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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 5th November, 2014

+ **CRL.A. 593/2012**
ISLAM

..... Appellant

Through: Mr. Rahul Sharma, Advocate
versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Afhaq Ahmed Police Station Adarsh
Nagar

&

+ **CRL.A. 703/2012**
MANOJ KUMAR & ANR.

..... Appellant

Through: Mr. Naveen Gaur, Mr. Vijay Gaur and
Mr. Raj Jaiswal, Advocates
versus

STATE

..... Respondent

Through: Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Afhaq Ahmed Police Station Adarsh
Nagar

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Jagdev Singh, S/o late Sh. Arjun Singh was working as Cashier at Libra Filling Station for the last about 30 years. He used to deposit the earnings of the petrol pump in UCO Bank, Bank Complex, Azadpur, New Subzi Mandi. On 1st December, 2004 at about

10:30AM, he left the petrol pump on his scooter bearing No. **DL 4S 1879** for depositing the cash of Rs.5,40,000/-. His associate Hardeep Singh followed him on his own scooter. Due to red light, there was slight difference between them. When he reached near PNB, Main GTK Road, three boys on a motorcycle came and stopped him at the divider of the road. Two boys got down who were armed with revolver and knife. One of the boys armed with knife cut the rope with which he had tied the bag on his scooter. When he resisted, then he was assaulted on his right wrist and left thigh. Thereafter, they took away the bag containing currency notes towards Azadpur. His associate Hardeep Singh followed them but could not succeed. He was removed to Sehgal Nursing Home by the public where he got treatment.

2. On receipt of information from wireless operator, DD No.6A was recorded by PW3-ASI Radha Rani and PW19-SI Anuj Nautiyal was directed to reach the spot at Panchwati Adarsh Nagar, Sehgal Nursing Home. When he reached there, he found injured Jagdev admitted in ICU. Jagdev Singh was declared fit for statement and SI Anuj Nautiyal recorded his statement Ex.PW1/A and got the FIR registered. At the instance of PW4-Hardeep Singh, site plan

Ex.PW19/A was prepared. Crime team comprising of PW7-SI Rajesh was called at the spot who prepared the report Ex.PW7/A. Despite making efforts, SI Anuj Nautiyal could not get any clue regarding the assailants.

3. It is further the case of prosecution that on 19th December, 2004, SI Avinash Tyagi along with Constable Arun, Constable Vijay, Constable Naresh and Head Constable Rishi left the office of special staff, North West and at about 11:45 AM on the basis of secret information accused Vijay @ Pahadi was apprehended and on his formal search a country made pistol with two live cartridges were recovered. Separate proceedings in regard to recovery of pistol and cartridges were carried out. Thereafter, investigation was handed over to PW17-Inspector Yugraj Krishnan Bhatia, who arrested the accused in this case vide arrest memo Ex.PW13/C. Pursuant to the disclosure statement, Ex.PW13/F of accused Vijay, police officials along with him went to Sha Alam Bandh, Jahangirpuri where on the pointing out of accused Vijay, Maruti Car bearing No. DL-6C-5643 coming from Azadpur Road side was intercepted. Accused Manoj was driving the car while accused Ram Janam Pandey was sitting beside him. Both the accused were arrested. They made disclosure statement. Pursuant

to the disclosure statement made by the accused Ram Janam Pandey, he got recovered one bundle of currency notes having a stamp of Libra Petrol Pump of denomination of Rs.100/- (total 10,000/-) from a box lying in a room of his house No. 719, Gali No. 12 at Jeevan Park, Samaipur Badli. The same was seized vide seizure memo Ex.PW12/D. Accused Manoj also got recovered four bundles of currency notes of denomination of Rs.100/- (total forty thousand) and out of them on three bundles, recovered at the instance of Manoj, there was a stamp of Libra Petrol Pump whereas the 4th bundle was stated to be looted from A-Block, Jahangirpuri. The bundle was seized vide seizure memo Ex.PW13/K. Accused Vijay got recovered six bundles of currency notes of Rs.100/- denomination each, out of which five bundles were having slip and stamp of Libra Filling Station and one was not having any slip and same was stated to be looted at Jahangirpuri which were also seized vide seizure memo Ex.PW13/M. Accused Vijay and Manoj also pointed out the place of incident vide pointing out memo Ex.PW13/N and Ex.PW13/O. Inspector Yugraj Krishnan Bhatia directed the accused Vijay @ Pahadi to muffle his face when he was arrested, thereafter, an application-Ex.PW17/A was moved for conducting Test Identification

