

M Vijay vs the State of Karnataka

M Vijay vs the State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1685595

Court : Karnataka

Decided On : Mar-19-2025

Judge : H.P.Sandesh

Appeal No. : CRL.A/734/2012

Appellant : M Vijay

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2025 BEFORE THE
HON'BLE MR JUSTICE H.P.SANDESH CRIMINAL APPEAL NO. 734
OF 2012 C/W CRIMINAL APPEAL NO. 793 OF 2012 CRIMINAL
APPEAL NO. 1177 OF 2012 IN CRL.A NO. 734/2012: BETWEEN:

1. M. VIJAY S/O MOHANKUMAR DIPLOMA STUDENT R/O
LAKSHMIPURA GOLLARAHATTI TIPTUR TALUK TUMAKURU
DISTRICT. APPELLANT

Digitally signed (BY SRI. G.S.BALAGANGADHAR, ADVOCATE) by DEVIKA M AND: Location: HIGH COURT OF 1. THE STATE OF KARNATAKA KARNATAKA BY THE POLICE OF HULIYAR POLICE STATION TUMAKURU DISTRICT. RESPONDENT (BY SRI. CHANNAPPA ERAPPA, HCGP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING TO SET ASIDE THE ORDER OF CONVICTION AND SENTENCES PASSED BY THE P.O., F.T.C., TIPTUR BY THE JUDGEMENT AND ORDER DATED 29.06.2012 IN S.C.NO.63/2009 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 395 OF IPC. -2- IN CRL.A NO. 793/2012: BETWEEN:

1. MR. B.MAHESH S/O BASAVARAJA AGED ABOUT 21 YEARS R/AT NO.216, KONANAKUNTE CROSS KANAKAPURA ROAD BANGALORE.

2. MR. B.R.KUMARA

S/O RAMEGOWDA AGED ABOUT 24 YEARS R/OF ASALU BOMMANAHALLI SATHANUR HOBLI KANAKAPURA TALUK. RAMANAGARA DISTRICT PRESENTLY AT C/O BUILDER RAVI BESIDE DEVEGOWDAS HOUSE PADMANABANAGARA, BANGALORE. ...APPELLANTS (BY SRI. K.J.GOPI, ADVOCATE) AND:

1. STATE OF KARNATAKA

BY HULIYAR POLICE REP. BY THE STATE PUBLIC PROSECUTOR HIGH COURTS COMPLEX BANGALORE. ...RESPONDENT (BY SRI. CHANNAPPA ERAPPA, HCGP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION

374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT

AND ORDER PASSED ON 29.06.2012 BY THE P.O., F.T.C., TIPTUR IN S.C.NO.63/2009 AND 263/2011 - CONVICTING THE APPELLANTS/ACCUSED FOR THE OFFENCE P/U/S 395 OF IPC. -3- IN CRL.A NO. 1177/2012:

BETWEEN:

1. MR. B.G. RAMU S/O GOPALIAH AGED ABOUT 20 YEARS R/OF BOMMDANAHALLI VILLAGE KANAKAPURA TALUK BANGALORE. PRESENTLY AT KONANAKUNTE CROSS VENKATAREDDY LAT. BANGALORE.

2. MR. M.KUMARA @ MASTANA

S/O MUGAIAH AGED ABOUT 22 YEARS R/OF YEDDAMARANAHALLI KANAKAPURA TALUK RAMANAGARA DISTRICT PRESENTLY AT KONANAKUNTE CROSS, KANAKAPURA ROAD, BANGALORE. ...APPELLANTS (BY SRI. K.J.GOPI, ADVOCATE) AND:

1. STATE OF KARNATAKA

BY HULIYAR POLICE, REP. BY THE STATE PUBLIC PROSECUTOR, HIGH COURTS COMPLEX, BANGALORE. ...RESPONDENT (BY SRI. CHANNAPPA ERAPPA, HCGP) THIS CRIMINAL APPEAL IS FILED UNDER SECTION -4-

374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT

AND ORDER DATED 29.06.2012 PASSED BY THE P.O., F.T.C., TIPTUR IN S.C.NO.63/2009 AND S.C.NO.263/2011 - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S 395 OF IPC. THESE APPEALS COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER: CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

Heard learned counsel for the appellants and learned HCGP for the respondent-State.

