IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.225 of 2007
Date of Decision: 25.04.2026

Niyamat Ali **.....Appellant**

Versus

State of Himachal Pradesh **.....Respondent**

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ***Yes.***

For the Appellant: Mr. Karan Singh Kanwar, Advocate.

For the Respondent: Mr. Vishal Panwar, Additional Advocate General.

Sandeep Sharma, J. *(Oral)*

Instant appeal filed under Section 374 of Cr.P.C. lays challenge to judgment dated 28.06.2007 passed by the learned Additional Sessions Judge, Sirmaur, District at Nahan, in Sessions Trial No.14-N/7 of 2004, whereby afore Court while acquitting co-accused Amit Gupta and Mehtab, convicted appellant-accused Niyamat Ali **(for short, 'appellant-accused')** for his having committed offences punishable under Sections 392, 342, 506 and 323 of IPC and sentenced him as under:

Section(s)	Sentence	Fine
392 IPC	Rigorous imprisonment for five years.	₹20,000/- (in default, to further undergo imprisonment for one year)

323 IPC	Simple imprisonment for six months.	₹500/- (in default, to further undergo imprisonment for one month)
342 IPC	Simple imprisonment for six months.	₹500/- (in default, to further undergo imprisonment for one month)
506 IPC	Rigorous imprisonment for two years.	₹10,000/- (in default, to further undergo imprisonment for six months)

2. In nutshell, case of the prosecution, as emerge from the pleadings as well as record of the learned trial Court is that accused Amit Gupta, appellant-accused, Mehtab, Amar Singh (since deceased) and Irfan (absconding) entered into an agreement to do an illegal act by illegal means to commit the offence of dacoity and in pursuance of such agreement, committed the offence of dacoity by showing revolver and knife to Santosh Bansal (PW-3) **(for short, 'complainant')** and her servant Chhotu (PW-4). Allegedly above named accused tied the hands of complainant as well as her servant and took away sum of ₹15,000/- and watch from the house of the complainant. Prosecution set up a case that on 27.07.2004 at 07:00 pm, accused, named hereinabove, entered the house of the complainant and in furtherance of their common intention, committed dacoity after wrongfully confining the complainant and her servant. While committing the act of dacoity, accused also caused hurt

to Anil Kumar Bansal (PW-14) and also committed offence of criminal intimidation by threatening complainant (PW-3) and her servant Chhotu (PW-4).

3. Anil Kumar Bansal (PW-14), who is in the karyana business, used to go for collection of money every Tuesday after closing his shop. On 27.07.2004, above named person, in routine, had gone for collection of money in his own car and in house, his wife (complainant), along with her servant Chhotu (PW-4) was present. At 07:00 pm, while complainant (PW-3) was attending the telephonic call from her daughter, two persons came in the dining hall and told Chhotu (PW-4) that they had been sent by one Vinod, resident of Paonta Sahib, for bringing one bag of sugar. Chhotu (PW-4) told them that since shop is closed, sugar cannot be supplied. In the meantime, complainant (PW-3) also came on the spot and she also replied that since shop is closed, needful cannot be done, however, they can give their telephone number so that required consignment is sent to their residence by next day. While afore two persons, present in the dining hall, were writing the name and telephone number, two persons standing on the stairs also came up and joined the two persons, already present in the dining hall. Three of the persons overpowered complainant (PW-3) and took her to the bedroom where

they tied her hands and made her to lie on the floor. Accused also gagged her mouth with *chunni*, whereas the fourth person caught hold of Chhotu (PW-4) and tied his hands and he was made to sit by the side of complainant (PW-3).

