to join TIP during the course of investigation. All the appellants were charged under Section 452/395/397 of IPC. They having pleaded not guilty, as many as 18 witnesses were examined by prosecution, whereas one witness was examined in defence.

4. Vide impugned judgment dated 20.12.2012 and Order on Sentence dated 4.1.2013, the appellant Ikram Ansari was convicted under Section 412 of IPC and was sentenced to undergo R.I. for three years and to pay a fine of Rs.1000/- or to undergo SI for one month, in default, whereas the remaining appellants were convicted under Sections 452/395/34 IPC. They were sentenced to undergo RI for four years each and to pay a fine of Rs.1000/- or to undergo SI for one month each, in default under Section 452 IPC. The appellants Usman and Azahruddin Badar were further sentenced to undergo RI for five years and to pay a fine of Rs.1000/- each or to undergo SI for one month each, in default under Section 395 of IPC. The appellants Mehfooz Islam, Nadim and Farid were sentenced to undergo RI for seven years each and to pay fine of Rs 1,000/- each or to undergo SI for one month each in default under Section 395 of IPC read with Section 397 thereof.

5. The complainant – Smt. Ruchi Gupta came in the witness box as PW1 and stated that on 06.07.2006, they had made a complaint at showroom of Videocon at Daryaganj with respect to the air conditioner installed at their

house. On 8.7.2006, two persons came to their house when she was alone, and inquired about the complaint lodged by her. She took them inside the room and showed the air conditioner to them. They promised to come again on Monday to repair the air conditioner. As soon as they went outside of her house, her children returned from their school. She further stated that on 10.7.2006, which was Monday, her children informed her at about 2.45 pm, that someone had come to repair the AC. She went out and found two boys present at the door. She took them inside the room, gave them the newspapers to spread over the bed since they had to climb over to reach the AC and went to the kitchen. Her younger son Kunal told her that the boys were asking for water to drink. She took out a water bottle from the fridge and poured water in the glasses. One of the boys came to the kitchen, put his hand over her mouth and his knife on her neck. When she cried, he directed her to keep quiet, threatening to kill her children, if she acted to the contrary. She told them that they could take whatever they wanted but should not kill them. They took her in the room where the children had been put in a cock like position. At that time, she noticed that 4-5 persons were present in the room. One of the boys took out a pistol and showed a cartridge to her, saying that he was to load cartridge in his pistol. When her elder son Dhruv told them that there was no valuable in the house, one of the offenders slapped her son. She being frightened told them that the money was kept in the *almirah* near the bed. They opened the *almirah*, but found nothing in it. She pointed out the money

lying in the other *almirah*, constructed over the *almirah* which they had opened. There were as many as four *almirahs* in that room and those *almirahs* were opened by those persons. They took out the string (*nara*) from her *petticot* and also picked up the bedsheets. The intruders then tied their hands and legs using the string and also tied their mouths with bedsheet. Her children were dragged and she was lifted and taken to the bathroom. After some time, she removed the strings on her hands and also freed her mouth. After some time, she heard noise of her maid servant whereupon she called the maid servant to come inside. The maid servant opened the door, cut the string with the help of scissors and when they came out, she found that one mobile phone, a sum of Rs.10,000/- besides chain, cash amounting to Rs.12 lac from *almirah*, gold chain, silver bangles, one pair of *pajeb,* five silver coins, one silver bowl and one sliver glass had already been stolen. During her deposition, the witness identified all the appellants present in the Court except the appellant – Ikram Ansari as the persons who had committed robbery in her house. She identified the appellant – Fareed as the person who had taken out the pistol and a cartridge and had threatened to load the pistol. The appellant – Mehfooz Islam was identified as the person who was having a knife in his hands whereas the appellant – Usman was identified as the person who had slapped her son. The appellant – Azahruddin was identified as the person who had tied their hands and legs.

The complainant further stated that after some days, she was brought to Karkardoom Courts where she identified her five coins, pair of *pajeb*, silver bangles, silver glass, silver bowl and gold chain before a Magistrate. She identified the Ex.P1 to P6 as the articles which belonged to them and were stolen from their house.

6. PW5 – Kunal Jain, is the younger son of the complainant. He stated that on 10.7.2006, he was present in the *verandah* of his house along with his brother Dhruv. Two persons came there and stated that they had come to repair the AC. He informed her mother in this regard. She took them to the room where the AC was installed and went back to the kitchen. Those boys asked him to bring water for them. He went to the kitchen and told her mother about it. He, thereafter, went to the bed room of his parents where his brother Dhruv was also sitting. On hearing cries of his mother, he saw one person was asking his mother as to where the money was. He also heard his mother telling the robbers, that the money was lying in the *almirah* and they could take it out. He also heard her mother telling them that they could also check her purse. According to this witness, he had noticed 5-6 persons in the room. He corroborated the deposition of the complainant with respect to their hands and legs being tied using the string of *petticoat* of his mother for the purpose. He further stated that a tape was put on his mouth and the mouth of his brother whereas a piece of cloth was stuffed in the mouth of his mother and thereafter they were put in the bathroom and bolted inside. He also

corroborated the deposition of the complainant with respect to the maid servant coming after some time, cutting the strings with the help of scissors and releasing them. He identified the appellant – Nadim as the person who was having a pistol in his hands and the appellant – Azahruddin and Farid as the persons who had tied their hands and legs. He also identified the appellant – Mehfooz and Farid as the persons who had entered the house first on the pretext of repairing the AC.

