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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15th May, 2015

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CRL.A. 1042/2013

AKIL

..... Appellant

Through: Ms. Rakhi Dubey, Adv.
versus

STATE NCT OF DELHI

..... Respondent

Through: Ms Fizani Hussain, Additional Public
Prosecutor for the State alongwith SI Amit
Sharma Police Station Sarita Vihar, New
Delhi

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CRL.A. 1241/2013

ZAFAR ALAM

..... Appellant

Through: Mr M. Hasibuddin, Adv.
versus

STATE NCT OF DELHI

..... Respondent

Through: Mr O.P. Saxena, Additional Public
Prosecutor for the State alongwith SI Amit
Sharma Police Station Sarita Vihar, New
Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Vide this common judgment, I shall dispose of two appeals bearing Crl. Appeal Nos. 1042/2013 and 1241/2013 filed by the appellants/accused Akil and Zafar Alam challenging the impugned judgment dated 10.07.2013 and order on sentence dated 22.07.2013 in Sessions Case No.93/2010 arising out of FIR No.346/2006 Police Station Sarita Vihar, New Delhi whereby the appellants were convicted under Section 392/34 Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of four (4) years and fine of Rs.5,000/- each, in default to undergo simple imprisonment for a period of two (2) months.

2. On 29.06.2006 an intimation through wireless message was received at Police Station Sarita Vihar regarding commission of a dacoity by five persons in House No. 673, DB Block, Pocket – II, Jasola Vihar, Delhi on which a DD No. 25A (Ex.PW6/A) was recorded and was entrusted to Sub Inspector Bhanu Pratap, who alongwith constable Abbas reached the spot and recorded statement of the complainant – Smt. Shahin and got the FIR (Ex.PW9/A) under Sections 379/356 IPC registered.
3. On 13.12.2006 accused Zafar Alam, Akil and Khalid were called to office of Special Staff by serving notice under Section 160 Cr.PC where they were interrogated by Inspector – Naresh Kumar. They made disclosure statements Ex.PW8/A, PW8/B and PW8/C regarding their involvement in the present case as such vide DD No.7A information was sent to Police Station Sarita Vihar. ASI Chaman Singh(PW7) came to the office of Special Staff where he was handed over copies of the arrest memos and the disclosure statements. Chaman Singh (PW7) interrogated the accused persons and arrested them vide arrest memos Ex.PW5/A, PW5/B and PW5/C. He got conducted the test identification proceedings in which accused persons – Zafar and Akil refused to participate whereas the complainant could not identify accused – Khalid and accordingly accused – Khalid was discharged. After completing investigation, charge-sheet was submitted under Section 356/379/397/34 IPC. Vide order dated 06.09.2010 charge for offence under Sections 392/34 and 397 IPC was framed against the accused persons to which they pleaded not guilty and claimed trial.
4. In order to substantiate its case, prosecution in all examined as many as 10 witnesses. All the incriminating evidence was put to the accused persons while recording their statements under Section 313 Cr.PC wherein they denied the case of prosecution and pleaded false implication in this case.
5. Vide the impugned judgment both the appellants were convicted for offences under Section 392/34 IPC and were sentenced as mentioned hereinbefore. However, they were acquitted of the offence under Section 397 IPC Feeling aggrieved, the present appeals have been preferred by them.

6. While assailing the findings of the learned Additional Sessions Judge, Ms Rakhi Dubey, Advocate appointed by Delhi High Court Legal Services Committee for the appellant – Akil submitted that in the initial statement [Ex.PW1/A] made by the complainant, which forms the basis of registration of FIR, the complainant stated that she was standing at the gate of her house then 2/3 persons came and snatched her mobile, cash and chain. However, at that time, she did not give the description of any person. Subsequently, on 08.01.2007, a supplementary statement of complainant was recorded wherein she gave a different version that five persons entered her house armed with *katta* and knives and committed dacoity. Thereafter, another supplementary statement was recorded on 26.09.2008 wherein she stated that she had earlier identified the accused persons meaning thereby that since the accused were shown to this witness earlier, therefore, they were justified in refusing to join the test identification proceedings. When the complainant appeared in the witness box, she gave an entirely different version. The prosecution case hinges upon the solitary testimony of the complainant which suffers from material improvements and, thus, it is not safe to convict the accused on her sole testimony. It was further submitted that as per the prosecution case, disclosure statements were made by accused person before the Special Staff where the accused had not given the FIR number or the Police Station, however, information was given to the Police Station vide DD No.7A Ex.PW7/A mentioning the FIR of this case as well as the Police Station. Two different calls were made to the Police Station giving different versions as such it was submitted that prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. Alternatively, it was submitted that the appellant/accused is not involved in any other case and he has already undergone half of the sentence as such a liberal view be taken.

