

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.158 OF 2013

1. Ramprakash @ Prakash Ramchander
Bharti, Age.26 years, Occ: Service.
2. Anilkumar Ramdulare Gautam,
Age.23 years, Occu:Service,

Both residing at Mahatma Phule
Zopadpatti, Near Hanuman Mandir,
Sewree, Dongar, Near Sewree Court,
Mumbai 400 015. (At present they
are in judicial custody and lodged at
Arthur Road Prison, Mumbai.)

... **Appellants**

V/s.

The State of Maharashtra,
(At the instance of Juhu Police
Station in their C.R.No.12/12 and
in CC No.663/PW/2012)

... **Respondent**

WITH

CRIMINAL APPEAL NO.1231 OF 2013

Vishalkumar Madine Gautam
Age.23 years.R/o.Malavall Dube,
Post. Shankarpur, Taluka Harcha,
Dist.Basti, Uttar Pradesh
(At present Kolhapur Central Prison,
Convict No.C-5759. District. Kolhapur,
Kalamba, Maharashtra 416 007)

... **Appellant**

V/s.

The State of Maharashtra,
(Through Juhu Police Station, Mumbai.)...

Respondent

**WITH
CRIMINAL APPEAL NO.254 OF 2015**

Vinodkumar Ramjas Jaiswal,
Age.23 years.R/o.Vikramjyot Bazzar,
Post. Yarputi, Taluka Harcha,
Dist.Basti, Uttar Pradesh
(At present Kolhapur Central Prison,
Convict No.C-5756, Circle-313.
District. Kolhapur, Kalamba,
Maharashtra 416 007)

... **Appellant**

V/s.

The State of Maharashtra,
(Through Juhu Police Station, Mumbai.)... **Respondent**

.....

Ms.Nasreen S.K.Ayubi, Appointed Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent/State in APEAL/158/
2013.

Ms.Anamika Malhotra, APP for the Respondent/State in APEAL/
1231/2013.

Mr.Prashant Jadhav, APP for the Respondent/State in APEAL/
254/2015.

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CORAM : A.M.BADAR J.

DATED : 6th MARCH 2018.

ORAL JUDGMENT :

1 Criminal Appeal bearing No.158 of 2013 is filed by
original accused Nos.2 and 3 namely Ramprakash Bharti and

Anilkumar Gautam respectively. Criminal Appeal No.1231 of 2013 is filed by original accused No.4 Vishalkumar Gautam. Criminal Appeal No.254 of 2015 is filed by original accused No.1 Vinodkumar Jaiswal. By these appeals, appellant/accused are challenging the Judgment and Order dated 31/01/2013 passed by the learned Adhoc Additional Sessions Judge, Sewree, Mumbai in Sessions Case No.315 of 2012 thereby convicting appellants/accused for the offence punishable under Section 452 read with Section 34 of the IPC and sentencing them to suffer rigorous imprisonment for seven years each apart from payment of fine of Rs.5,000/- each and in default to undergo simple imprisonment for three months by each of them. Similarly, the appellant/accused Nos.1 to 3 came to be convicted for the offence punishable under Section 392 read with Section 34 of the IPC by the impugned Judgment and Order and they are directed to suffer rigorous imprisonment for seven years on this count. The learned trial Court further convicted all appellants/accused of the offence punishable under Section 342 read with Section 34 of the IPC and they are sentenced to suffer rigorous imprisonment for one year apart from payment of fine of Rs.1,000/- and in default to undergo further simple imprisonment for one month by each of them. Apart from this, the appellant/accused No.4 came to be convicted for the offence punishable under Section 392 read with Section 397 of the IPC as well as under Section 3 read with Section 25(1-B)(a) of the Indian Arms Act and he came to be

sentenced to suffer rigorous imprisonment for seven years and that of three years apart from payment of fine of Rs.1,000/- and in default sentence of one month respectively.