2. CrI.A.No.734/2012 is filed by the accused No.1,

Crl.A.No.793/2012 is filed by accused Nos.3 and 6 and Crl.A.No.1177/2012 is filed accused Nos.2 and 4 challenging the judgment of conviction and imposing sentence for a period of five years with fine of Rs.5,000/- each for the offence under Section 395 of IPC, in default of payment of fine, to undergo simple imprisonment for a period of three months and also invoked Section 428 Cr.P.C. that accused Nos.1, 2, 3, 4 and 6 are entitled for set off for the period they have undergone in judicial custody.

3. The factual matrix of the case of the prosecution before the Trial Court is that on 18.12.2008 at 10.00 p.m., near -5-

Bellara Village, Huliya Hobli, Chikkanayakanahalli Taluk at Sira-Huliya Road, within the jurisdiction of Huliya Police Station, the accused Nos.1 to 4 and 6 along with absconded accused Nos.5 and 7 have committed dacoity i.e., when C.W.1 was driving the lorry bearing No.KA-44-1995 belonging to Purushottama from Sira side towards Huliya, the accused Nos.1 to 4 and 6 along with absconded accused Nos.5 and 7 threatened C.W.1 with knife and snatched Rs.16,500/- and voluntarily caused hurt to C.W.1 with razor and thereby committed offence. The Police investigated the case based on the complaint given by C.W.1 and filed the charge-sheet against all the accused persons and matter was assigned to FTC-I Tumakuru, and after FTC-IV Court is transferred to Tiputur, this case is transferred to Tiptur.

4. Having secured the accused, the accused did not

plead guilty and claimed for trial and accused Nos.5 and 7 were not secured and split-up case was registered against both of them. Hence, accused Nos.1, 2 to 4 and 6 have faced trial. The prosecution in order to prove the case examined the witnesses as P.Ws.1 to 14 and marked the documents as Exs.P1 to P16 and marked M.Os.1 to 6 and accused was subjected to 313

-6-

statement and not led any evidence. The Trial Court having considered evidence of prosecution, particularly P.Ws.1, 3, 8 to 4 and 14 comes to the conclusion that

nothing is elicited from the mouth of these witnesses and merely because independent mahazar witnesses have not supported the prosecution version, the evidence of other witnesses cannot be thrown away and comes to the conclusion that even after exercising great care

and caution, as already discussed above, no material discrepancy was elicited from the evidence of P.Ws.1, 3, 8 to 11 and 14. Their evidence clearly establishes that accused Nos.1 to 4 and 6 along with absconded accused were caught on 22.12.2008 and the same is sufficient to convict the accused persons and convicted the accused persons having considered the evidence of prosecution witnesses.

5. Learned counsel for the appellant in

Crl.A.No.734/2012 would vehemently contend that, except the evidence of P.W.1 and P.W.11, no other evidence before the Court. Learned counsel would contend that even P.W.1 also turned hostile and he could not able to identify any of the accused persons. Learned counsel also brought to notice of this Court that P.W.11 only identified two accused persons and -7-

P.W.2 is mahazar witness and P.W.3 is seizure mahazar witness and all of them have turned hostile. The Trial Court considered the evidence of C.W.1 and that too, when suggestion was made to C.W.1 that for the first time they are seeing the accused persons, he did not give any reply that he had seen the accused person and even C.W.1 was not able to identify the accused and the said suggestion ought not to have been relied upon by the Trial Court. Even in the cross-examination after one month, when C.W.1 was recalled, the same was relied upon and owner of the vehicle was not examined in which C.W.1 was working as driver and it is the case of the prosecution that Tata Sumo was used for committing offence. Though it is contended that documents are collected, but owner of the Tata Sumo was not examined before the Trial Court. Learned counsel would contend that answer elicited from P.W.14, who is also Investigating Officer is not credible and committed error in believing his evidence and the Court has to take note of the fact that accused No.1 was in custody for a period of 8 months 26 days during the time of trial as well as he was there in jail after conviction.