parade of accused Vijay who refused to join the TIP proceedings. After completion of necessary investigation, challan qua accused Vijay, Ram Janam Pandey and Manoj was filed.

4. It is further the case of prosecution that on the basis of secret information, on 27th May, 2005, accused Islam was apprehended at about 6:30 PM. Pursuant to his disclosure statement Ex.PW16/C, a knife was got recovered which was seized vide memo Ex.PW16/E. Accused Islam was asked to muffle his face and an application for conducting his TIP was moved but the accused refused to join the same. It is further alleged that on 28th June, 2005, accused Vicky surrendered before the Court, as such, he was arrested vide memo Ex.PW17/B. An application for conducting his TIP proceedings was also moved but this accused also refused to join the proceedings. After completing investigation supplementary challan was filed against these accused.

5. Charge under Section 120B/394 r/w Section 120B/397 r/w Section 120B IPC was framed against the accused Vijay Kumar, Manoj Kumar, Ram Janam Pandey, Islam and Vicky. Charge under Section 25/27 of Arms Act was also framed against the accused Islam. All the accused pleaded not guilty and claimed trial.

6. In order to substantiate its case, prosecution in all examined 19 witnesses. The case of accused persons was basically one of denial simplicitor. All of them took a plea that they were lifted from their residence and thereafter falsely implicated in this case. Neither any disclosure statement was made by them nor any recovery effected from them.

7. Vide impugned judgment dated 19th April, 2012 accused Vijay Kumar, Manoj Kumar and Islam were held guilty for offence under Section 394 IPC. Further accused Vijay and Manoj was also held guilty for offence under Section 394/397 IPC. Accused Ram Janam Pandey was held guilty for offence under Section 411 IPC. Accused Vijay Kumar, Manoj Kumar, Islam and Ram Janam Pandey were acquitted of the charge under Section 120 B IPC. Accused Vicky was acquitted of all the charges. Vide order on sentence dated 28th April, 2012, convicts Vijay Kumar and Manoj Kumar were sentenced to rigorous imprisonment for a period of 7 years and fine to the tune of Rs.10,000/- in default to undergo simple imprisonment for a period of one month. Convict Islam was sentenced to rigorous imprisonment for a period of 5 years and fine to the tune of Rs.10,000/- in default to undergo simple imprisonment for a period of one month. Convict

Ram Janam Pandey was sentenced to rigorous imprisonment for a period of four months and 24 days and fine to the tune of Rs.2000/- in default to undergo 15 days simple imprisonment. All the convicts were granted benefit of Section 428 Cr.P.C.

8. Accused Ram Janam Pandey had already undergone the period of sentence awarded to him. As such, he did not prefer any appeal. Separate appeal bearing Crl. Appeal No. 593/2012 has been filed by accused Islam whereas accused Vijay and Manoj Kumar have preferred joint appeal bearing Crl. Appeal No. 703/2012.

9. I have heard Mr. Rahul Sharma, Advocate for accused-Islam, Mr. Naveen Gaur, Advocate for accused-Manoj Kumar and Vijay Kumar and Mr. M.N. Dudeja, learned Additional Public Prosecutor for the State and have perused the record.