2 Facts in brief, leading to the prosecution of the appellants/accused can be summarized thus :

- (a) First Informant Roopam Kalpesh Wagani along with her family comprising of her father-in-law, husband and children used to reside at Flat No.601, Ashray Building, M.S.Road No.5, Juhu, Mumbai. Her father-in-law and husband used to deal with diamonds and they used to leave the house at about 9.00 a.m.
- (b) The incident allegedly took place on 27/01/2012 at about 1.30 p.m. At that time, P.W.No.1 Roopam Wagani was feeding her son. There was nobody in the house. She opened the door of her flat in response to the ringing of the door bell. She found appellant/accused No.1 Vinodkumar Jaiswal at the door. P.W.No.1 Roopam Wagani was knowing him as an Electrician. On the pretext of giving back the amount, he secured entry in the house of the First Informant and demanded a glass of water. The First Informant went to the kitchen and came back with a glass of water for the appellant/accused No.1 Vinodkumar Jaiswal. She found

three unknown persons in her house with the appellant/accused No.1 Vinodkumar Jaiswal. Then the First Informant was asked by them whether any work of electrician or that of plumbing is available. First Informant Roopam telephonically called her husband P.W.No.6 Kalpesh Wagani and on his instructions, told appellant/accused No.1 Vinodkumar Jaiswal to repair the flow of water of shower in the bathroom of her bedroom. According to the prosecution case, then appellant/accused No.1 Vinodkumar Jaiswal along with two of his associates went to the bathroom for effecting repairs. The fourth person was standing between the bedroom and the hall. After fifteen minutes, they came back in the hall and appellant/accused No.4 Vishalkumar Gautam pointed a firearm at head of P.W.No.1 Roopam Wagani. He threatened her to give keys and valuable articles in the house. Appellant/accused No.1 Vinodkumar Jaiswal along with two of his associates went to the bedroom, took out camera, watches, currency notes of Indian and Foreign origin, Cellphone and other valuable articles, such as, imitation jewellery and put those in two sacks. After robbing the First Informant, appellant/accused No.1 Vinodkumar Jaiswal opened the door of the flat for going out and at that point of time, P.W.No.3 Rameshchand Dube, watchman of the Apartment came and asked P.W.No.1 Roopam Wagani as well as appellant/accused No.1 Vinodkumar Jaiswal as to what

happened. By giving the answer 'nothing happened', appellant/accused No.1 Vinodkumar Jaiswal and one of his associate left the apartment of the First Informant. At that point of time, P.W.No.2 Chintan Dawriya along with his friend named Jinal came at the door of the apartment of P.W.No.1 Roopam Wagani in response to her call. He also inquired from P.W.No.1 Roopam Wagani as to what happened by entering inside the apartment. At that time, two of the accused persons were inside the flat. Under their threat, P.W.No.1 Roopam Wagani did not disclose anything. Then, the remaining two accused persons left the flat and P.W.No.1 Roopam Wagani narrated the incident of robbery to P.W.No.2 Chintan Dawriya as well as P.W.No.3 Rameshchand Dube in presence of Jinal. They all then immediately left the apartment of P.W.No.1 Roopam Wagani for apprehending the accused persons.

- (c) According to the prosecution case, after going to the ground floor by elevator, P.W.No.3 Rameshchand Dube shouted 'thief, thief'. He apprehended appellant/accused No.1 Vinodkumar Jaiswal. The public at large present there apprehended appellant/accused No.3 Anilkumar Gautam. P.W.No.2 Chintan Dawriya apprehended appellant/accused No.2 Ramprakash Bharti, whereas Jinal apprehended appellant/accused No.4 Vishalkumar Gautam. Police were

called on the spot. The accused persons were then handed over to the police.