6. Learned counsel for the appellants in other two

connected appeals would contend that he would not reiterate the submissions made by learned counsel for the appellant in CrI.A.No.734/2012 appearing on behalf of accused No.1, but he would contend that they relied upon the evidence of P.Ws.1 and 11 and would vehemently contend that P.W.2 is the person who witnessed the accused persons through the light of the vehicle and the incident has taken place in the night at 10.00 p.m. Learned counsel would vehemently contend that when both the witnesses have not identified the accused, the Trial Court ought not to have relied upon the prosecution material for convicting

the accused. Learned counsel would contend that no Test Identification Parade was conducted, since both P.Ws.1 and 11 were not knowing the accused persons prior to the incident and they were not known to each other earlier and that they are strangers, Investigation Officer ought to have conducted Test Identification Parade. Learned counsel also would vehemently contend that even seizure mahazar was conducted in the presence of P.Ws.1 and P.W.11 and Investigating Officer has not properly assessed the fact as to vehicles belongs to whom

-9- and when there is a weak piece of material on record, the Trial Court ought not to have relied upon the same.

7. Learned counsel for the appellant in

CrI.A.No.734/2012 in support of his argument with regard to suggestion made to P.W.1 by the accused is concerned relied upon the judgment in KOLI TRIKAM JIVRAJ AND ANOTHER

VS. THE STATE OF GUJARAT reported in AIR 1969 GUJARAT 69, wherein the Apex Court held that when suggestions put in cross-examination are no evidence at all against the accused and on the basis of such suggestions no inference can be drawn against the accused that he admitted the facts referred to in the suggestions. It is possible that in putting suggestions the lawyer of the accused, if he thinks fit and proper, may not put the entire case of the accused in the cross-

examination of a prosecution witness. Therefore, the accused is entitled to the benefit of the plea set up by the lawyer but it cannot be said that the plea or defence which his lawyer puts forward must bind the accused.

8. The counsel also in support of his argument relied upon the judgment of Madhya Pradesh in SAKARIYA VS. - 10 - STATE OF M.P. reported in 1991 CRI.L.J.1925, wherein Madhya Pradesh High Court held that, defence-statement of

accused containing plain denial and false implication, subsequent suggestion by defence lawyer to prosecutrix about consent on her part, does not amount to admission that accused was guilty.

9. Learned counsel for the appellants in

Crl.A.No.793/2012 also relied upon the judgment in BASAVARAJ @ BASYA VS. STATE OF KARNATAKA reported in 2019 (2) CRIMES 371 (SC), particularly the counsel concentrated with regard to identification of the appellant- accused satisfactorily established, recovery of weapon at the instance of the accused also established, evidence corroborated by medical evidence, conviction is justified. Learned counsel would contend that in the case on hand, even though recovery was made in terms of Ex.P5-seizure mahazar, witnesses have turned hostile and recovery is not proved.

10. The counsel also relied upon the judgment in STATE OF RAJASTHAN VS. TALEVAR & ANR. reported in 2011 (3) Crimes 61 (SC), wherein the Apex Court held that - 11 -

recovery on the disclosure statements of either of the respondents/accused persons not in close proximity of incident, moreover, the materials recovered could have been passed from one person to another without any difficulty, no presumption can be drawn against the accused.

11. The counsel also in support of his argument relied

upon the judgment in MOHD. IQBAL M. SHAIKH & ORS. VS. STATE OF MAHARASHTRA reported in 1998 (2) CRIMES 106 (SC), wherein the Apex Court held that delay in examination of eye-witnesses, not satisfactorily explained, Test Identification Parade not held to corroborate substantive evidence, delay in arresting accused persons even though identified much earlier. Hence, in the absence of Test Identification Parade, there is no incriminating evidence against the accused persons.

12. The counsel also relied upon the judgment in MOHANLAL GANGARAM GEHANI VS. STATE OF MAHARASHTRA reported in 1982 SCC (CRI) 334. In this

judgment also, the Apex Court relies upon Test Identification

Parade, testimony of a witness who identified the accused for - 12 - the first time in Court without knowing him before, in the absence of any T.I. Parade, held, would be valueless and unreliable.

13. The counsel also relied upon the judgment of Bombay High Court in RAKESH GOPAL SHETTY & ANOTHER

VS. STATE OF MAHARASHTRA reported in 2013 (4) CRIMES 166 (BOM.), wherein the Court held that the accused was identified in the Court, the truth complainant was not called upon by the Investigating Officer to identify the accused at the test identification parade besides pacifies the statement of accused that no proper opportunity to see faces of the accused persons. Hence, evidence of complainant is of no use to convict the accused persons to crime.