10. So far as actual incident is concerned, the star witness of prosecution is the complainant PW1-Jagdev Singh himself who deposed that he was working as cashier at Libra Filling Station, Fruit Mandi, Jahangir Puri. He used to collect all the cash from the petrol pump and deposit the same in UCO Bank, Bank Complex, Azadpur, New Subzi Mandi. On 1st December, 2004 at about 10:30 AM, with a sum of Rs.5,40,000/- for depositing the same in the UCO Bank, he

left the petrol pump on his scooter bearing No. **DL 4S 1879**. He was also having pay in slip booklet and some visiting cards with him. Money and the papers were kept in a green colour rexine bag and the bag was lying in the front bucket of the scooter tied with the sutli. Another employee, namely, Hardeep of the Filling Station was behind him on another scooter for his safety. When he reached at the red light of 100 number stand, there was a signal of red light. After the green light, they started and when he reached the cut of Indira Nagar, near PNB, one motorcycle tried to hit him. He tried to save himself but again the motorcyclists put their motorcycle in front of his scooter and stopped him. Three boys were riding on that motorcycle. The boy sitting on the last took out a revolver and pointed the same towards him and asked him to give the bag. However, he caught hold of the bag by his left hand and from right hand caught hold of the scooter and refused to give the bag. That boy gave the butt blow of the revolver on his right hand, still he resisted and did not give the bag. Then the boy who was sitting in the middle of the motorcycle also came there and showed him knife and when he resisted, he gave a knife blow on left thigh at two places. Thereafter, the third boy who was driving the motorcycle removed his motorcycle and came to him

and by using force looted the bag which was containing the cash, visiting cards and pay in slips. After looting the bag, all the boys ran away towards red light side. His companion Hardeep Singh came to him but he asked him to chase those boys. He requested one public person to inform the Filling Station about the occurrence and he made a call to the Filling Station by his mobile phone. Thereafter he was removed to Sehgal Nursing Home for his treatment where police met him and he narrated the incident to them.

11. PW4 Hardeep Singh has also deposed that on 1st December, 2004, Jagdev Singh, the Manager of Libra Filling Station, who used to deposit the cash in the Bank daily, was going to deposit the cash amount of Rs.5,40,000/- and left the Filling Station at about 10:30AM on his scooter. As per the daily routine, one person used to accompany him. On that date, he accompanied Jagdev Singh and followed him on his own scooter. When he reached near Jagdev Singh, he informed him “*paiso wala bag chheen ke le gaye*” and he further directed him to chase the boys who had snatched the bag. He tried to chase them but could not trace them. Thereafter, he returned back to the spot and came to know that Jagdev had been removed to the hospital. He found the scooter of Jagdev lying on the road.

Thereafter he went to the hospital and found Jagdev admitted there. The witness did not identify the accused persons. However, as regards the incident, he has corroborated the testimony of the complainant.

12. When Jagdev Singh was taken to Sehgal Nursing Home with alleged history of assault by knife blows while he was on his scooter at about 11:00 AM, he was examined by Dr. Mukund Khetan. He prepared his MLC-Ex.PW2/A which was proved by PW2-Dr. Ruchi Malhotra. On local examination, following injuries were found:-

- I) *Sharp cut wound on left thigh anterior aspect measuring about 10 x 4x 4 cm with artery bleeding deep. No neurological defect.*
- II) *Sharp cut wound over left thigh at anterior aspect near knee joint, measuring 8 x 4x 4 cm, deep fascia opened with arterial bleeding.*
- III) *Abrasion over left shoulder.*
- IV) *Abrasion on right wrist lateral aspect.*

13. On receipt of wireless message, DD No.6A was recorded by PW3 and thereupon PW19-SI Anuj Nautiyal reached the hospital, recorded statement Ex.PW1/A of Jagdev Singh and thereafter he got the FIR registered. In the initial statement also, the entire incident has been narrated by the complainant which was reiterated before the Court. As such, as regards the actual incident, the same stands proved from the testimony of PW1-Jagdev Singh duly corroborated by PW4-Hardeep Singh and PW2-Dr. Ruchi Malhotra.

14. The crucial question for consideration is as to who robbed the complainant of the cash amount of Rs.5,40,000/-. Admittedly, none of the accused persons were known to the complainant from before and even the initial statement does not give the name of any of the accused. None of the accused persons were apprehended at the spot. As per the case of prosecution, on 19th December, 2004, initially accused Vijay was apprehended and thereafter at his instance accused Ram Janam Pandey and Manoj Kumar were arrested. Accused Islam was arrested much later on 27th May, 2005 whereas accused Vicky surrendered in Court on 28th June, 2005.