7. PW7 Dhruv Jain is the elder son of the complainant. He stated that on 10.7.2006 when he was present in the *verandah* of their house with his younger brother Kunal Jain, two persons came there and on being inquired by Kunal said that they had come to repair the AC. Kunal called their mother who took them inside the house. According to this witness, he went in the bedroom of his mother and after some time Kunal also reached there. After some time, one person came there along with a pistol. At that time, he heard the cries of his mother and they were then made to adopt a cock like posture. Two/three other persons also came in the room. One person came there along with his mother. Thereafter one of the offenders removed cash and mobile from the purse of his mother. He further stated that the person who was having a pistol in his hand loaded it and thereupon his mother, out of fear, asked them to take away whatever they wanted, but spare them. He further stated that the culprits then opened the *almirah* and probably took out the money kept in the *almirah*. He also corroborated the deposition of PW1 and

PW5 with respect to the offenders tying their hands and legs with strings and detained them inside the bathroom. He also corroborated the testimony of PW1 and PW5 with respect to maid servant coming there after some time, cutting the strings and releasing them.

8. PW9-Jaan Mohd stated that the appellant – Azharuddin @ Baddar was known to him since both of them were working in the same company i.e. Steadfast Omcare Electronics Private Limited, which was an authorized centre of Videocon in Sector-3 of Noida. He further stated that on a complaint being received from Preet Vihar. Engineer Gulshan and his helper were deputed to attend the complaint, but they had not reached the place where they were to reach, and on that very day, they were contacted by the police, to inquire about the employees working in their company. PW15 - Anjali is the maid servant of PW1 who deposed with respect to the complainant and her children being found by her in the bathroom of the house. According to her, though the mouth of the complainant had been tied with a piece of cloth, she had managed to take it out from the mouth and the cloth was seen by her around the neck of the complainant.

9. PW-5 Head Constable Virender Singh proved the disclosure statement Ex.PW8/C made by the appellant – Azaharuddin Badar while in police custody on 13.7.2006. He stated that in the morning of 14.7.2006, they went to the house of appellant Azaharuddin Badar who produced a polythene kept in his *dewan*. A sum of Rs.1,35,000/-, besides one silver glass were found in

the said polythene bag. According to the witness, a country made pistol loaded with cartridge was also got recovered by the appellant from his house.

He further stated that the appellant – Azaharuddin Badar led them to the house of the appellant – Nadim in Village Mandawali who was arrested and then interrogated. According to the witness, the appellant – Nadim made a disclosure statement Ex.PW8/F stating therein that he could get recovered cash kept in his house and thereafter led them to a room on the first floor of his house. One polythene bag and a dagger were produced by him. A sum of Rs.1,07,000/- lac and a gold chain were found in the polythene bag, which was seized after they had been sealed with the seal of AK.

According to the witness, the police team went to the house of the appellant Ikram in Village Mandawali. He was also arrested and his disclosure statement Ex.PW8/M was recorded. He produced one packet containing Rs.1,09,300/- and a pair of silver *pajeb* which were seized after they had been sealed with the seal of AK.

The witness further stated that the police team then went to the house of appellant – Farid in Lahori Gate. The appellant – Farid was interrogated and arrested. He thereafter made a disclosure statement Ex.PW8/R stating therein that he could get the cash recovered from the house. The witness further stated that the appellant – Farid produced one polythene bag and a dagger from a heap of wood lying in the kitchen. A sum of Rs.3,02,000/- and

a pair of silver bangles were found in the polythene bag, which were duly seized after they had been sealed with the seal of AK.

The witness also stated that on 19.7.2006, the appellant – Azaharuddin Badar took them to a place near Mother Dairy in Mandawali where the appellant – Mehfooz, Usman and the minor accused Nazis were seen coming out of the Street No.2 of Mandawali. They were apprehended and were interrogated. A sum of Rs.1 lac each was recovered from the possession of Nazis and Usman. Five silver coins were also found in the jeans which the appellant – Usman was wearing.

The witness went on to state that thereafter the police party went to the house of appellant – Mehfooz who produced two bundles of currency notes of Rs.50,000/- besides a silver bowl. The said case property was also duly seized after it had been sealed with the seal of AK.

10. PW-8 Constable Vinod Kumar stated that on 19.7.2006 he was present in front of Mother Dairy Mandawali along with S.I. Anant Kumar and Head Constable Virender Kumar. At that time, SI Anant Kumar received a secret information that three offenders involved in the present case were present in Mandawali. Thereupon, they reached behind Mother Dairy and found three persons coming out of Street No.2, Mandawali. They over-powered those persons and recovered currency notes of Rs.500/- denomination besides 5 silver coins from the pant which the appellant Usman was wearing. He further stated that though nothing was found in the search of appellant

Mehfooz, when he was interrogated after his arrest he made a disclosure statement Ex.PW8/Y and then led the police party to his house No.B-284, Mandawali. He took out two wads of currency notes in the denomination of Rs.500/- and a bowl of silver which were duly seized after they had been duly sealed. The witness identify the silver bowl Ex.P and silver coins Ex.P6/1-5 which were recovered from the appellant Usman.

11. PW-14 Head Constable Pawan stated that the appellant Azharuddin Badar was arrested in his presence and he made a disclosure statement Ex.PW8/C stating therein that he could get recovered Rs.1,35,000/- , a silver glass from his house. He further stated that pursuant to the said statement, the appellant Azharuddin Badar led them to House bearing No.B-175, Gali No.5, Mandawali and picked up a bundle lying in the mezzanine of his room. The the said bundle, when checked, was found to contain Rs.1,35,000/-. A silver glass was also found in the bundle. The cash as well as the glasses were seized after they had been duly sealed with the seal of I.O. He also deposed regarding recovery of pistol from the house of appellant Azharuddin. He identified Ex.P3 as the silver glass which was recovered at the instance of the appellant Azharuddin.

