

Roop Basant and ors. Vs. State

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Court : Delhi

Decided On : Aug-02-2013

Judge : Pratibha Rani

Appellant : Roop Basant and ors.

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

26. h July, 2013 Pronounced on :2nd August, 2013 % + CRL.A. 3-5/2006 ROOP BASANT & ORS. Through :Appellants Mr.S.K.Sethi, Advocate. versus STATE Through: Respondent Ms.Fizani Hussain, APP for the State with IO SI Dhananjay Gutpa. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI % PRATIBHA RANI, J.

1. Appellants Roop Basant, Satpal @ Gopal and Pratap @ Pappu have preferred this appeal after being convicted in Session Cases No.26/2003 (FIR No.158/2003 under Section 186/307/34 IPC, & 25/27/54/59 Arms Act, PS Samay Pur Badli), No.27/2003 (FIR No.159/2003 under Section 25/54/59 Arms Act, PS Samay Pur Badli) and No.28/2003 (FIR No.160/2003 under Section 25/54/59 PS Samay Pur Badli). All the three Appellants were convicted under Section 186/307/34 IPC and sentenced to undergo SI for two months with fine of Rs.200/- each for committing the offence punishable under Section 186/34 IPC and further sentenced to

undergo RI for four years with fine of Rs.1000/- each for committing the offence punishable under Section 307/34 IPC. They were further convicted and sentenced under Section 25 Arms Act to undergo RI for one year with fine of Rs.500/- each and all the sentences were ordered to be run concurrently. Since FIR No.158/2003 under Sections 186/307/34 IPC, PS Samay Pur Badli was triable by the Court of Session, the other two connected FIRs No.159/2003 and 160/2003 were also committed to the Court of Session to be tried alongwith main case.

2. At the outset, it may be mentioned that so far as Appellant Roop Basant is concerned, as per the nominal roll received pursuant to the order dated 07.07.2010 of this Court, the Appellant had already undergone the sentence awarded to him and he was released on 23.06.2007 after completing the sentence awarded in this case. Hence, Appellant Roop Basant having already undergone the sentence and released on 23.06.2007, the appeal qua Appellant Roop Basant was disposed of on 22.07.2010.

3. In brief, the prosecution case is that ACP S.K.Sharma, Operation Cell, North-West, Delhi constituted a special team under supervision of Inspector Ram Chander, Incharge, Operation Cell, North-West, Delhi to develop information to solve the various cases of dacoities committed in the area in the preceding three months.

4. On 30.03.2003, Ct.Swaraj No.789/NW received a secret information that 5-6 bad elements of Bawariya Tribe would assemble near Kadipur Primary School at midnight to commit crime in Kaushak No.1 Colony. CrI.A. No.3-5/2006 information. The said secret information was reduced into writing vide DD No.12 recorded at 10.00 pm in the office of Operation Cell. The raiding party was constituted and after making departure entry at 11.00 pm vide DD No.14, the raiding team left in official vehicle not DL-1LD-5106 with driver Ct.Naresh Kumar and the secret informer.

5. At about 11.30 pm, after reaching Kadipur Primary School, the vehicle was parked inside the school. Efforts were made to join the nearby residents of the area but none agreed. In the meantime, one person came from Ibrahim Pur side on his scooter who was also apprised with the information and was requested to

join the raiding team. The public person revealed his identity as Tejinder Singh S/o Sardar Mahinder Singh, R/o E-4, Sector-16, Rohini and agreed to join the proceedings. He also parked his scooter inside the school. Thereafter the informer and the public witness Tejinder Singh alongwith SI Dharmender Kumar took their position behind the wall near the small gate of the school. The remaining members of the raiding party took position near the road behind a room of Sonu Cycle Works as well behind the school wall in the bushes.