15. It was vehemently argued by the learned counsel for the appellants that since none of the accused were known to the appellants, it was incumbent upon the prosecution to have conducted their Test Identification Parade and in the instant case, although TIP of accused Vijay, Islam and Vicky was got conducted but that was of no consequence since all these accused were shown to the complainant in the police station. Therefore, they were justified in refusing to join the proceedings. It was further submitted that so far as accused Islam is concerned, his name did not find mention in the initial statement of the witness recorded on 19th February, 2010 and at

that time, the witness had pointed towards accused Vicky. It was only later on when he was cross-examined by learned Public Prosecutor for the State on the point of identity that he admitted that it was accused Islam who had snatched the bag by cutting the rope from the motorcycle by a knife but denied that he inflicted any injury by knife. It was submitted that the witness was examined on several dates and he had been changing his stand time and again and, therefore, as regards the identity of the accused, his testimony is not reliable. Moreover, he had admitted in cross-examination that he was called in the police station twice and was shown to the accused persons.

16. Rebutting the submissions of learned counsel for the accused, it was submitted by learned Public Prosecutor for the State that although the incident had taken place on 1st December, 2004 but the witness came to be examined in the Court after a lapse of six years, therefore, some ambiguity appeared regarding the role played by the accused persons but that is inconsequential. Appellants Vijay and Islam refused to join TIP proceedings hence adverse inference is liable to be drawn against them.

17. Learned counsel for the appellant relied upon *Mohd. Shahid v. State*, 2014 (2) JCC 1305 for emphasising the necessity of conducting

Test Identification Parade of the accused persons after their arrest when the accused are not known to any of the witnesses from before.

I have the occasion to deal with this aspect of the matter in this judgment and it was observed as under:-

"22. The object of conducting a Test Identification Parade is two-fold. First is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who are seen by them in connection with the commission of the crime. Second is to satisfy the Investigating Authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of the witness. It is accordingly considered a safe rule of prudence to generally look for corroboration of sworn testimony of the witness in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings.

23. In **Sk. Hasib v. State of Bihar**, 1972 CriLJ 233 Hon'ble Supreme Court observed:

"...The purpose of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in Court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding..."

24. In **Rameshwar Singh v. State of J & K**, 1972 Cri LJ 15, it was observed:

"... It may be remembered that the substantive evidence of a witness is his evidence in court, but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial."

25. In **Suresh Chandra Bahri v. State of Bihar**, 1994 CriLJ 3271, Hon'ble Supreme Court observed:

“It is well settled that substantive evidence of the witness is his evidence in the court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned also who was a stranger to the accused because in that event the chances of his memory fading away are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of TIP.”

18. So far as accused Vijay and Islam are concerned, the Investigating Officer moved applications for conducting their Test Identification Parade. However, both these accused refused to join the proceedings on the ground that they were shown to the witness in the police station and their photograph was also taken. This plea is admitted by the complainant himself in his cross-examination as he admitted that he was called in the police station twice and accused persons were shown to him. Qua accused Vijay, he specifically admitted that he was shown by the police at the police station prior to

TIP proceedings. That being so, since the accused were shown to the witness in the police station, they were justified in refusing to join the proceedings and, therefore, refusal on their part to join the proceedings does not lead any adverse inference against them.

19. As regards accused Manoj, although as per the prosecution case, he was arrested on 19th December, 2004 along with co-accused Ram Janam Pandey at the instance of accused Vijay and while according to Inspector Yugraj Krishnan, he directed accused Vijay to keep his face muffled as his TIP was required to be conducted. Absolutely no explanation is forthcoming as to why he did not give any such direction to accused Manoj or got his TIP conducted. Therefore, in the absence of any TIP of accused Manoj, his identification in the Court for the first time by the witness after a lapse of six years of the incident is not reliable. In *Mohd. Abdul Hafeez vs. State of Andhra Pradesh*; (1983) 1 SCC 143, also names or description of accused persons was not given in FIR. No TIP was held and accused was identified only before Court four months after the occurrence. It was held that such identification is not reliable in connecting the accused with the crime.