4. Two of the persons were having country made revolvers and they pointed the said revolvers on the forehead of complainant (PW-3) and asked her to hand over the keys and cash. They also showed knife to her threatening to cause injury and thereafter, they started threatening Chhotu (PW-4) and asked him to give them the keys. In the meantime, two persons opened the *almirah* and carried out the search and removed the cash along with two watches. At about 07:45 pm, Anil Kumar Bansal (PW-14) returned to the house after collecting money. After parking his car, he took the money bag and went towards his house and firstly switched on the light and thereafter, rang call bell. One person came down stairs to open the door, who was recognised by Anil Kumar Bansal (PW-14) to be appellant-accused, who after unbolting the door, immediately went upstairs and he was followed by Anil Kumar Bansal (PW-14). Anil Kumar Bansal (PW-14), after having reached on the last step of the stairs, suspected some foul play. He called his wife, but she did not respond. In the meantime, appellant-accused pounced upon

Anil Kumar Bansal (PW-14) and tried to snatch the bag of money and in that process, both Anil Kumar Bansal (PW-14) and appellant-accused fell on the stairs. Anil Kumar Bansal (PW-14) raised alarm and ran towards State Bank along with the money bag and went to the clinic of Dr. Sohan Lal (PW-16), who provided first aid to Anil Kumar Bansal (PW-14).

5. Having heard alarm, many persons gathered outside the house of complainant (PW-3), including Mustak Ali (PW-1), but two intruders managed to escape, however, remaining two went towards the motorcycle and one of them started it, but before they could flee, Muskat Ali (PW-1) caught the motorcycle from its rear portion, but one of the occupants pointed a country made pistol on the chest of Mustak Ali (PW-1) and threatened to open fire, on which Mustak Ali (PW-1) got frightened and went back. In the meantime, both the accused ran towards fields, abandoning their motorcycle on the spot. Though Mustak Ali (PW-1) along with other persons followed them, but could not succeed in apprehending them. In the afore background, matter came to be reported to the Police, which, after having reached on the spot, recorded the statement of complainant (PW-3), which is Ex.PW3/A, on

the basis of which, FIR Ex.PW15/A came to be lodged, containing therein sequence of events, as has been detailed hereinabove.

6. During investigation, Police found involvement of five persons in the incident, namely accused Amit Gupta, Niyamat Ali (appellant-accused), Mehtab, Amar Singh (since deceased) and Irfan (absconding). Though during investigation, three persons namely Amit Gupta, Niyamat Ali (appellant-accused) and Mehtab were arrested, whereas one person namely Amar Singh was reported to have died in encounter and another, namely Irfan, is still absconding. After completion of investigation, Police presented Challan in the competent Court of law under Sections 120-B, 395, 342, 506 and 323 of IPC, which being *prima facie* satisfied that case under aforesaid provision of law exist against the accused, named in the FIR, proceeded to frame charge under the aforesaid provisions of law against all the accused, to which they pleaded not guilty and claimed trial.

7. Prosecution with a view to prove its case, examined 20 witnesses. Accused in their statements recorded under Section 313 Cr.P.C. denied the case of the prosecution in *toto* and claimed innocence. Though opportunity of leading evidence in defence came to be afforded to them, but they failed to avail the same. Subsequently, on

the basis of evidence led on record by the prosecution, learned trial Court vide judgment dated 28.06.2007 acquitted co-accused namely Amit Gupta and Mehtab under all the aforesaid provision of law, but convicted appellant-accused under Sections 392, 342, 506 and 323 of IPC and sentenced him as per description given hereinabove. In the afore background, appellant-accused approached this Court in the instant proceedings praying therein for his acquittal after setting aside the judgment of conviction and order of sentence recorded by learned trial Court. It is also pertinent to take note of the fact that during trial, all the accused, named hereinabove, remained in judicial custody for three years.

8. In nutshell, grouse of the appellant-accused, as has been highlighted in the grounds of appeal and further canvassed by Mr. Karan Singh Kanwar, learned counsel representing the appellant-accused, is that learned trial Court, while ascertaining guilt of the appellant-accused failed to appreciate the evidence in its right perspective, as a result thereof, findings detriment to the interest of appellant-accused, who has been falsely implicated, came to the fore. Mr. Kanwar submitted that learned trial Court committed illegality while acquitting some of the accused and convicting appellant-accused on the