- (d) P.W.No.11 Prakash Patil, Police Sub-Inspector of Juhu Police Station conducted search of person of appellants/accused and arrested them vide search-cum-arrest panchanama (Exhibit 36) in presence of panch witness P.W.No.4 Dharmesh Darji, after recording the FIR (Exhibit 23) of P.W.No.1 Roopam Wagani. Routine investigation followed. Panchanama of the spot of the incident (Exhibit 54) came to be prepared by P.W.No.11 Prakash Patil, PSI. Voluntary disclosure statement of appellant/accused No.4 Vishalkumar Gautam (Exhibit 44) came to be recorded on 27/01/2012 in presence of P.W.No.7 Upendra Italia. This has resulted in recovery of a pistol which came to be seized under panchanama Exhibit 45
- (e) During the course of investigation, test identification parade came to be conducted in presence of P.W.No.10 Nagurao Lokhande – a panch witness by P.W.No.5 Vijay Shetye, Nayab Tahsildar and accordingly, memorandum thereof (Exhibit 39) came to be recorded. Seized firearm along with the cartridges came to be sent for forensic examination and on completion of routine investigation, the appellants/accused persons came to be charge-sheeted.

- (f) After framing and explaining the charge to the appellants/accused persons, as they abjured guilt and claimed trial, the prosecution has examined in all thirteen witnesses in order to bring home the guilt to the appellants/accused. First Informant Roopam Wagani is examined as P.W.No.1 and the First Information Report lodged by her is at Exhibit 23. Her friend Chintan Dawriya is examined as P.W.No.2, whereas watchman Rameshchand Dube is examined as P.W.No.3. Panch witness, who witnessed search and arrest of appellant/accused namely Dharmesh Darji is examined as P.W.No.4 and arrest-cum-search panchanama is at Exhibit 36. P.W.No.5 Vijay Shetye is the Executive Magistrate, who conducted the test identification parade on 19/03/2012, the report whereof is at Exhibit 39. Kalpesh Wagani, husband of First Informant Roopam is examined as P.W.No.6. Panch witness to the disclosure statement and the resultant recovery by appellant/accused No.4 Vishalkumar Gautam namely Upendra Italia is examined as P.W.No.7. P.W.No.8 Rajendra Nalavade had photographed the scene of occurrence. P.W.No.9 Ghanshyam Gupta is a panch witness to panchanama Exhibit 49 and he had witnessed the event of showing the firearm and thereafter sealing the same. P.W.No.10 Nagurao Lokhande is a pancha witness to the test identification parade. P.W.No.11 Prakash Patil, PSI had conducted part of the investigation. P.W.No.12 Sharda Raut,

the Deputy Commissioner of Police had issued sanction order Exhibit 57 for sanctioning prosecution of the appellant/accused No.4 Vishalkumar Gautam for the offence punishable under the Arms Act. P.W.No.13 Vijay Khaire, the Police Inspector had conducted the remaining investigation.

- (g) The defence of the appellants/accused was that of total denial.
- (h) After hearing the parties, by the impugned Judgment and Order dated 31/01/2013, the learned Adhoc Additional Sessions Judge, Sewree, Mumbai was pleased to convict the appellants/accused and to sentence them as indicated in the opening paragraph of this Judgment.

3 I heard Ms.Ayubi, the learned Advocate appointed to represent the appellants/accused persons at sufficient length of time. She took me through the entire evidence and submitted that the entire case of the prosecution is improbable and unworthy of credit. In her submission, the appellants/accused persons are falsely implicated in the crime in question in order to avoid payment of their dues for electrical and plumbing work executed by them. Ms.Ayubi, the learned Advocate argued that evidence of P.W.No.6 Kalpesh Wagani goes to show that he had instructed his wife P.W.No.1 Roopam Wagani to get the work of plumbing done