6. At about 12.30 midnight, three persons came on foot from Kadipur side and sat on the small wall of the school. The secret informer pointed out to SI Dharmender Kumar that the three persons were the same who had come with intention to commit dacoity. After sometime at about 1.00 am, when those three persons started moving from there SI Dharmender Kumar alongwith his staff came out from hiding and informed those persons that they have been surrounded by the police and asked them to surrender. At that time, one of them said Maar Satpal goli. On hearing this, the tallest person fired towards them from his katta and tried to escape towards Ibrahim Pur Village. As the bullet fired by the tallest person did not hit anyone, SI Dharmender Kumar made two fires in the air and while challenging them, asked them to stop. On this, the tallest person again started loading his katta but he was chased and overpowered by SI Dharmender Kumar and Ct.Swaraj. Another person was chased and overpowered by SI Ramesh Singh with staff and the third person was overpowered by SI Rajinder Prasad with staff. The identity of the person apprehended by SI Dharmender Kumar was revealed as Satpal and that of two other persons as Roop Basant and Pratap @ Pappu, all resident of District Muzaffar Nagar, U.P.

7. On search, one dessi katta was recovered from the right hand of Satpal and one live cartridge from the right side pocket of his pant. From Roop Basant, one dessi katta and live cartridge were recovered and from Pratap @ Pappu, one buttondar knife was recovered. After conducting the proceedings at the spot and sealing and seizing the recovered articles, rukka Ex.PW19/A was sent through Ct. Shiv Kumar at 2.50 am for registration of the case. FIR No.158/2003 was registered vide kayami DD No.30-A at 3.00 am by Duty Officer HC Ram Rattan No.123/NW. FIR Nos.159/2003 and FIR 160/2003 were also registered in respect of the arms

recovered from the Appellants. After completion of investigation and obtaining necessary sanction under Section 39 of Arms Act, chargesheets were filed against all the three Appellants.

8. Needless to say that, all the three Appellants pleaded not guilty to the charge framed and claimed trial. Prosecution examined 20 witnesses to bring home the guilt to the three persons sent to face trial.

9. After examining all the Appellants under Section 313 Cr PC and giving an opportunity to produce defence evidence, which was availed, learned Addl. Session Judge, vide impugned judgment, convicted all the three Appellants for committing the offence punishable under Section 307/186/34 IPC and under Section 25 Arms Act and sentenced in the manner stated above.

10. I have heard Mr.S.K.Sethi, learned counsel (DHCLSC) for Appellants Satpal and Pratap @ Pappu as well as Ms.Fizani Hussain, learned APP for the State. I have also perused the impugned judgment, oral and documentary evidence adduced by the prosecution and other material placed on record.

11. On behalf of Appellants Satpal and Pratap @ Pappu, Mr.S.K.Sethi, Advocaste has submitted that the public witness PW-18 Mr.Tejinder Singh has not fully supported the case of prosecution. While questioning the legality of the judgment, learned counsel for the appellant contended that it is a false and frivolous case wherein none of the police officer has received any injury though all the three Appellants were stated to be armed with dessi katta and knife. It has been further submitted that there are glaring contradictions even in the testimony of police officers which make them uncreditworthy. To demonstrate, he referred to the statement of PW-4 HC Satish Kumar, who in his examination-in-chief, identified another Appellant (Pankaj) as Roop Basant and when Appellant Roop Basant himself disclosed his identity by raising his hand in the Court, he identified Roop Basant. It has also been pointed out that as per PW-5 Ct.Rakesh Kumar, height of the wall of the school was 4-5 feet, however, PW-9 Ct.Swaraj Singh has given the height of the wall of the school as 10 feet. As per PW-10 ASI Rajinder Prasad, the height of the wall was 4 feet while PW-12 Ct.Shiv Kumar has given the height of the wall as 6 feet. Learned counsel for the Appellants has submitted that it was

dark night and how the secret informer could point out to SI Dharmender Kumar about the three persons also remains unexplained. While pointing out that all the police officers have stated that it was a dark night and there was no light on the electric pole near the place of arrest, it was contended that how the writing work was done in that dark night, creates doubt on the trustworthiness of the prosecution witnesses. It has been submitted that learned Trial Court, while convicting the Appellants, did not consider the statement given by the Appellants during their examination under Section 313 Cr PC as well as the testimony of defence witnesses including telegram sent. Learned counsel for the Appellants submitted that since the prosecution failed to prove its case beyond reasonable doubt, the Appellant Satpal and Pratap @ Pappu deserve to be given benefit and acquitted in this case.