14. The counsel also relied upon the judgment of Delhi High Court in DHAN BAHADUR VS. STATE reported in 2008

(3) CRIMES 666 (DEL.) and contend that identification of

accused during trial without holding test identification parade was valueless, witnesses could not be said to be reliable and conviction could not be set sustained. - 13 -

15. Per contra, learned High Court Government Pleader

for the respondent-State would contend that Ex.P10 clearly disclose that he had suffered injuries i.e., wound certificate and case of P.W.1 and P.W.11 is that at the time of committing the offence inflicted injury with razor on the neck of P.W.1. He would contend that Doctor has been examined as P.W.12 before the Trial Court with regard to nature of injury is concerned and specific case of P.W.1 and P.W.11 is that all the accused persons came in Tata Sumo and caused obstruction to the vehicle by parking vehicle in front of their vehicle and all of them climbed the vehicle on the side of P.W.1 and P.W.11 and when P.W.11 showed his pocket that he is not having money, he was made to alight from the vehicle. P.W.11 categorically says that they inflicted injury on P.W.1 and took him and their evidence is consistent and corroborates with each other. The Trial Court in detail considered the evidence on record and rightly convicted the accused persons and it does not require interference of this Court. He would contend that even amount was recovered at the instance of accused persons, particularly the amount which was robbed from P.W.1.

- 14 -

16. Having heard learned counsel for the appellants and

learned High Court Government Pleader for the respondent- State and also considering the material on record and also the principles laid down in the judgments referred by learned counsel for the appellants, the points that would arise for consideration of this Court are:

(1) Whether the Trial Court committed an error in convicting the appellants/accused for the offence under Section 395 IPC and whether it requires interference?

(2) What order? Point No.(1)

17. Having heard respective learned counsel for the

appellants and learned High Court Government Pleader for the respondent-State and also taking note of the material on record, the case of the prosecution is that on 18.12.2008 at 10.00 p.m., accused persons came in the vehicle and caused obstruction to P.W.1 and P.W.11, who were proceeding in the lorry towards Huliya Hobli and threatened P.W.1 with knife and snatched Rs.16,500/- and voluntarily caused injury. Having perused the material on record, particularly the evidence of

- 15 -

prosecution witnesses, though the prosecution examined P.Ws.1 to 14, the relevant witness P.Ws.1, 11 and 14 and other witnesses have not supported the case of the prosecution with regard to the mahazar as well as seizure mahazar and only Court has to take note of material on record whether evidence of P.W.1 is credible to convict the accused persons.

18. No doubt, P.Ws.1 and 11 reiterate with regard to the incident, when the accused persons came in Tata Sumo and

caused obstruction to the vehicle in which they were proceeding and climbed the said lorry in two different direction on the side P.Ws.1 and 11, in the evidence of P.W.1, though he reiterates regarding the incident, but says that one of the assailant inflicted injury with knife and they snatched money of Rs.16,500/- and instructed him to move the lorry and when he tried to put gear, there was jerk, at that time, all of them fell down from the lorry and he escaped from the clutches of accused persons but, cleaner was there in the lorry itself and thereafter, accused flew away from the place and at that time,

there was darkness. But, he could not identify the accused persons and immediately, he rushed to the police station and lodged the complaint at 11.30 and he also identifies signature - 16 - and says that Police took him to the hospital and he took treatment in the hospital. He categorically says that he came to know that on the very same day, the accused persons were arrested, but he cannot identify those persons and also he has

not given any statement before the Police. He also identifies M.Os.2 and 3 and so also M.O.4 and also identified the photo of vehicle. But, he says later on Police showed the persons, who snatched the money from him, but he cannot identify those persons and he identifies M.O.5 i.e., Rs.15,000/- cash and this witness turned hostile.

19. In the cross-examination of P.W.1, a suggestion

was made that he came to know that accused were apprehended on 22.12.2008 and the said suggestion was denied. However, he says that he went to the office of Circle Inspector of Police on 23rd and vehicle Tata Sumo was parked. But, he came to know that assailant came in the said vehicle and he also says that M.O.s.1 to 4 are shown to him by the Police. But, he did not count the money. It is suggested that though he gave the statement in terms of Ex.P4, he is deposing falsely before the Court. At the first instance, accused persons stated that no cross-examination, but accused Nos.1 to 3 were

- 17 - thereafter recalled and suggestion was made to the witness that M.Os.1 to 5 were not seized and the same was denied. When suggestion was made that for the first time, they are seeing the accused persons in the Court, it is stated that witness had seen the accused persons at the time of incident.