and despite doing this work, as seen from the version of P.W.No.1 Roopam Wagani, she has failed to pay the necessary charges and taking advantage of the situation, she with the aid of P.W.No.2 Chintan Dawriya had falsely implicated the appellants/accused persons in the crime in question. The learned Advocate further argued that evidence of the prosecution to the effect that the appellants/accused persons were apprehended in the premises of the apartment is also not probable because, as seen from evidence of P.W.No.1 Roopam Wagani as well as P.W.No.2 Chintan Dawriya and P.W.No.3 Rameshchand Dube, watchman, the incident was disclosed after the appellants/accused allegedly left the premises and, therefore, evidence that they were apprehended in or in the vicinity of the apartment is unbelievable. The learned Advocate further argued that allegedly seized articles were not mixed with other articles in order to enable the First Informant to identify the articles claimed by her to be owned by her. The seized articles, as seen from the cross-examination of the panch witness, are articles readily available in the market and, therefore, the evidence of identification to that effect is unworthy of credit.

4 The learned Additional Public Prosecutor supported the impugned Judgment and Order by submitting that the prosecution has adduced clear, cogent and trustworthy evidence in order to bring home the guilt to the appellants/accused. In submission of the learned APP, the appellants/accused were

caught red-handed and, therefore, theory of false implication does not deserve a moments consideration.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings including copies of depositions of prosecution witnesses as well as documentary evidence adduced by the prosecution.

6 According to the prosecution case, appellants/accused persons committed trespass at the house of the First Informant with an intention of committing offence of robbery and by using deadly weapon, they had committed robbery of cash and valuables from the house of P.W.No.1 Roopam Wagani by wrongfully confining her. According to the prosecution case, at the time of the incident of robbery, P.W.No.3 Rameshchand Dube and P.W.No.2 Chintan Dawriya appeared on the scene of the occurrence. As such, evidence of all these three witnesses will have to be re-appreciated in order to ascertain whether the conviction and the resultant sentence is justified or not and other evidence adduced by the prosecution is corroborative in nature.

7 P.W.No.1 Roopam Wagani has deposed exactly in tune with her FIR Exhibit 23 lodged with the promptitude on the day of the incident i.e. on 27/01/2012 itself. The incident in question, as seen from evidence of P.W.No.1 Roopam Wagani, P.W.No.2

Chintan Dawriya and P.W.No.3 Rameshchand Dube watchman of the apartment, lasted from 1.30 p.m. up to about 2. 30 p.m. of that day. P.W.No.1 Roopam Wagani along with her family was residing on 6th floor of Ashray Apartment and at the relevant time, except her minor son, there was nobody in her apartment. Work of guarding that apartment was entrusted with P.W.No.3 Rameshchand Dube. It is seen from cross-examination of P.W.No.1 Roopam Wagani that appellant/accused No.1 Vinodkumar Jaiswal was working as Electrician at her residence from last two to three years. Similarly, cross-examination of P.W.No.2 Chintan Dawriya shows that he was knowing the appellant/accused No.1 Vinodkumar Jaiswal since prior to one year of the incident. P.W.No.3 Rameshchand Dube, Security Guard of the apartment has stated in his evidence that he was knowing the appellant/accused No.1 Vinodkumar Jaiswal as he was doing the work as an Electrician and Plumber and had come to the building on two/three occasions. The material elicited from cross-examination of P.W.No.1 Roopam Wagani as well as P.W.No.2 Chintan Dawriya, apart from their version in the chief-examination, makes it clear that both these witnesses were fully knowing the appellant/accused No.1 Vinodkumar Jaiswal. Similarly, P.W.No.3 Rameshchand Dube was also knowing this accused because of his visits to the apartments for doing the work of plumbing as well as electrician. Thus, evidence of P.W.No.1 Roopam Wagani that she let the appellant/accused No.1