same set of evidence. He submitted that though prosecution had charged accused, named in the FIR, with the offence of dacoity punishable under Section 395 of IPC, but such charge never came to be proved on account of the fact that prosecution was unable to prove that five persons had entered the house of the complainant with the intention to commit dacoity. He further submitted that prosecution was unable to prove criminal conspiracy under Section 120-B of IPC, as a result thereof, two co-accused namely Amit Gupta and Mehtab were acquitted, but yet for no cogent and convincing evidence, appellant-accused came to be convicted for his having allegedly committed robbery punishable under Section 392 IPC. He submitted that though learned trial Court while holding appellant-accused guilty of his having committed robbery, punishable under Section 392 IPC, arrived at a conclusion that appellant-accused was accompanied by three other co-accused, but such three persons never came to be identified before the learned trial Court. He further submitted that there are material contradiction and inconsistencies in the statements of prosecution witnesses, i.e. complainant (PW-3), Chhotu (PW-4) and Anil Kumar Bansal (PW-14), regarding the manner in which the alleged offence was committed and the articles taken by the accused in the alleged incident. He submitted

that though recovery of weapon in the case at hand was shown to be from the open place, but recovery of such weapon never came to be proved by any of the prosecution witnesses. He further submitted that though revolver was shown to be used in the offence, but such revolver never came to be recovered. He further submitted that as per own case of the prosecution, identification parade was not got conducted by investigating agency, because Chhotu (PW-3) and complainant (PW-4) were shown appellant-accused in the Police Station, as has been stated by complainant (PW-4) in his deposition before the learned trial Court.

9. To the contrary, Mr. Vishal Panwar, learned Additional Advocate General, while supporting the impugned judgment of conviction recorded against the appellant-accused vehemently argued that there is no illegality or infirmity in the same, as the same is based upon proper appreciation of evidence, be it ocular or documentary, adduced on record by the prosecution. While referring to the statement of Anil Kumar Bansal (PW-14), i.e. husband of the complainant (PW-3), Mr. Panwar, learned Additional Advocate General, submitted that appellant-accused, besides committing robbery, had given beatings to Anil Kumar Bansal (PW-14). He further submitted that bare perusal of statements of complainant (PW-3) and Chhotu (PW-4) clearly reveals

that appellant-accused committed robbery and as such, no illegality can be said to have been committed by the learned trial Court while holding appellant-accused guilty of his having committed offence punishable under Section 392 IPC. He submitted that appellant-accused herein cannot claim any parity with the co-accused namely Amit Gupta and Mehtab, because their presence on the spot could not be proved, but there is overwhelming evidence adduced on record by the prosecution to demonstrate that appellant-accused entered the house of the complainant (PW-3) and thereafter, besides giving beatings to Anil Kumar Bansal (PW-14), complainant (PW-3) and Chhotu (PW-4), committed robbery of ₹15,000/- and two watches. He submitted that if the statements made by all the material prosecution witnesses are read in conjunction, they clearly establish guilt of the appellant-accused. Minor contradiction and inconsistencies, if any, are not fatal to the case of the prosecution, especially when all prosecution witnesses have specifically stated with regard to unauthorised entry of appellant-accused in the house of complainant as well as beatings given to them.

10. I have heard the parties and gone through the record.

11. Admittedly, in the case at hand, at first instance, prosecution set up a case that accused namely Amit Gupta, appellant-

accused and Mehtab along with Amar Singh and Irfan entered into an agreement to commit the offence of dacoity and allegedly, in pursuance of such agreement, committed the offence of dacoity at the house of complainant (PW-3) by showing revolver and knife to the complainant (PW-3) and her servant Chhotu (PW-4). Allegedly, accused, named hereinabove, after having entered the house of complainant (PW-3), not only gave them beatings, but committed robbery of ₹15,000/- and two watches. However, during trial, prosecution was not able to prove that five persons entered the house of the complainant (PW-3), as a result thereof, co-accused Amit Gupta and Mehtab, whose presence was otherwise attempted to be proved by the prosecution by proving that motorcycle allegedly left by the accused while fleeing the spot, belongs to co-accused Amit Gupta, came to be acquitted. With a view to prove criminal conspiracy *inter se* accused, prosecution also attempted to prove that co-accused Amit Gupta had stayed in Hotel Ashiyana, Paonta Sahib, and in furtherance of his plan, he contacted persons namely Tofiq, Mehmood and Bakeel (PW-11). Though prosecution examined Bakeel (PW-11), but he did not support the case of the prosecution. Though co-accused Amit Gupta was unable to refute that he had not

hired Hotel Ashiyana, but he was acquitted for the reason that his presence at the spot of occurrence could not be established.