7. The learned counsel for the appellant – Zafar Alam supported the submissions made by learned counsel for the appellant – Akil. It was submitted that although this appellant has already been released from jail after completing his sentence but since he has been falsely implicated in this case as such he is contesting the case on merits.

8. Rebutting the submissions of learned counsel for the appellants, it was submitted by learned Additional Public Prosecutor for the State that the first information given to

the PCR vide Ex.PW4/A was regarding commission of a dacoity by five persons armed with *katta* and knives and snatching of chain, money and mobile of the complainant after tying her. Subsequently, similar version was given by her in her deposition. If there is a slight discrepancy or improvement in her statements same is inconsequential as on the basic substratum of the case she has supported the case of the prosecution. The accused persons refused to join test identification proceedings hence adverse inference is liable to be drawn against them. They were duly identified by the complainant in the court as such the impugned judgment does not suffer from any infirmity which calls for any interference as such appeals are liable to be dismissed.

9. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

10. The star witness of prosecution is PW1 – Smt. Shahine, the complainant herself. This witness has unfolded that on 29.06.2006 at about 8.30 pm her children were playing outside the house. She came out of the house in order to take them inside as it was evening. They came inside and by that time one person whose name later on she came to know as Zafar came inside and inquired from her whether it is a house of washerwoman. She replied in negative. That person went out. She enquired from her children as to why they had not locked the door and when she again reached the door at that time accused – Zafar Alam alongwith four/five persons entered her house – one was armed with pistol while another was having knife in his hand. Accused – Zafar intimidated her not to raise alarm and to sit quiet. She was having two and a half month baby in her lap. The accused who was having knife put the knife on her baby. The accused having pistol put the pistol on her elder daughter. Her children started weeping. During this period accused – Zafar Alam went out and came twice – thrice. Thereafter, at the instructions of accused – Zafar Alam the other persons started searching her house. She was having three suitcases; they opened all the suitcases and scattered them. However, the big suitcase could not be opened by them so one of them asked her to open the same or else they would break it so she opened the suitcase herself. The accused persons took out her jewellery from the suitcases. She took out her chain which she was wearing and put the same under the mattress but accused Zafar asked her to produce the same. They also took out her purse

from the suitcase comprising Rs.12,500/-; one silver made *tabiz*. They also took her mobile phone kept on the table. After committing robbery, the accused persons tied her hands and legs with *dupatta* and also tied her elder daughter with another *dupatta*. They threatened her not to raise alarm as they were going to nearby house. She further deposed that she had given the aforesaid statement to the police, but the Investigating Officer – Bhanu Pratap distorted her statement (Ex.PW1/A) and wrote different version and obtained her signatures. She asked him as to why he is not taking her correct version on which he said that “*hamari badnami hoti hai ki hamare time to dacoity kaise ho gayi*”. She further deposed that her correct version was not contained in Ex.PW1/A and the correct version was written subsequently by the police. After the accused were apprehended, another police officer, namely, Chaman Singh came and offered Rs.10,000/- and asked her to keep mum and get a chain prepared for Rs.10,000/- and identify the same in the court. She was also told that she should listen to them otherwise she will have to run from pillar to post. None of her robbed articles have been recovered till date. She identified both the accused who committed robbery in her house. In cross examination, she reiterated that the correct version of the incident was not recorded in her complaint by the Investigating Officer – Bhanu Pratap. However, she did not make any complaint against the Investigating Officer for not recording her correct version as she was not advised to this effect. On 08.01.2007, she came to know that accused persons have been apprehended. She further deposed that she had given the description of the accused persons but the police did not record the same. She denied the suggestion that no such incident ever took place in her house or that the accused along with their associates never entered her house.

11. As regards the first limb of argument that the prosecution case hinges on the solitary testimony of the complainant, the Court can act on the testimony of a single witness provided he/she is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. In fact it is not the number, the quantity but the quality that is material. The principle is that the evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy otherwise.

Therefore, the Courts can fully and completely rely on the testimony of a solitary witness and record conviction. [*Vide Vadivelu Thevar v. The State Of Madras*, AIR 1957 SC 614; *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150; and *Kunju @ Balachandran v. State of Tamil Nadu*, AIR 2008 SC 1381.

12. Reverting to the submissions made by learned counsel for the appellants that the complainant has given different versions at different stages, a perusal of record goes to show that her testimony finds substantial corroboration from the material available on record and also depicts a clear picture as to how the Investigating Officer of the case tried to dilute the gravity of the offence.