12. PW-16 ASI Rajender Prasad, who was the initial Investigating Officer of this case stated that on recording statement of Jaan Mohd., Manager of a Company in Noida, he had come to know that the appellant Badar and one

mechanic Sumit were sent to the house No.45, Gagan Vihar on 8.7.2006 and they had fixed to go there again on 10.7.2006.

13. PW-18 S.I. Anand Kumar is the main Investigating Officer of this case. He stated that on 11.7.2006, he interrogated the appellant Azharuddin @ Badar who disclosed that on the day of the incident i.e. 10.7.2006, he was with Nadim and Ikram. He interrogated Nadeem and Ikram one by one and found many contradictions in their statements. He also noticed a fracture on the left hand of the appellant Nadeem and also found that he was a BC of P.S. Mandawali. He further stated that on 13.7.2006, he recorded the disclosure statement of appellant Azharuddin Ex.PW8/C and in the night of 13/14.7.2006, appellant Azharuddin led them to his house No.B-175, Gali No.5, Mandawali and got recovered Rs.1,35,000/-, in cash besides one silver glass from a *dewan* in his house. The currency notes and the silver glass were seized after they were duly sealed with the seal of AK. According to this witness, one country made pistol with fired cartridges was also got recovered by appellant Azharuddin from his house.

The witness further stated that thereafter they went to the house of the appellant Nadeem i.e. B-210, Gali No.3, Mandawali. Nadeem was interrogated and arrested. He made a disclosure statement Ex.PW8/F and then led them to first floor of his house and got recovered Rs.1,07,000/-, in cash besides a gold chain from the wooden canopy. He also claimed that the said appellant had also got recovered a knife from his house.

According to the witness thereafter they went to the house of Ikram Ansari i.e. B-267, Gali No.2,Mandawali and interrogated him. He made a disclosure statement Ex.PW8/M and got recovered Rs.1,09,300/-, in cash, besides a pair of silver *pajeb* from the wooden canopy behind the curtains.

The witness further stated that the appellant Nadeem led to the house of appellant Farid and Usman where he interrogated Farid and recorded his disclosure statement Ex.PW8/R. He further stated that the appellant Farid got recovered Rs.3,02,000/-, in cash and one pair of silver *kada* from the unused material kept in the kitchen.

This witness further stated that on 19.7.2006, he received a secret information that three remaining accused involved in this case were sitting in a park in Mandawali. On this information, a raiding party was organized by him and the appellant Mohd. Usman, Mehfooz and one Najish(a juvenile) were arrested. The disclosure statements of Usman and Mehfooz are Ex.PW18/E and Ex.PW8/Y respectively. On search of Usman, Rs.1,00,000/-, in cash was recovered from the pocket of his pant besides five silver coins. Mehfooz led them to his house bearing House No.B-248, Gali No.2, Mandawali and got recovered Rs.1,00,000/-, in cash beside one silver bowl from a *diwan* kept in his house.

14. PW11 Mr. Rajesh Tripathi is the Metropolitan Magistrate who conducted the TIP of the case property on 22.7.2006. According to the witness, the complainant correctly identified the bowl, *pajeb,* glass, bangles,

gold chain and silver coins before him vide proceedings Ex.PW11/C. PW12 is Smt. Veena Rani, Metropolitan Magistrate before whom the appellant – Farid refused to join TIP on 25.7.2006 in Central Jail. The appellant – Nadim also refused to join TIP before the said witness on the same date.

15. In their statements under Section 313 Cr.PC, all the appellants denied the allegations against them and claimed to be innocent. The appellant – Ikram Ansari claimed that on 10.7.2006 he was having stitch on his stomach and was taking rest in the house. The appellant – Azaharuddin Badar claimed that the police had apprehended all the staffs from the office of Sector-3 Noida and he was kept detained there for 3-4 days when his signatures were obtained on blank papers.

16. DW1 Smt. Ishrati Begum is the mother of the appellant – Ikram. She stated that on 10.7.2006, the police had come to her house and taken away her son Ikram for inquiry. She further stated that on 11.7.2006, she sent telegram against illegal detention of her son. However, no such telegram was produced by the witness. DW2 – Dr. Poonam Singh had issued discharge slip Ex.DW2/A to the appellant – Ikram. According to her, he was admitted in her clinic on 20.6.2006 and was discharged on 22.6.2006 with advice to take rest. She stated that in her opinion, he was in a position to walk when he was discharged on 22.6.2006. DW3 – Smt. Saida Begum is the mother of the appellant – Farid. She stated that on 12.7.2006, Farid was sleeping in his house when police came there and took him with them. DW4 – Shri Bittan is

the neighbour of the appellant – Mohd. Usman, and a resident of Bijnour. He stated that in July, 2006 he saw police vehicle in front of the house of the appellant – Mohd. Usman was taken by the police with them in a vehicle. DW5 – Smt. Zaida is the sister-in-law of the appellant – Nadim. She stated that on 10.7.20106, the police had taken Nadim from her house for some inquiry and thereafter he was falsely implicated in this case. DW6 – Iram Mukhtar is the aunt of appellant – Azharuddin. She stated that on 10.7.2006, the appellant – Azharuddin left the house saying that he had received a call from Azad who had told her that the supervisor was calling him at Mandawali. She further stated that thereafter the appellant – Azharuddin did not return and on inquiry she was informed by Azad that they were in the police station Preet Vihar. She then went to the police station with the mother of the appellant – Azharuddin, but they were not allowed to meet him. She further stated that on 14.7.2006, when they went to the police station they were informed that Azharuddin had been arrested in this case. DW7 – Kiran Pal is an official from CTO, New Delhi. He stated that on 11.7.2006, a telegram was sent by Mr. Mohd. Yaqoob resident of B-267, Mandawali to Commissioner of Police, Delhi, but the relevant record in this regard has been destroyed. DW8 Mr. S. Hasan Zaidi, advocate stated that on 11.7.2006 Mr. Mohd. Yakur Ansari had come to him and told him that his son Ikram had been lifted by the police from his house at 8 pm on that day. He thereupon went to the telegraph office and sent a telegram in this regard to the

Commissioner of Police. According to him Ex.PW8/A is the copy of the telegram form filled by him.