20. The other material witness is P.W.11, since other

witness have not supported the case of the prosecution. P.W.11 in his evidence reiterates the evidence of P.W.1, but he says he showed his pocket, when there was no money, he was left by the accused. He says accused person inflicted injury to P.W.1 and thereafter took him and when he found a person coming in the motorcycle, he informed the same and he also says on the next date, Police called him to the Police Station and he found Tata Sumo and he identified the accused persons in the Police Station. But, he says that he can identify only two persons and identify only accused Nos.2 and 4 before the Court. He also says he did not see who was with P.W.1. This witness was subjected to cross-examination and in the cross- examination of SPP, when the witness turned hostile, he says that P.W.1 was inflicted with M.O.1 and snatched the money forcibly and also he was

pulled down from the vehicle and

- 18 -

admits that an amount of Rs.16,500/- was snatched from P.W.1 and this witness was cross-examined by accused counsel, he says he cannot state on what distance, he stopped the vehicle in front of their vehicle and also cannot state from which side, how many of them boarded their lorry and also cannot state, who was driving said Tata Sumo and also cannot state who are all boarded lorry from his side and also he did not notice when the amount was snatched from P.W.1 after making him to get down from vehicle and also he cannot state what happened to him after dragging P.W.1. But, he says he witnessed the incident of inflicting injury once and he did not notice whether he was bleeding or not. But, he says he came to know about that only P.W.1 alighted from vehicle and also he cannot state which accused inflicted injury on P.W.1 and he cannot identify except M.O.1 and also he cannot state what statement the police have recorded and also he cannot state on what date, he went to office of Circle Inspector of Police and he cannot state the amount belongs to whom.

21. The other witness is P.W.14-Investigating Officer and he reiterates with regard to conducting of investigation after receipt of complaint, drawing of mahazar and seizure of - 19 -

M.Os.1 to 6 and drawing of Exs.P5 and P7 and also Ex.P2 and taking of signature of accused persons on the mahazar. He categorically admits in the cross-examination, when he went to spot, he did not found any object at the spot. He also admits, he did not enquire with the localites of the said spot and also did not call them as witness to the mahazar. He admits that there was correction in the PF and also he did not collect the document in respect of the lorry from the owner of the lorry and also he admits that he did not mention the denomination of the notes which have been recovered from the accused persons in the mahazar and PF. It is suggested that there is no voluntary statement regarding Exs.P12 to P16 are recorded.

22. Having considered the evidence of P.Ws.1, 11 as well as P.W.14, P.Ws.1 and 14 speak about the incident that

accused persons came in the Tata Sumo and caused obstruction to proceed. Hence, they stopped the vehicle and all of them boarded the vehicle and caused threat. The relevant material to be considered by the Trial Court is whether the accused persons have been identified by the witnesses. Admittedly, P.W.1 was not identified and he reiterates that he cannot identify the accused and he admits that there was

- 20 -

darkness. No doubt, in the cross-examination of accused Nos.1 and 3, a suggestion was put to P.W.1 that for the first time he is seeing the accused persons in the Court, but witness volunteers that he has seen the accused. But, the fact is that when he did not identify the accused persons before the Court, the said suggestion ought not to have been relied upon by the

Trial Court. No doubt, Trial Court has also taken note of the said fact, but considering other evidence comes to the

conclusion that prosecution has proved the case.

23. The judgments which have been relied upon by the

learned counsel for the appellants i.e., AIR 1969 GUJARAT 69 as well as judgment of Madhya Pradesh High Court in 1991 CRI.L.J.1925, suggestion should not be considered as an admission, when suggestion is put to the witness and no dispute with regard to the principles laid down therein. However, the Court has to consider whether evidence of P.Ws.1 and P.W.11 is credible to convict the accused. No doubt, P.W.1 deposed with regard to the manner in which the incident has taken place and inflicting of injury, P.W.11 also could not identify, who inflicted injury and though both of them were called to the Police Station on the very same day and they were

- 21 - arrested, but the fact is that they were arrested on 22nd and not on the very same day and P.W.2 says on the next day, he was called to the Police Station.