Vinodkumar Jaiswal in her apartment cannot be doubted as her unnatural conduct. P.W.No.1 Roopam Wagani has categorically deposed that when she fetched water for the appellant/ accused No.1 Vinodkumar Jaiswal, she found him to be in the company of three other accused persons in the hall of her house. Evidence of P.W.No.1 Roopam Wagani to the effect that appellant/accused No.1 Vinodkumar Jaiswal then asked her about availability of electrical work or plumbing work, is gaining corroboration from evidence of her husband P.W.No.6 Kalpesh Wagani, who has deposed that P.W.No.1 Roopam Wagani called him telephonically to ask whether such type of work is available. As per version of P.W.No.1 Roopam Wagani then, as per instructions of her husband P.W.No.6 Kalpesh Wagani, she asked appellant/accused No.1 Vinodkumar Jaiswal to repair the flow of water in the bathroom. Thereupon, appellant/accused No.1 Vinodkumar Jaiswal along with two of his associates went to the bathroom, whereas their one associate stood between bedroom and the hall. Version of P.W.No.1 Roopam Wagani shows that then after lapse of about fifteen minutes all accused persons came in the hall and appellant/accused No.4 Vishalkumar Gautam whipped a firearm and pointed it at her head, threatened her to give the keys as well as valuable articles. P.W.No.1 Roopam Wagani then stated that appellant/accused No.1 Vinodkumar Jaiswal and his two associates went in her bedroom, whereas appellant/ accused No.4 Vishalkumar Gautam stood beside her pointing firearm at her

head. Rest of three accused persons took camera, watches, currency notes of Indian and Foreign origin, cellphones, imitation jewellery and other articles from her bedroom and stocked those articles in two sacks.

8 What happened after committing the robbery at the gunpoint by accused persons is stated by P.W.No.1 Roopam Wagani in her further evidence. After looting the valuables, the accused persons were discussing whether to kill P.W.No.1 Roopam Wagani and her son or whether to kidnap them. During the course of discussion, appellant/accused No.1 Vinodkumar Jaiswal opened the door to see P.W.No.3 Rameshchand Dube, watchman of the apartment at the door. It is seen from evidence of P.W.No.1 Roopam Wagani that though P.W.No.3 Rameshchand Dube asked her as to what happened, to which she replied in negative under threats of the accused persons. Then appellant/accused No.1 Vinodkumar Jaiswal and one of the co-accused started going down and at that time her friend P.W.No.2 Chintan Dawriya with his friend Jinal arrived at the door of the apartment. They asked her as to what happened, but as the remaining two accused persons, out of which one was holding a firearm, were present inside the apartment, she replied in negative. Then the remaining two accused persons left the house. Thereafter, as per version of P.W.No.1 Roopam Wagani, she disclosed the incident to P.W.No.2 Chintan Dawriya, P.W.No.3 Rameshchand Dube and Jinal.

P.W.No.1 Roopam Wagani has stated in her evidence that the appellants/accused carried the looted articles in two sacks. She further deposed that thereafter all accused persons were arrested outside the house.

9 Now, let us see what P.W.No.3 Rameshchand Dube, watchman of the apartments is stating about the incident. He stated that on 27/01/2012 at about 1.30 p.m. appellant/accused No.1 Vinodkumar Jaiswal came to the apartment with his three companion and informed him that they have come for doing electrical and plumbing work at the apartment of P.W.No.1 Roopam Wagani. He, therefore, allowed all of them to enter in the building and to go to the 6th floor apartment of P.W.No.1 Roopam Wagani. As disclosed by P.W.No.3 Rameshchand Dube, as the accused persons did not return back for a considerable time, he became suspicious and knocked the door of the flat of P.W.No.1 Roopam Wagani. At that time, appellant/ accused No.1 Vinodkumar Jaiswal and one of his companion came out. They as well as P.W.No.1 Roopam Wagani informed him that nothing had happened, but he saw P.W.No.1 Roopam Wagani in frightened condition. At that point of time, as per version of P.W.No.3 Rameshchand Dube, P.W.No.2 Chintan Dawriya and his friend came at the door of the apartment. They both entered in the flat. Remaining two persons by disclosing that nothing had happened came out of the flat and started to go down by stair case.