12. Though motorcycle allegedly left behind by accused, who had committed robbery, was owned by co-accused Amit Gupta, but he was able to prove that somebody had unauthorisedly taken his motorcycle and in that regard, he had lodged complaint Ex.DA. Though prosecution attempted to prove that persons namely Tofiq, Mehmood and Bakeel (PW-11) introduced co-accused Amit Gupta to co-accused Mehtab, but such case never came to be proved by Bakeel (PW-11), who turned hostile. Since presence of co-accused Amit Gupta and Mehtab could not be proved on the spot of occurrence, they were acquitted, but interestingly appellant-accused Niyamat Ali, who allegedly committed dacoity along with co-accused Amit Gupta and Mehtab and two other persons namely Amar Singh and Irfan, came to be convicted for his having committed offence of robbery, solely on the ground that he was identified by Anil Kumar Bansal (PW-14), for whom allegedly appellant-accused had opened the door and thereafter during scuffle, both appellant-accused and Anil Kumar Bansal (PW-14) had fallen from the stairs.

13. Complainant (PW-3) and Chhotu (PW-4) never named appellant-accused Niyamat Ali at the time of making complaint, however, during their deposition in Court, they had pointed towards appellant-accused. However, identification of appellant-accused in Court may not be of much relevance because Chhotu (PW-4) in his statement categorically admitted that he along with complainant (PW-3) was shown appellant-accused and co-accused Mehtab by the Police in the Police Station. Interestingly, co-accused Mehtab, who was also recognised by complainant (PW-3) and Chhotu (PW-4), was acquitted on the ground that there is no evidence to prove that co-accused Amit Gupta and Mehtab had any meeting prior to the alleged incident. Though prosecution case reveals that application for identification parade was submitted by the Police and in that regard, one judicial officer was appointed, however, appellant-accused refused to participate on the ground that he has been already shown to the complainant (PW-3) and Chhotu (PW-4) in the Police Station by the investigating agency. Though learned trial Court proceeded to draw adverse inference against appellant-accused, but once it is apparent from the statement of Chhotu (PW-4) that co-accused namely Mehtab and appellant-accused were shown to the complainant (PW-3) and Chhotu (PW-4) in the Police

Station, no fruitful purpose otherwise would have been served by conducting identification parade and as such, was rightly refused by the appellant-accused.

14. Learned trial Court failed to take note of the fact that two material witnesses namely Tofiq and Mehmood were cited as prosecution witnesses, but were not examined. Since Bakeel (PW-11) had not supported the case of the prosecution, it was all the more important for the prosecution to prove the guilt of the accused by examining afore persons namely Mehmood and Tofiq, whose examination could have established the presence of co-accused Mehtab on the spot also along with appellant-accused. In the case at hand, none else than Anil Kumar Bansal (PW-14) named appellant-accused Niyamat Ali, with whom he had prior acquaintance. Though Anil Kumar Bansal (PW-14) stated that he knew appellant-accused Niyamat Ali as he was driving bus, but neither owner of the bus ever came to be examined, nor particulars of the bus were placed on record.

15. True it is that the deposition made by interested witness cannot be brushed aside easily, rather same has a evidentary value, as is of independent witnesses, but by now it is well-settled that while ascertaining the guilt of accused on the basis of statement made by

interested witness, Court concerned is required to be more cautious and careful. Since in the case at hand, there is no evidence, save and except statement of Anil Kumar Bansal (PW-14) with regard to presence of appellant-accused on the spot, coupled with the fact that three other persons, who were allegedly with the appellant-accused at the time of commission of offence never came to be identified, this Court is persuaded to agree with Mr. Karan Singh Kanwar, learned counsel representing the appellant, that prosecution was not able to prove beyond reasonable doubt that on the date of alleged incident appellant-accused was the person who committed act of robbery at the residence of complainant (PW-3).