24. It is important to note that these accused persons

are not known to P.W.1 and P.W.11 earlier and they are strangers and not having acquaintance with each other prior to this incident. But, the Investigating Officer ought to have conducted Test Identification Parade for identification of the

accused. In the case on hand, no Test Identification Parade was conducted by the Investigating Officer and P.W.1 says that he was called to Police Station subsequent to the arrest and P.W.1 not identified the accused before the Court and the only evidence is P.W.11 and P.W.2, who also say that they could not identify, but identified the accused Nos.1 and 4 before the Court and P.W.2 says that those persons were identified through the light of the vehicle but, P.W.1 says that there was darkness and there are material contradiction with regard to the identification of the accused person. Having considered the evidence of P.Ws.1 and P.W.11, in the absence of Test Identification Parade, since all of them are not known to each other and not having acquaintance with each other, it is the

- 22 - bounden duty of the Investigating Officer to conduct Test Identification Parade. In the said circumstance, when the offence invoked is under Section 395 IPC, the same has not been done.

25. Learned counsel for the other appellants would

contend that with regard to the seizure is concerned, relied upon the judgment of the Apex Court in 2019 (2) CRIMES 371 (SC) with regard to identification of the appellant-accused satisfactorily established, recovery of weapon at the instance of the accused also established, evidence corroborated by medical evidence, conviction is justified. The counsel also relied upon the judgment in 2011 (3) Crimes 61 (SC), wherein the Apex Court held that recovery on the disclosure statements of either of the respondents/accused persons not in close proximity of incident, moreover, the materials recovered could have been passed from one person to another without any difficulty, no

presumption can be drawn against the accused. Further, as contended by the learned counsel for the appellants as held in the judgments referred (supra) by Delhi High Court and Bombay High Court as well as Apex Court, in the absence of Test Identification Parade, when they were unable to identify - 23 - the accused persons, since the incident has taken place at dark hours and P.Ws.1 and 11 identified the accused persons before the Trial Court for the first time would be valueless and unreliable and much importance cannot be given to the said identification and all the accused persons were not identified by them.

26. Learned High Court Government Pleader for the

respondent-State would contend that injury is inflicted and wound certificate is also produced and Doctor has been examined as P.W.10 and unless the accused persons are identified, medical report also will not support the case of the prosecution. He would contend that recovery is made from the accused persons i.e., amount of Rs.16,500/- and recovery witness also turned hostile and mere recovery of money from the accused, unless the same is proved by leading any cogent evidence before the Court, question of considering the evidence does not arise and there cannot be an order of conviction. No doubt, Trial Court considered the material on record and relied upon the evidence, even P.Ws.1 and P.W.11 turned hostile to the some extent, except stating the manner in which the accused caused obstruction, but P.W.11 categorically says that

- 24 -

when there was no money, he was made to alight from the vehicle and thereafter made P.W.1 also to get down from the vehicle and thereafter, took him along with them and though he says that in his presence inflicted injury, but he was not able to identify which accused inflicted injury and in the admission of P.W.11, he categorically says that he does not know what happened to P.W.1 after he was taken with them, but P.W.1 says that after the accused persons flew from the place in the vehicle, cleaner was in the vehicle and material contradictions are not taken note by the Trial Court. The Trial Court even considered the evidence of other hostile witnesses, particularly in paragraph No.53 of the order of the Trial Court, as already observed, P.Ws.1, 3 to 11, particularly P.Ws.3, 8 to 11 not

supported the case of the prosecution and evidence of P.W.14 is also very clear with regard to recovery is concerned and he

did not mention the denomination of notes which was recovered in terms of the mahazar and ought to have mentioned the same and the same is not mentioned in the PF. When the evidence of P.W.14 is not credible, the very reasoning given by the Trial Court that with due care and caution appreciated the evidence of prosecution witnesses

- 25 - cannot be accepted and Trial Court committed an error in convicting the accused and in the absence of consistent evidence, the Trial Court ought not to have convicted the accused persons. Hence, it requires interference of this Court. Accordingly, I answer Point No.(1) as negative. Point No.(2)

27. In view of the discussion made above, I pass the following:

ORDER

(i) The criminal appeals are allowed.

(ii) The impugned judgment of conviction passed by the Trial Court is set aside. The bail bonds executed by the appellants are cancelled.

(iii) The Trial Court is directed to refund the fine amount, if any deposited by the appellants in favour of the respective appellants on proper identification. Sd/-
(H.P.SANDESH) JUDGE ST List No.: 1 Sl No.: 56

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com