Thereafter, as per version of P.W.No.3 Rameshchand Dube, P.W.No.1 Roopam Wagani disclosed the incident of robbery at gunpoint and, therefore, they all immediately left the apartment for going down by the elevator. P.W.No.3 Rameshchand Dube further deposed that he shouted 'thief, thief' and caught appellant/accused No.1 Vinodkumar Jaiswal. P.W.No.2 Chintan Dawriya and his friend Jinal nabbed two accused persons, whereas the fourth companion was nabbed by the persons of the locality.

10 P.W.No.2 Chintan Dawriya is friend of P.W.No.1 Roopam Wagani. He received a message at about 2.00 p.m. of 27/01/2012 from P.W.No.1 Roopam Wagani and in a telephonic call, he heard some negative sound and, therefore, he along with his friend Jinal rushed to the house of P.W.No.1 Roopam Wagani. As per version of this witness, when he reached at the front door of the apartment of P.W.No.1 Roopam Wagani, he saw P.W.No.3 Rameshchand Dube standing outside the door apart from two accused persons. Those two accused persons left the spot and proceeded towards the ground floor by disclosing that nothing had happened. P.W.No.2 Chintan Dawriya then stated that he along with his friend and P.W.No.3 Rameshchand Dube entered in the apartment of P.W.No.1 Roopam Wagani and found two more persons thereat. Upon being questioned, those persons replied that they are doing plumbing work and then left. Thereafter, as per version of P.W.No.2 Chintan Dawriya, P.W.No.1 Roopam

Wagani disclosed the incident to both of them and, therefore, they all rushed towards the ground floor by the elevator. P.W.No.2 Chintan Dawriya has deposed that then P.W.No.3 Rameshchand Dube apprehended appellant/accused No.1 Vinodkumar Jaiswal, whereas he apprehended appellant/accused No.2 Ramprakash Bharti, his friend Jinal caught appellant/accused No.4 Vishalkumar Gautam, whereas the public caught hold of appellant/accused No.3 Anilkumar Gautam.

11 Perusal of evidence of all these three witnesses goes to show that their testimony is congruous and consistent in all material aspects. In unison, the trio have disclosed the sequence of events which took place at the time of incident and whatever they had witnessed during the happening of the incident in question. All these three witnesses have categorically identified the appellants/accused persons and disclosed the role played by all of them in the robbery at the gunpoint. Evidence of P.W.No.2 Chintan Dawriya further shows that when the appellants/accused persons were apprehended, appellant/accused No.1 Vinodkumar Jaiswal and appellant/accused No.2 Ramprakash Bharti were carrying a sack with them. From cross-examination of all these three witnesses, it is brought on record that they all were previously knowing appellant/accused No.1 Vinodkumar Jaiswal as he was doing electrical work as well as plumbing work. From cross-examination of P.W.No.1 Roopam Wagani, it has been

brought on record that within five minutes of P.W.No.2 Chintan Dawriya coming on the spot, remaining two accused persons left. She denied the suggestion that over the issue of unpaid dues, there was quarrel between her and Chintan on one side and the accused persons on the other side. This suggestion implies that the appellants/accused persons have accepted their presence on the spot at the time of the incident. From cross-examination of P.W.No.3 Rameshchand Dube, it is brought on record that he caught appellant/accused No.1 Vinodkumar Jaiswal in the premises of the building, rest of the two accused persons were caught by P.W.No.2 Chintan Dawriya and his friend Jinal and the fourth accused was caught outside the campus. This material elicited in cross-examination again points out presence of the appellants/accused at the scene of the occurrence at the time of the incident. Apart from this, there is nothing in cross-examination of all these three witnesses which would shake the case of the prosecution. All these three witnesses are natural witnesses to the incident and their presence on the scene of occurrence cannot be doubted. There is no material in cross-examination of these three witnesses to infer that either they were not present on the scene of occurrence or that they are telling a lie.