16. Interestingly, in the case at hand, learned trial Court on the same set of evidence proceeded to acquit co-accused Amit Gupta and Mehtab, but recorded conviction of the appellant-accused. There is no mention, if any, of three other persons, who had allegedly committed the act of robbery with the appellant-accused. Though at this stage, Mr. Vishal Panwar, learned Additional Advocate General, attempted to submit that one accused namely Amar Singh had expired and another namely Irfan is absconding, but judgment rendered by the learned trial Court, if read in its entirety, nowhere suggests that both these persons

were with the appellant-accused Niyamat Ali at the time of his allegedly committing robbery at the residence of complainant (PW-3). Even if it is presumed that above named two persons Amar Singh and Irfan were with the appellant-accused at the time of alleged incident, there is no mention, if any, of third person, who had entered the house of complainant (PW-3) along with appellant-accused and two other persons, named hereinabove.

17. In case tilted as **Ram Singh Vs. State of U.P.**, passed in Criminal Appeal No.206 of 2024, Hon'ble Apex Court held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the Court cannot convict one accused and acquit the other. Relevant Paras of afore judgment read as under:

> "31. In such circumstances, it cannot be said that the prosecution could prove the accusation against the appellant beyond all reasonable doubt. As a matter of fact, on the same set of evidence, the trial court gave the benefit of doubt to the other accused Lala Ram primarily on the ground that there was a grudge between the accused and PW-1.
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> 32. This Court in the case of Javed Shaukat Ali Qureshi, has held that when there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role,

the court cannot convict one accused and acquit the other. This Court clarified as under:

> 15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them the same or similar role, the court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the criminal court should decide like cases alike, and in such cases, the court cannot make a distinction between the two accused, which will amount to discrimination."

18. Though this Court is in agreement with the submission made by learned Additional Advocate General that Court while ascertaining the guilt of the accused, named in the FIR, could have convicted and sentenced the accused under charge of robbery, which otherwise was not made at the time of framing of charge, but once two accused, who had allegedly come with the appellant-accused for commission of offence punishable under Section 395 of IPC, i.e. dacoity, came to be acquitted for want of proving their presence on the spot, there was no occasion, if any, for learned trial Court to arrive at a conclusion that appellant-accused, who was allegedly seen by Anil

Kumar Bansal (PW-14), committed act of robbery, punishable under Section 392 of IPC.

19. Since learned trial Court found the evidence led on record by the prosecution to be deficient against accused Amit Gupta and Mehtab, who as per prosecution story had hatched criminal conspiracy along with appellant-accused, another accused namely Amar Singh and Irfan, there was no occasion, if any, to sentence appellant-accused for robbery, because on account of shortcomings, as came to be pointed out by learned trial Court while acquitting accused Amit Gupta and Mehtab, entire prosecution story had become doubtful, benefit of which was also required to be given to appellant-accused.

20. Moreover, this Court, after having scanned evidence led on record, especially statements of complainant PW-3, Chhotu PW-4 and Anil Kumar Bansal (PW-14), is persuaded to agree with Mr. Karan Singh Kanwar, learned counsel representing the appellant, that there are material contradictions and inconsistencies in the statements of prosecution witnesses. No doubt minor contradictions and inconsistencies may not be fatal to the case of prosecution, but once version put forth by these persons with regard to mode and manner of committing alleged act and presence of appellant-accused becomes

doubtful, version put forth by them cannot be taken as a gospel truth, rather same is required to be considered very carefully. In this regard, reliance is placed upon the judgment passed by Hon'ble Apex Court in **C. Magesh and others versus State of Karnataka (2010) 5 Supreme Court Cases 645**, wherein it has been held as under:-

> "45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasis, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Surja Singh v. State of U.P. (2008)16 SCC 686: 2008(11) SCR 286 has held:-(SCC p.704, para 14)
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> > " 14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy;..the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."
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> 46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that " no man is guilty until proven so," hence utmost caution is required to be exercised in dealing with situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and

thereby satisfying the test of consistence in evidence amongst all the witnesses."