13. The initial statement of complainant [Ex.PW1/A] recorded by the Investigating Officer Sub Inspector Bhanu Pratap is confined to snatching of mobile phone, chain and Rs.10,000/- belonging to her while she was standing outside her house. However, in her deposition before the Court she has explained as to how and why the Investigating Officer distorted her statement by stating that in case her correct version is recorded then that would affect the reputation of the police that dacoity has taken place and they are unable to maintain law and order situation. The factum of distortion of statement of complainant by Investigating Officer – Sub Inspector – Bhanu Pratap and diluting the gravity of the offence is manifest from the fact that immediately after the incident an information was given to Police Control Room at about 21.48 pm by the complainant which was received by PW4 – HC Bhagat Singh whereby the complainant informed that five persons armed with *kattas* and chaku had entered her house bearing number 673, Pocket – II, D Block, Okhla Vihar, Jasola and that they had tied her and had taken the mobile phone, Rs.10,000/- and the chain. HC Bhagat Singh reduced the said information in PCR form, photocopy of which is Ex.PW4/A and passed on this information to the concerned officials on the basis of which DD No.25A Ex.PW6/A was recorded and the DD was entrusted to Sub Inspector Bhanu Pratap.

14. Her version that subsequently her correct version was recorded by the police also finds corroboration from her supplementary statement dated 08.01.2007 wherein she stated that on 29.06.2006, five boys entered her house – one of them was armed with

katta and another was armed with knives. They robbed her of her mobile phone make Nokia, chain and purse containing Rs.10,000/- and tied her and escaped, which corroborates with her initial complaint made by her to the PCR.

15. Not only the initial Investigating Officer – Sub Inspector – Bhanu Pratap distorted the version given by the complainant and diluted the gravity of the offence. Even after arrest of accused persons, the subsequent Investigating Officer – Sub Inspector Chaman Singh offered Rs.10,000/- to her to get a chain prepared and identify the same in the Court. The entire sequence of events goes to show that the witness is a trustworthy witness on which implicit reliance can be placed. Moreover, absolutely no enmity, ill-will or grudge is being alleged by any of the accused against the complainant for which reason she will falsely implicate them in this case.

16. Although it is true that while appearing in the witness box, the witness has deposed that she was also robbed of various other jewellery articles which was not disclosed by her in any other statement but that itself is not sufficient to discard her testimony which otherwise is a trustworthy version of the entire incident. Exaggeration *per se* do not render the evidence brittle. Mere partial variations in the statement of witness cannot be duped as improvement as the same may be elaboration of the statement made by the witness earlier. The omission which amounts to contradiction in material particulars i.e. go to the root of the case / materially affects the trial or core of the prosecution case, renders the testimony of the witness liable to be discarded. Minor contradictions in the deposition of the witness are bound to be ignored.

17. In *State of Karnataka vs. Suvarnnamma*, (2015) 1 SCC 323, the Hon'ble Supreme Court dealt in detail and referred to various decisions by observing that much importance cannot be attached to minor discrepancies. Some of the judgments cited in the said case are reproduced as under:-

*“Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat (1983)
3 SCC 217:*

“5.We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the

appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment.

The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

Appabhai vs. State of Gujarat, (1988) Supp. SCC 241

“13.The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J., speaking for this Court in *Sohrab v. State of Madhya Pradesh* observed: [SCC p. 756, SCC (Cri) p. 824,para 8]

“This Court has held that falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered.”

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Leela Ram vs. State of Haryana (1999) 9 SCC 525

“9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in *State of U.P. v. M.K. Anthony* (1985) 1 SCC 505). In para 10 of the Report, this Court observed:

“10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and

formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

10. In a very recent decision in *Rammi v. State M.P with Bhura v. State of M.P.* (1999) 8 SCC 649) this Court observed:

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

In *State of Punjab v. Jagir Singh* (1974) 3 SCC 277) held:

“23. A criminal trial is not like a fairy tale wherein one is free to give flight to one’s imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilization and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosions cannot be given a bonus in favour of those who are guilty of polluting society and mankind."

18. In view of the aforesaid decisions, trivial discrepancies do not render the evidence of complainant unbelievable, who otherwise, has been found to be a truthful witness.