12 Now, let us see whether evidence of these witnesses is gaining corroboration from other evidence available on record.

After apprehending the appellants/accused in the premises of Ashray Apartment, they were handed over to police. P.W.No.11 Prakash Patil, PSI arrested all of them after taking their personal search in presence of P.W.No.4 Dharmesh Darji, panch witness. The panchanama is at Exhibit 36. Congruous evidence of P.W.No.11 Prakash Patil, PSI and that of P.W.No.4 Dharmesh Darji shows that after conducting personal search of the appellants/accused, panchanama Exhibit 36 came to be prepared. P.W.No.4 Dharmesh Darji has deposed that in the personal search of appellant/accused No.1 Vinodkumar Jaiswal, he was found to be carrying a sack containing ten watches, a camera as well as Indian and foreign currency notes. Appellant/accused No.2 Ramprakash Bharti was found to be carrying a sack containing eight bangles, necklace and a finger ring. Evidence of P.W.No.4 Dharmesh Darji further shows that appellant/accused No.3 Anilkumar Gautam was found to be possessing two cellphones; one of Apple made and one of Samsung made, whereas appellant/accused No.4 Vishalkumar Gautam was found to be in possession of two cartridges. All these articles came to be seized vide panchanama Exhibit 36. Evidence of P.W.No.1 Roopam Wagani shows that she has identified seized articles, which were watches, camera, jewellery etc. Even if those articles were not mixed with other articles, it is well settled that women are having uncanny sense of identification of their articles of daily use and as such, no infirmity can be found in her evidence in respect of identification of articles belonging to her, which were

found in possession of the appellants/accused persons soon after the incident. This evidence attracts presumption as envisaged by Illustration (a) to Section 114 of the Evidence Act.

13 On 27/01/2012 i.e. on the date of incident itself, appellant/accused No.4 Vishalkumar Gautam had made a disclosure statement to P.W.No.11 Prakash Patil, PSI in presence of P.W.No.7 Upendra Italia, a pancha witness. Evidence of both these witnesses shows that appellant/accused No.4 Vishalkumar Gautam then took them to Ashray Building, where P.W.No.1 Roopam Wagani used to reside. He then lead the police team and the panch witness to the third floor of the said building and pointed a cupboard kept in the corridor of that building, from where he discovered the firearm containing one live cartridge. The same came to be seized vide panchanama Exhibit 45. This seized firearm was sent for forensic examination and report of Ballistic Expert Exhibit 58 shows that the same was found to be single barrel breech loading country-made handgun, in the working condition and capable of chambering and firing 8 mm rifle cartridge. Seized cartridges were also found to be live cartridges by the Ballistic Expert in his report Exhibit 58.

14 Evidence of P.W.No.12 Sharda Raut, Deputy Commissioner of Police reveals that after perusal of the entire material placed before her, she accorded sanction to prosecute

appellant/accused No.1 Vinodkumar Jaiswal vide Order Exhibit 57.

15 Evidence of P.W.No.1 Roopam Wagani apart from being corroborated by the FIR Exhibit 23 lodged by her with promptitude, is further gaining corroboration from the situation prevalent on the scene of occurrence as reflected from the contemporaneous spot panchanama Exhibit 54 recorded on the very day of the incident i.e. on 27/01/2012 itself. This spot panchanama is duly proved by P.W.No.11 Prakash Patil, PSI. It reflects that household articles were lying halter-scatter in the apartment of P.W.No.1 Roopam Wagani. Locks of drawers from the cupboard were found broken and drawers were found open.

16 To conclude evidence of prosecution, as such, reflects commission of house trespass by the appellants/accused with an intention to commit robbery at the gunpoint by wrongfully confining the First Informant P.W.No.1 Roopam Wagani. The alleged offences, as such, are duly proved by the prosecution, even if the discrepant evidence regarding test identification parade conducted by the prosecution after more than two months from the incident is ignored from consideration. Similarly, appropriate sentence is imposed by the learned trial Court for the offences which are held to be proved against the appellants/accused. In the result, the appeals fail and, therefore, the Order :

ORDER

- (i) The appeals are dismissed.

(A.M.BADAR J.)