21. There is another aspect of the matter i.e. recovery of weapon allegedly used by accused for committing act of robbery. Though as per story of the prosectuion, three weapons, i.e. two pistols and one knife, were used, but use of two pistols never came to be proved, rather same were not recovered and as such, there was otherwise no occasion to put the same to the complainant (PW-3) and other witnesses, who had an occasion to see the incident. As far as recovery of knife is concerned, admittedly same was recovered from open place, i.e. Guava orchards. In the instant case, aforesaid weapon was not put to the complainant (PW-3), Chhotu (PW-4) and Anil Kumar Bansal (PW-14). Since recovery of afore weapon was from the open place, accessible to general public, same may not be helpful to the case of prosecution, as has been held by the Hon'ble Apex Court in case titled as **Manjunath and Others Vs. State of Karnataka**, passed in Criminal Appeal No.866 of 2011, decided on 06.11.2023, wherein the Hon'ble Apex Court held that the recovery of weapon from the open place, accessible to all, is not reliable. Relevant Paras of afore judgment read as under:

"25. The next aspect is the recovery of the alleged weapons, we have noted the particulars thereof while discussing the findings of the Trial Court. Such recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered from a house where other persons were also residing which compromises the sanctity of such recovery and takes away from the veracity thereof.

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions have been discussed by the Privy Council in Pulukuri Kotayya v. King Emperor38 and the position was reiterated by this Court in Mohd. Inayatullah v. State of Maharashtra39, in the following terms:-

> "12…It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly

> relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery…"
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> (Emphasis supplied)

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

27.1 This court has, in various judgments, clarified this position. Illustratively, in Jaikam Khan v. State of U.P40 it was observed: –

> "One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries." (Emphasis supplied)

27.2 Also, in Nikhil Chandra Mondal v. State of W.B.41 the Court held:-

> "20. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been

> used, has been employed by the High Court to seek corroboration to the extra- judicial confession."
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> (Emphasis supplied)
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> 28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places. An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons."

22. Though at first instance, it came to be reported to the Police that accused committed dacoity of ₹15,000/- and two watches, but such version of complainant (PW-3) came to be changed while getting her statement recorded under Section 161 Cr.P.C., where she disclosed that only one watch was stolen, however, while making deposition in Court complainant (PW-3) improved her version by stating that ₹40,000/- and

two watches were taken away by the accused, which version of her being contradictory to her earlier two statements, detailed hereinabove, casts serious doubt about the correctness of story put forth by the prosecution. True it is that by way of medical evidence adduced on record, prosecution succeeded in proving that complainant (PW-3), Chhotu (PW-4) and Anil Kumar Bansal (PW-14) suffered minor and simple injuries, but once no cogent and convincing evidence ever came to be placed on record with regard to infliction of such injuries by the accused, named in the FIR, MLCs placed on record may not be of much relevance.

23. Consequently, in view of detailed discussion made hereinabove, as well as law taken into consideration, this Court has no hesitation to conclude that learned trial Court has failed to appreciate the evidence in its right perceptive and it has further fallen in grave error while acquitting some of the accused and convicting appellant-accused on the same set of evidence, which otherwise nowhere proves guilt, if any, of the appellant-accused punishable under Sections 392, 342, 506 and 323 of IPC. Hence, present appeal is allowed and impugned judgment of conviction and order of sentence recorded by learned trial Court are quashed and set aside qua the appellant-accused. Appellant-

accused is acquitted of the charge framed against him under Sections 392, 342, 506 and 323 of IPC. Interim order, if any, is vacated. Bail bonds, if any, are discharged.

Pending applications, if any, shall also stand disposed of.

(Sandeep Sharma),
Judge

April 25, 2026
(Rajeev Raturi)