19. Furthermore, after arrest, test identification proceedings of both the accused/appellants was conducted and both of them refused to join the test identification parade on the ground that they were shown to the witnesses and that their photographs were taken in the Police Station. The learned counsel for the appellants, referred to the supplementary statement dated 26.09.2008 wherein the complainant stated that she had earlier identified accused on 16.01.2007 for submitting that this fortifies the version of the accused that they were shown to the witness earlier. This submission is misconceived inasmuch as, firstly, no such suggestion was given either to the complainant or the

Investigating Officer of the case that accused were shown to her and, therefore, the accused were justified in refusing to join the test identification parade. Moreover, as per this statement, she identified them in Patiala House Courts on 16.01.2010. However, as per record, the TIP was conducted much prior thereto i.e. on 08.01.2007 when the accused refused to join the proceedings. That being so, there is no evidence on record to prove that accused were shown to the complainant before or they were justified in refusing to join TIP proceedings. Rather refusal on their part to join the test identification parade leads to an adverse inference against them that had they join the proceedings they would have been identified in the test identification parade. In *Suraj Pal vs. State of Haryana (1995) 2 SCC 64*, Hon'ble Supreme Court in similar circumstances held that Court would be justified in inferring that had the appellants participated in TIP, he would have been identified by complainant. What can be culled out from the aforesaid decision is that the identification of the accused by the complainant in court coupled with their refusal to join the TIP establishes the identity of accused as assailant of the crime.

20. As regards the submission that initially the FIR was registered only under Section 356/379 IPC whereas the accused were convicted under Section 392/34 IPC and different version of the complainant are forthcoming and, therefore, accused could not have been convicted on the basis of such material on record, as stated above, the entire material available on record goes to show a very defective investigation carried out by the Investigating Officer of the case who in fact had tried to dilute the gravity of the offence and also distorted the entire incident which is apparent from the fact that at the very first available opportunity, the complainant had informed the PCR regarding commission of dacoity at her house by five persons armed with *kattas* and knives, tying them, taking away mobile, cash and chain. DD No.25A Ex.PW6/A was also recorded to this effect, yet Sub Inspector Bhanu Pratap satisfied himself by recording a different and distorted version and getting the FIR registered only under Section 356/379 IPC. Even the subsequent Investigating Officer – Sub Inspector Chaman Singh also asked the complainant to keep silence otherwise she will have to run from pillar to post. All this reflects a casual and callous attitude of both the Investigating Officers. However, the fate of the case cannot depend upon the perfunctory investigation carried out by the

Investigating Officer of the case.

21. Consequences of defective investigation have been elaborated in *Dhanaj Singh v. State of Punjab* (2004) 3 SCC 654. It was observed as follows:

"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.* (1995) 5 SCC 518).

22. In *Paras Yadav v. State of Bihar* (1999) 2 SCC 126 it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined *de hors* such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

23. As was observed in *Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC 517 if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518 and *Suvarnnamma* (*supra*).

24. The learned counsel for the appellants relied upon a decision of learned Single Judge of this Court in *Shyam Sunder @ Pappu vs. The State* [Crl. Appeal No. 31/2005] and *Suraj @ Rajbir vs. State* [Crl. Appeal No.216/2005] wherein the appellants were acquitted. However, the appellants do not get any benefit from this judgment as the facts and circumstances in that case were entirely different.

25. So far as conviction of the appellants under Section 392/34 IPC, the entire evidence was scrutinized by the learned Trial Court and thereafter the verdict of

conviction has been rendered which cannot be found faulted with. That being so, the findings of the learned Additional Sessions Judge convicting the appellants is upheld. However, as regards quantum of sentence, it was submitted that he is the only bread earner of the family having responsibility to maintain wife, children and parents who are on the verge of starvation. Antecedents of appellant – Akil are reported to be clean. His conduct has been reported to be satisfactory by the Superintendent Jail. That being so, while enhancing the quantum of fine of Rs.25,000/-, in default to undergo simple imprisonment for four months, substantive sentence is reduced to three years. The fine, if realized, a sum of Rs.20,000/- be paid to complainant PW -1 Shahine. As regards the appellant – Zafar Alam, no directions are called for as he has already been released from jail after serving the sentence.

26. As a result, Crl. Appeal No. 1241/2013 filed by the appellant – Zafar Alam is dismissed. Crl. Appeal No. 1042/2013 filed by the appellant – Akil is also dismissed except to the extent of modification in quantum of sentence. Pending applications, if any, also stand disposed of.

27. However, it is a fit case where in view of the perfunctory investigation carried out by the Investigating Officers, action is called for against them. As such, the concerned Deputy Commissioner of Police is directed to take necessary action against the Investigating Officers – Sub Inspector Bhanu Pratap and Sub Inspector – Chaman Singh and to submit a compliance report to this Court within three (3) months from the date of this judgment.

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

Appellant be informed through Superintendent Jail.

Copy of the judgment be sent to concerned DCP for information and compliance.

(SUNITA GUPTA)
JUDGE

MAY 15 2015/*rd*