AZHARUDDIN BADAR

17. The case of the prosecution is that the appellant Azharuddin visited the house of the complainant firstly on 08.07.2006 for the purpose of repairing their air-conditioner and thereafter on 10.07.2006 when the dacoity was committed. However, in the FIR, Smt. Ruchi Gupta did nto claim that either of the two persons who had visited her house on 08.07.2006 had participated was amongst the persons who later committed dacoity of cash and other articles from her house on 10.07.2006. Had either or both the persons who visited her house on 08.07.2006 been amongst the persons who committed dacoity on 10.07.2006, she could not have omitted this material fact in the FIR since that would have clearly established the identity of one of one of the persons involved in the dacoity.

When Smt. Ruchi Gupta came in the witness box, she clearly stated that the boys who had come to her house for repair of air-conditioners were not present in the Court, meaning thereby that either the appellant Azharuddin had not visited her house on 08.07.2006 or he was not involved in the commission of dacoity.

The benefit of doubt, as per settled legal proposition, goes to the accused and not to the prosecution.

18. According to the Investigating Officer, PW-18 SI Anant Kumar, he had interrogated the appellant Azharuddin on 11.07.2006. The case of the prosecution is that during interrogation on 11.07.2006, the appellant Azharuddin did not admit his involvement in the offence, but, when he was further interrogated on 13.07.2006, he admitted that he was involved in the aforesaid offence. No attempt was made by the Investigating Officer to search the house of the appellant Azharuddin on 11.07.2006, despite his having come to know from PW-9 Saan Mohammad that it was Azharuddin who had visited the house of the complainant to repair the air-conditioner. The case of the prosecution is that it was on 13.07.2006 that the appellant Azharuddin admitted his involvement in the crime and thereafter got the cash as well as one stolen silver glass recovered from his house. In my view, once Azharuddin, on account of having been interrogated on 11.07.2006, came to know that he was being suspected by the police for involvement in the dacoity which took place in the house of the complainant, the first thing he would do would be to remove the stolen article and cash from his house. He may keep the stolen goods at some place other than his house, but, would not take the risk of continuing to keep them in his house, despite knowing that he being a suspect, his house could be searched by the police at any time and in the event the stolen property being found in his house, he would be immediately held responsible for the dacoity in which the goods were stolen. Therefore, the alleged recovery of cash and silver glass from the house of the appellant

Azharuddin on 13.07.2006 is highly suspect. It would be pertinent to note here that this is not the case of the prosecution that the appellant Azharuddin continued to be in police custody from the time he was interrogated on 11.07.2006 till the time the recovery was effected on 13.07.2006. Therefore, he had ample time and opportunity to remove the stolen articles as well as the cash from his house.

19. As regards identification of Azharuddin in the Court, admittedly, no TIP was held for his identification nor did he refuse to join any TIP. His identification for the first time in the Court, in my view, is not sufficient to establish his identity as one of the persons involved in the commission of dacoity, particularly when the complainant has specifically said that neither of the persons who had come to repair their air-conditioner on 08.07.2006 was present in the Court at the time she was examined. The appellant Azharuddin, therefore, needs to be given benefit of doubt and acquitted.

IKRAM ANSARI

20. The case of the prosecution is that cash amounting to Rs 109300 and a pair of stolen Pajeb was recovered from his house on 14.07.2006. It has come in the deposition of PW-18 SI Anant Kumar that he had interrogated Ikram Ansari on 11.07.2006 itself. As noted earlier, a person who has been interrogated by the police for his involvement in a case of dacoity and is then allowed to leave the Police Station is not likely to retain the stolen articles in his house. He knows that he being a suspect, his house could be searched by

the police at any time and in case the stolen articles are recovered from his house, he would have no escape from the clutches of law. Therefore, in the natural course of human conduct, the attempt of such a person would be to remove the stolen articles from his house at the earliest opportunity and shift them to a place which the police is not likely to search. The house of a suspect would always be the first place to be searched by the police if it is seeking to recover the stolen articles. This is not the case of the prosecution that the appellant Ikram Ansari was not allowed to leave the police station on 11.07.2006 and he continued to be detained till the time recovery was effected from his house. In these circumstances, the alleged recovery of cash and stolen Pajeb from the house of the appellant Ikram Ansari becomes highly suspect.

21. According to the Investigating Officer, he interrogated the appellant Ikram Ansari in his house No. B-267, Gali No. 2, Mandawali and at the very same time, he got recovered cash and stolen Pajeb from his house and he was then arrested. However, a perusal of the disclosure statement of the appellant Ikram Ansari gives an indication as if the disclosure statement is recorded at a place other than the place where the stolen articles had been kept by him. The impression one gets from a reading of the said disclosure statement Ex.PW-8/M is that he was being interrogated at a place other than his house and he had told the Investigating Officer that the stolen cash was lying in his house and he could get it recovered from there. This is yet another circumstance which

creates suspicion with respect to the truthfulness of the case against this appellant.