20. Moreover, a perusal of testimony of the complainant goes to show that he had been giving different versions regarding the role played by the accused persons on different occasions. He was examined on 19.02.2010, 07.07.2010, 22.02.2011, 15.03.2011. His statement was recorded initially on 19th February, 2010. At that time, he deposed that the boy sitting on the last of the motorcycle took out a revolver and pointed out towards him and asked to give the bag, however, he declined, then that boy gave butt blow with revolver on his right hand but he still resisted. Then the boy sitting in the middle came and showed knife and when he resisted, he gave knife blow on left thigh at two places but he still resisted. Thereafter the third boy who was driving the motorcycle used force and looted the bag and then all the three ran away. Thereafter the witness pointed towards the accused Vijay Kumar as the person who was sitting on the last of the motorcycle and hit him with the butt of the revolver on right hand, Manoj Kumar as the person who showed him knife and stabbed on left leg twice and caused injuries and Vicky as the boy who snatched the bag and was driving the motorcycle.

21. The witness was recalled on 7th July, 2010 and he was cross-examined by learned Public Prosecutor for the State as he was

confused about the identity of the accused persons. At that stage, on the pointing out of learned APP, the witness admitted that accused Mohd. Islam was the same accused who had snatched the bag by cutting the rope from the vehicle by a knife but denied that he inflicted any injury on his person by the knife. He further denied the suggestion that accused Vicky was driving the motorcycle and went on stating that accused Manoj was driving the motorcycle. In his further cross-examination by learned Public Prosecutor on 22nd February, 2011, he deposed that he identified the country made pistol Ex.P1 which was pointed out by the accused Vijay at the time of committing robbery. In his further cross-examination dated 15th March, 2011 by learned Public Prosecutor for the State, he admitted that knife Ex.P2 was the same with which accused Islam cut the rope of the bag. In cross-examination by learned counsel for the accused, he deposed that he was called by the police at police station after arrest of the accused persons and they were shown to him. He also admitted that none of the accused persons were known to him prior to the incident. He did not disclose any special mark of country-made pistol and knife to the police.

22. Under the circumstances, considering the shaky deposition made by the complainant with respect to the identity of the persons involved in the incident of robbery, it will not be safe to place reliance upon his testimony as regards the identity of the culprits.

23. As regards the recovery of currency notes, it is the case of the prosecution that on 19th December, 2004, Constable Rishi, Constable Vijay, Constable Naresh and Constable Arun left with SI Avinash Tyagi in Govt. vehicle at about 11:45 AM. When they reached at Mahendra Park, Rani Bagh, a secret information was received by SI Avinash Tyagi that one boy was standing with motorcycle near park with an intention to commit an offence and who was having illegal arms with him. As such, raiding party was organized by SI Avinash Tyagi. On the pointing out of informer, accused Vijay was apprehended and a country made pistol with two live cartridges was recovered. It is pertinent to note that SI Avinash Tyagi, who was heading the raiding party, has not been examined by the prosecution for which no explanation is forthcoming. In the absence of examination of this crucial witness, it is not clear that when the secret information was received, any effort was made by him to join independent persons in the raiding party. Moreover, according to the

police officials, on the pointing out of accused-Vijay, Manoj and Ram Janam Pandey were arrested. Pursuant to the disclosure statement made by them, currency notes having stamp of Libra Filling Station was recovered from them. Admittedly, except for the police officials, there is no independent witness to the recovery. It is admitted by all the police officials that in the house of accused Manoj and Ram Janam Pandey, their family members were present but neither any family member nor any neighbours of the accused were asked to join the proceedings or the seizure memo of the currency notes. In *Kavinder & Ors. v. State*, 2005 (1) Acquittal 262 relied upon by the learned counsel for the accused, it was observed that a disclosure statement is an important piece of evidence especially when the same leads to the recovery of an incriminating fact or article. The Investigating Officer concerned, therefore, has to take care to associate with the process of investigation, independent witnesses to support the making of the alleged disclosure. He cannot choose the easy course of recording disclosures in the presence of members of his own team or a police stock witness. The Supreme Court has, in the decisions referred to above, emphasized the need for independent witnesses being associated with disclosure.