22. Ex.PW8/K is the arrest memo of Ikram Ansari. The whole of this document is not in the hand of the same person since the date of his arrest in column No.6 has been written by a person other than the person who prepared the remaining part of the arrest memo. There is no plausible explanation for the arrest memo being in the hands of two different persons. Moreover, the time of the arrest is also not interrogated despite there being a column for this purpose. In these circumstances, I am of the considered view that the appellant Ikram Ansari who has been convicted under Section 412 of IPC for receiving or retaining the stolen property knowing or having reasons to believe the same to be stolen property and having been transferred by commission of dacoity, needs to be given benefit of doubt and acquitted.

NADIM

23. As noted earlier, according to the investigating officer, he had interrogated the appellant Nadim on 11.7.2006. As noted earlier, while discussing the case against the appellants, Azharuddin and Ikram Ansari, a person who has been interrogated by the police and is being suspected for his involvement in a case of dacoity is most likely to continue to retain the stolen property in his house and is likely to shift the same to a safe place at the earliest possible opportunity. Therefore, the alleged recovery from the house of the appellant Nadim becomes suspect. However, he has been identified not

only by the complainant Smt. Ruchi Gupta as one of the persons, who had committed dacoity in their house, but also by her son PW5 Kunal Jain. According to PW5, he was carrying a pistol in his hand. Admittedly, the appellant Nadim refused to join TIP during the course of investigation before Smt. Veena Rani, Metropolitan Magistrate, who has been examined as PW12. The ground given by the appellant Nadim for refusing to join the TIP was that his photographs had been taken and he had been shown to the witnesses in the police station. He claimed that he was kept in the police station from 10th July to 13th July, 2006 and was produced in the court on 14.7.2006. However, there is absolutely no evidence of either the appellant or his photographs having been shown either to PW1 Smt. Ruchi Gupta or to her son PW5 Kunal Gupta. When Kunal was cross-examined, no suggestion was given to him that either the appellant Nadim or his photographs were shown to him in the police station. When the complainant Ruchi Gupta was cross-examined, she emphatically denied the suggestion that the accused persons were shown to her in the police station. No suggestion was given to her that photographs of the accused persons were shown to her. Therefore, the ground given by the appellant Nadim for refusing to join TIP before a Metropolitan Magistrate does not stand substantiated. In fact, there is no evidence of either the complainant Ruchi Gupta or her husband having gone to police station on a day when the appellant Nadim was in police custody. Therefore, there could

be no occasion for the Investigating Officer to show him to the aforesaid witnesses.

If the accused refuses TIP without any justifiable cause, he does at his own peril and the Court will, in such circumstances, be justified in drawing an inference that had the appellant participated in TIP he would have been identified by the witnesses and that precisely was the reason why he refused to join the TIP. Similar view was taken by the Hon'ble Supreme Court in ***Suraj Pal vs. State of Haryana*** (1995) 2 SCC 64.

In this case also, it can be safely presumed that the appellant Nadim refused to join TIP, because he knew that if he participates in the TIP, he would be identified by the witnesses, they having seen him, at the time of dacoity.

24. It was contended by the learned counsel for the appellant that though according to PW5 Kunal Jain, he had a pistol with him, no pistol was recovered from him and only a knife is alleged to have been recovered from his house. The aforesaid circumstance, in my view, is of no consequence since the inability of the Investigating Officer to recover a pistol from the appellant Nadim does not by itself show that he was not carrying a pistol with him at the time of commission of dacoity. Similarly, recovery of a knife from his house does not necessarily lead to the inference that it was used by him in the dacoity. There is no reason for the court to disbelieve the deposition of PW5 Kunal Jain in this regard. There could be no reason for him to make a

false statement claiming that the appellant Nadim was carrying a pistol with him, at the time of commission of dacoity.

In my view, the identification of the appellant Nadim by PW1 Ruchi Gupta and PW5 Kunal Jain, coupled with his refusal to join a TIP before a Metropolitan Magistrate is sufficient to establish his identity as one of the persons involved in the dacoity. Since the appellant Nadim was carrying a pistol, which is a deadly weapon, in the full view of the witnesses, he used the said weapon within the meaning of Section 397 of IPC. Therefore, no fault can be found in conviction under Sections 452 and 395/397 of IPC read with Section 34 thereof.

Usman

25. As noted earlier, the appellant Usman was identified by the complainant Ruchi Gupta as one of the persons involved in the dacoity in her house. She identified him as the person who had slapped her son. When Dhruv Jain, son of the complainant came in the witness box as PW7, he stated that Usman was one of the offenders who had slapped him, thereby corroborating the deposition of his mother in this regard.

26. The deposition of PW8 Constable Vinod Kumar and PW18 SI Anant Kumar would show that on 19.7.2006, the appellants Mehfooz & Usman along with a juvenile named Najish were apprehended, when they were coming out of street No.2 of Mandawali. On search of the appellant Usman, two wads of currency notes in the denomination of Rs.500/- was recovered

from the pocket of the pant which he was wearing. Five silver coins were also recovered from the said pant. There is no reason to disbelieve the deposition of PW8 Constable Vinod Kumar and PW18 SI Anant Kumar with respect to the recovery of Rs.1.00 lakh and five silver coins from the possession of the appellant Usman. Neither the silver coins nor huge cash amounting to Rs.1.00 lakh could have been planted by the Investigating Officer upon him. This is not the case of the appellant Usman that either the cash or the silver coins recovered from him belonged to him and are not stolen property. His case, on the other hand, is that neither the cash nor the silver coins were found with him. On the other hand, the complainant identified the silver coins not only during trial but also in a judicial TIP which was conducted by a Metropolitan Magistrate. The identification of the silver coins in a judicial TIP from amongst a number of silver coins clearly indicates that the complainant was in a position to identify the coins belonging to her and that is why she correctly picked them up during the TIP. The identification of the coins by the complainant, coupled with the fact that the appellant Usman does not claim the same to be his property clearly proves that on 19.7.2006 the aforesaid appellant was found in possession of the cash and silver coins, which were stolen from the house of the complainant on 10.7.2006. Considering the very short time lag between the date of dacoity and the date of recovery of the cash and silver coins, a statutory presumption can be drawn under Section 114 of the Evidence Act that either the appellant

Usman had committed the theft of the cash and the coins or he had received or retained the stolen property knowing or having reasons to believe the same to be stolen property. The appellant Usman has chosen not to give any explanation for his being found in possession of the stolen cash and coins. The presumption, in the facts and circumstances, should be that he had committed theft of the said cash and coins during the commission of robbery on 10.07.2006.

27. Identification of the appellant Usman by the complainant and her son, coupled with the recovery of the stolen articles from him soon after the dacoity establishes beyond a shade of reasonable doubt that he had participated in the dacoity which took place in the house of the complainant on 10.07.2006.

28. It was contended by the learned counsel for the appellant Usman that PW-7 having not been examined under Section 161 of the Code of Criminal Procedure, his deposition in the Court is of no consequence. I, however, cannot accept the submission. This is not a requirement of law that every witness has to be first examined under Section 161 of Cr.P.C. before he can be examined during trial. The Court may scrutinize the testimony of a witness who was not examined during the course of investigation with more caution and subject the same to a closer scrutiny, but his deposition in the Court is not per se in admissible in evidence. In any case, the deposition of

the complainant, coupled with the recovery of the stolen property from him, is sufficient to establish his guilt beyond reasonable doubt.

It was contended by the learned counsel for the appellant Usman that in their statement under Section 161 Cr.P.C., neither the complainant nor PW-5 Kunal Jain alleged slapping of PW-7 Dhruv Jain. The said omission, in my view, cannot be said to be material, since the focus of their statement was on the theft of cash and valuables from their house and not on slapping of PW-7 which was a minor incident which happened during the commission of robbery.

It was also contended by the learned counsel for Usman that he was not likely to carry a cash amounting to Rs.1 lakh in his pocket. I, however, find no merit in the contention. HE could be carrying cash for any purpose such as giving the money to someone for safe custody or to purchase some valuable using the money. He had no reason to suspect that he would be caught by the police.

29. The appellant Usman refused to join TIP before a Metropolitan Magistrate on 24.07.2006 on the ground that his photograph had been taken in the police station and his face had been shown to the witnesses. However, there is no evidence of either the appellant or his photograph shown to any of the eye-witnesses in a police station. In fact, there is no evidence of any of the eye-witnesses having visited police station Preet Vihar during the period the appellant was in police custody. The appellant, therefore, has failed to give

any justification for his refusing to join TIP and, therefore, an adverse inference can be drawn against him that had he participated in the TIP, the witnesses would have identified him and that precisely was the reason he refused to participate in the TIP.

Mehfooz

30. It has come in the deposition of PW-8 Constable Vinod Kumar and PW-18 SI Anant Kumar that when the appellant Mehfooz, after his being arrested, while coming out of street No. 2 of Mandawali on 19.07.2006 was interrogated, he made a disclosure statement Ex.PW-8/Y. In the said statement, the appellant Mehfooz, inter alia, stated that about Rs. 1 lakh in cash and a silver bowl had been kept by him in his room, concealed in a *diwan.* It has also come in the deposition of PW-8 Constable Vinod Kumar and PW-18 SI Anant Kumar that thereafter the appellant Mehfooz took them to his house and took out two wads of currency notes in the denomination of Rs 500/-, besides a silver bowl which was duly seized by the Investigating Officer. The silver bowl was identified by the complainant Ruchi Gupta not only during trial, but also in a judicial TIP conducted by PW-11 Shri Rajesh Tripathi, Metropolitan Magistrate. A perusal of the proceedings conducted by the aforesaid witness on 26.07.2006 would show that the complainant correctly identified the bowl from amongst the bowls which the witness had arranged before him. The identification by the complainant in judicial TIP clearly shows that the witness was capable of identifying the silver bowl

stolen from her house on 10.07.2006 and that is why she correctly picked it up from amongst the bowls showed to her by the learned Magistrate. More importantly, the appellant Mehfooz does not claim that the aforesaid bowl or the cash recovered from his house belonged to him and not to the complainant, his case being that neither the cash nor the bowl was recovered from his house.

31. Since the appellant Mehfooz was found in possession of the stolen cash and silver bowl soon after their theft and he has not offered any explanation for his being found in possession of the aforesaid articles, it can be safely presumed under Section 114 of Evidence Act that he had either committed theft of the aforesaid articles or he had received or retained the stolen property knowing or having reasons to believe the same to be stolen property. Considering his identification by the complainant and her son, the presumption in this case ought to be that he had himself committed the theft of the aforesaid articles by participating in the dacoity on 10.7.2006.

32. The appellant Mehfooz was identified by the complainant Ruchi Gupta as the person who was having a knife in his hand at the time of commission of dacoity. He was also identified by PW-5 Kunal Jain as one of the two persons who had entered the house on 10.07.2006 on the pretext of repairing the air-conditioner.

33. The appellant Mehfooz refused to join TIP before a Metropolitan Magistrate on 24.07.2006 on the ground that his photograph had been taken in

the police station and his face had been shown to the witnesses. However, there is no evidence of either the appellant or his photograph shown to any of the eye-witnesses in a police station. In fact, there is no evidence of any of the eye-witnesses having visited police station Preet Vihar during the period the appellant was in police custody. The appellant, therefore, has failed to give any justification for his refusing to join TIP and, therefore, an adverse inference can be drawn against him that had participated in the TIP, the witnesses would have identified him and that precisely is the reason he refused to participate in the TIP.