24. In the instant case, Inspector Yugraj Kishan Bhatia as well as PW12-Head Constable Naresh and PW13-Head Constable Rishi have admitted that despite the presence of 3-4 persons in the house of the accused persons, neither any of the family member nor any neighbour was asked to join the seizure of the currency notes. In the absence of joining any independent witness, the recovery becomes doubtful.

25. Furthermore, although PW13-Head Constable Rishi and PW15-Constable Arun have also deposed that six bundles of currency notes were also recovered at the instance of accused Vijay, five of which were bearing the stamp of Libra Filling Station, however, testimony of Inspector Yugraj Kishan Bhatia is conspicuously silent regarding recovery of any currency notes at the instance of accused Vijay. Moreover, Head Constable Rishi and Constable Arun does not depose as to from where accused Manoj and Vijay got recovery of currency notes affected.

26. Last but not the least, the currency notes had no special identification mark except for the fact that the same were bearing the stamp of Libra Filling Station. Although police officials have deposed that one bundle of currency notes of Rs.100/- denomination, three bundles and five bundles of currency notes of Rs.100/- denomination

recovered at the instance of accused Ram Janam Pandey, Manoj and Vijay were bearing the stamp of Libra Filling Station, however, if the currency notes were bearing the stamp of Libra Filling Station, the first attempt of the robber would be to destroy that piece of evidence which would immediately link him with the robbery and for possession of which he can have absolutely no explanation to offer. The person who commits robbery would know that in the event of his being arrested, his house was bound to be searched by the police in order to recover the stolen articles. Therefore, he would not like to retain any such article which can lend him in trouble on account of its recovery from him. Therefore, alleged recovery of currency notes after about 18 days of the incident is doubtful. Moreover, complainant has deposed that the currency notes which were released to him on *superdari* are not the same which were carried by him on the day of incident. He went on stating that he was informed that from the snatched money, a car was purchased by the accused persons which was sold and the money was the sale proceed which was released to him on *superdari*.

27. As regards recovery of country-made pistol from accused-Vijay and knife from accused-Islam, here again there is no independent

witness to the recovery. Moreover, admittedly, no identification mark of the country-made pistol or the knife was given by the complainant in his initial statement. Therefore, it is not established that these were the same weapon of offence which were used in the commission of crime.

28. Suffice it to say that prosecution case is, for the reasons stated in the foregoing paragraphs, renders the same doubtful. While it is true that there may be a strong suspicion suggesting the involvement of the appellants in the crime, suspicion, however strong, is not enough to justify a conviction. There indeed is a long distance between the prosecution case 'may be true' and 'must be true' which must be traversed by cogent and reliable evidence. (See *State Delhi Admn. vs. Gulzarilal Tandon*, AIR 1979 SC 1382; *Swarn Singh Rattan Singh vs. State of Punjab*, AIR 1957 SC 637, *Kulvinder (supra)*, *Mohd. Shahid (supra)*, *Sukh Chain and Hargovind @ Pappu vs. The State*, MANU/DE/3353/2009; *Om Singh @ Ombir vs. State*, MANU/DE/1460/2008). That evidence is not forthcoming in the instant case. Therefore the appellants are entitled to benefit of doubt and they are accordingly acquitted of the charges framed against them.

29. The appeals accordingly succeed and are hereby allowed. The impugned judgment and order on sentence passed by the Trial Court are set aside. The appellants be released from jail if not wanted in any other case.

Trial Court record along with the copy of the judgment be sent back.

A copy of this judgment be also sent to the Superintendent Jail for information to the appellants and compliance.

**(SUNITA GUPTA)
JUDGE**

NOVEMBER 05, 2014
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