34. It was contended by the learned counsel for the appellant Mehfooz, Farid and Nadim that no public witness was joined in the police team before alleged recovery of the stolen cash and articles from the house of the appellants. As noted earlier, the recovery from the aforesaid appellants was made pursuant to the disclosure statement made by them, while in police custody.

It is true that no public witness was joined in the police party before the bloodstained knife was recovered. We can't be oblivious to the reluctance of a common man to join such raiding parties organized by the police, lest they are compelled to attend Police Station and Courts umpteen times at the cost of considerable inconvenience to them, without any commensurate

benefit. Hence, no adverse inference on account of non-joining of public witnesses in such raids can be drawn in the instant case.

In **State of NCT of Delhi Vs. Sunil & Another** : 2000 VIII AD (SC) 613, a plea was taken that there was no independent witness of the recovery made by the police pursuant to the statement of the accused while in police custody. The following observations made by the Hon'ble Supreme Court in this regard are pertinent:

> "Hence, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witness. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signatures of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth."

In **State of Maharashtra Vs. Suresh** : 1999 X AD (SC) 29, the accused made a disclosure statement that dead body was kept concealed in the fields and he would take out and produce the same. The following observations made by the Hon'ble Supreme Court regarding the implication of such a statement are relevant:

> "We too countenance three possibilities when an accused points out the place where a dead body or an

> incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But, if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act."

Therefore, in this case also there are three possibilities. The first possibility is that the appellants themselves had kept the stolen articles at the place from where they were recovered. The second possibility is that someone had told them that the stolen articles had been kept there and the third possibility is that the appellants had seen someone keeping the stolen articles at the aforesaid place. Since the appellants did not tell the Court as to how they came to know that the stolen articles had been kept at the place where they were found by the police. The presumption has to be that they had themselves kept the stolen articles at the places from where they were recovered by the police and, therefore, they had come into possession of those articles before they were recovered by the police.

35. For the reasons stated hereinabove, I find no ground to interfere with the conviction of the appellant Mahfooz. Since he was carrying a knife which

is a deadly weapon at the time he participated in the dacoity, he has been rightly convicted with the aid of Section 397 of the IPC.

36. It was contended by the learned counsel for the appellant Mehfooz that the knife alleged to have been carried by the appellant Mehfooz at the time of commission of dacoity having not been recovered, the prosecution has failed to prove that the knife carried by him was a deadly weapon and, therefore, Section 397 of IPC could not have been applied for the purpose of sentencing him. In support of his contention, the learned counsel has relied upon Samiuddin @ Chotu vs. State of NCT of Delhi 175 (2010) DLT 27, Kalu @ Saleem vs. State, Crl.A. No. 1431/2011, decided on 14.12.2012, Dharam vs. State, Crl.A. No. 309/2012, decided on 16.07.2013, Mustaq vs. State, Crl.A. No. 1411/2012, decided on 11.07.2013, Ghanshyam vs. State 2010(1) JCC 240, Balik Ram vs. State 1983 Crl.L.J. 1438 and Mohan Singh vs. State Crl.A. No. 182 of 1985, decided on 18.03.1987.

37. In Shri Phool Kumar vs. Delhi Administration, AIR 1975 SC 905, the appellant before the Apex Court, namely, Phool Kumar was armed with a knife at the time of commission of the robbery. He was convicted with the aid of Section 397 of IPC. It was submitted on behalf of the appellant that sentencing him to undergo RI for seven years under Section 397 of the Penal Code was illegal and he ought to have been convicted under Section 397 simplicitor. The precise evidence against the appellant was "Phool Kumar had

a knife in his hand". Rejecting the contention, the Apex Court held that he was carrying a deadly weapon to the view of the victim which was sufficient to frighten or terrorize them and any other overt act, such as, brandishing of the knife or causing of grievous hurt with it was not necessary to bring the offender within the ambit of Section 397 of the Penal Code. The Apex Court in this regard also referred to Section 398 of IPC which prescribes a minimum sentence of seven years in case the offender at the time of attempting to commit robbery is armed with any deadly weapon and held as under:-

> "6. Section 398 uses the expression "armed with any deadly weapon" and the minimum punishment provided therein is also 7 years if at the time of attempting to commit robbery the offender is armed with any deadly weapon. This has created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of 7 years under Section 398 if he is merely armed with any deadly weapon, while an offender so armed will not incur' the liability of the minimum punishment under Section 397 if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the Legislature in the two sections, viz., "uses" in Section 397 and "is armed" in Section 398. In our judgment the anomaly is resolved if the two terms arc given the identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand if an offender was armed with a deadly weapon at the time of attempting to commit a robbery,

> then the weapon was not put to a fruitful use because it would have been of use only when the offender succeeded in committing the robbery."

38. Carrying a deadly weapon in a manner that it is seen by the victim clearly is aimed at intimidating the victim to part with the property under a fear that if he does not part with the property, the weapon being carried by the offender can be used against him. There is nothing in the judgment to indicate that the size of the knife which the appellant Phool Kumar carried with him at the time of commission of the offence was indicated by the witnesses or that the said knife was recovered by the police during the course of investigation. Despite that, the Apex Court upheld his conviction with the aid of Section 397 of IPC.

39. In ***Salim Vs. State (Delhi Administration)***, *1987(3) Crimes 794,* deiced on 09.11.1987, the charge against the appellant was that they committed robbery while armed with knives. It was contended on behalf of the appellant that no offence under Section 397 of IPC could be said to have been committed inasmuch as the knife had not been recovered. Reliance in this regard was also placed upon Murari Lal v. State: 23(1983)DLT410, wherein no knife had been recovered and it was contended that unless the size of the blade was known, a knife could not ordinarily be classified as a deadly weapon within the meaning of Section 397 Indian Penal Code . The learned counsel for the appellant in that case placed reliance also upon an earlier decision of this Court in Balik Ram vs. State 1983 Crl.L.J. 1438. Relying

upon the observation of the Apex Court in Phool Kumar (supra) that "so far as he is concerned he is said to be armed with a knife which is also a deadly weapon. To be more precise from the evidence of PW-16 "Phool Kumar had a knife in his hand", the contention was rejected by this Court. It was held that since the aforesaid decision of the Apex Court had not been referred to in the earlier decisions in Balik Ram (supra) and Murari Lal (supra), the said decisions were not a binding precedent. While rejecting the appeal, this Court, inter alia, observed and held as under:-

> "The Concise Oxford Dictionary defines the word 'weapon' as 'material thing designed or used or usable as an instrument for inflicting-bodily harm, e.g. gun, bomb, rifle, sword, spear, stick hammer, poker, horn, claw'. The word 'deadly', according to this Dictionary, means 'causing fatal injury'. Also, according to this Dictionary, 'knife' means 'blade with sharpened longitudinal edge fixed in handle either rigidly or with hinge used as cutting instrument or as weapon'. As per Webster's Third New International Dictionary a 'knife" is 'a simple instrument used for cutting consisting of a sharp-edged usually steel blade provided with a handle'. Longman Dictionary of Contemporary English defines 'knife' as 'a blade fixed in a handle used for cutting as a tool or weapon'. These definitions in various dictionaries can be multiplied. We all understand what a knife means and to categorise it or to fix its size for it to be a deadly weapon may not be appropriate. A knife has also been' described as a pocket knife, pen knife, table knife, kitchen knife, etc. It cannot be denied that a knife can be used as a weapon of offence. It can cut, it can pierce, it can be deadly. To say that a knife to be a deadly weapon should be of a particular size would perhaps be not a correct statement."

Similar view was taken in State of Maharashtra vs. Vinayak 1997 Crl.L.J. 3988, where the High Court held that irrespective of its size, any knife is a deadly weapon.

Farid

40. The appellant Farid has been identified during trial by the complainant Ruchi Gupta as well as by her son PW-5 Kunal Jain. According to PW-5 Kunal Jain, Farid is a person who along with Mehfooz entered the house on the pretext of repairing the air-conditioner. The complainant has specifically stated that it was the appellant Farid who had taken out a pistol and a cartridge and threatened to load the pistol. There is no reason to disbelieve either the complainant or her son Kunal Jain with respect to the identity of the appellant. The robbers were in the house of the complainant for quite some time and, therefore, she as well as her son Kunal Jain had ample opportunity to see them. Consequently, they were very much in a position to identify them in the course of trial.

The appellant Farid admittedly, refused to join TIP before a Metropolitan Magistrate on 25.07.2006. While refusing to join TIP, he claimed that he had been shown to the witnesses in the police station and his photographs also had been taken. He also claimed that he was in the police station from 10th July to 13th July, 2006. However, there is no evidence either the appellant or his photographs having been shown either to PW-1 Smt. Ruchi Gupta or to PW-5 Kunal Jain. In fact, there is no evidence of either of

them having visited the police station on the date the appellant Farid was in police custody. Though Farid claims to be in police station from 10th July to 13th July, 2006, the deposition of PW-18 Anant Kumar would show that though he was interrogated on 11.07.2006, he was detained in the police station on that date and he was arrested later on 13.07.2006.

Though the case of the prosecution is that Rs 3,00,000/- in cash and a stolen Kada of the complainant was recovered from the house of the appellant Farid on 14.07.2006, I am excluding the aforesaid recovery from consideration since the appellant Farid having been interrogated on 11.07.2006. He was not likely to retain the stolen jewellery and cash in his house till 14.07.2006 and would have removed the same to a safe place, the moment he was allowed to leave the police station on 11.07.2006. But, the identification of the appellant Farid by the complainant and her son, coupled with the refusal to join TIP before a Metropolitan Magistrate is sufficient to establish his identity as one of the persons who participated in the dacoity. Since he was armed with a pistol which he threatened to load in the presence of the complainant, he has rightly was been convicted under Section 395 of IPC with the aid of Section 397 thereof.

41. For the reasons stated in the preceding paragraphs, the appellants Azharuddin and Ikram Ansari are given benefit of doubt and are hereby

acquitted, whereas the conviction of the appellants Farid, Mehfooz, Usman and Nadim is upheld.

Coming to the sentence, as far as the appellants Farid, Mehfooz and Nadim are concerned, since they were armed with deadly weapons in the view of the complainant and her children and only the minimum prescribed sentence of seven years has been awarded to them, there is no scope for reduction of their sentence.

As far as the appellant Usman is concerned, I find that though the maximum sentence prescribed with an offence punishable under Section 395 of IPC is 10 years, the Trial Court has been quite reasonable in sentencing him to undergo imprisonment only for a period of five years and to pay a fine of Rs 1000/- or to undergo SI for 15 days in default. Therefore, there is no ground for reduction of the sentence awarded to the appellant Usman is made out. The sentence awarded under Section 452 of IPC also cannot be said to be excessive or unreasonable and, therefore, does not call for any reduction.

All the appeals stand disposed of accordingly.

One copy of this order be sent to Jail Superintendent for information and necessary action.

LCR be sent back along with a copy of this judgment.

FEBRUARY 24, 2014 V.K. JAIN, J.
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