12. On behalf of State, Ms.Fizani Hussain, learned APP has submitted that one of the Appellant namely Roop Basant has already undergone the sentence awarded to him and the same sentence should be maintained for the other two appellants also for the reason that they were from Bawariya Gang that had been committing dacoity in the area. Learned APP has further submitted that this is a case where the police party constituted to apprehend the dacoits, was also attacked by them and they are dreaded criminals. She further submitted that despite their apprehension at midnight, the police party could manage to have a public witness even at that odd hours who has been examined as PW-18 in this case. It has been submitted that all the Appellants were apprehended at the spot and recoveries were also made at the spot. Even the public witness has fully supported the case of prosecution and identified all the Appellants as well as dessi kattas and knife recovered from them. Learned APP has submitted that no suggestion was given to the public witness during his cross examination regarding any previous enmity or even in their statement recorded under Section 313 Cr PC, the Appellants have not stated about any enmity with the public witness, hence there is no question of any false implication of the Appellants in this case. Learned APP has submitted that though the statement of the police officers in the given circumstances is sufficient to prove prosecution case, in this case their statement is supported and corroborated by the public witness also, hence the impugned judgment need not be interfered with by this Court and the appeal may be dismissed qua Appellants

Satpal and Pratap @ Pappu.

13. I have considered the rival contentions. Since the prosecution sought to prove its case through testimony of police officials duly corroborated by an independent public witness but noticing that the public witness remained untraceable for years together for want of complete address, this aspect needs to be examined as to how without any clue about the address of public witness for two years, his new address could be located by another police official (who is not the Investigating Officer) so as to make him appear in the Court as a prosecution witness.

14. When Ms.Fizani Hussain, learned APP for State was asked to clarify this aspect, with the assistance of IO SI Dhananjay Gupta, on 26.07.2013 she explained that all the flats in E-Block were individually checked by him to trace out this witness and ultimately the public witness could be located at I-4/92 and served. Learned APP was further requested to throw some light as to how this exercise, though conducted by the IO SI Dhananjay Gupta, the service report is not in his hand or under his signature but given by one Ramesh Singh. Further when Tenjinder Singh was examined as PW-18, he gave his address as E-14, Sector-16, Rohini which is non-existent and not his correct old/new address. Learned APP has submitted that she has brought to the notice of the Court whatever happened and may be that after going through his statement under Section 161 Cr PC, PW-18 Tejinder Singh mentioned the same address as recorded in his statement. Learned APP was then requested to find out if the IO in his case diary or in any memo or at any other place has noted down the registration number of the scooter of the public witness or his mobile number, she fairly conceded that none of these details have been recorded by the IO.

15. The explanation given by learned APP for the State on instruction from the IO about how the public witness was traced out, is not borne out from the record. It is a case where only block number was recorded in the address without specifying the flat number/house number/plot number. As per the report on the summons sent to the public witness for the date of hearing 18.03.2005, service was effected on the new address. The report is to the following effect :Summon has been executed. The new address of witness is I-4/92, Sector-16, Rohini. Mobile

No.20070226, Res.Phone 27858807 It is difficult to make out from above as to who received the summons as even the signatures of Tejinder Singh do not appear on the summons. The police officer who had got the summons served on the witness at his new address could not have reached there without any clue from the old address unless the public witness is a public figure well known in the area or known to the member(s) of raiding party. The summons repeatedly sent to the public witness on the recorded address i.e. E-4, Sector-16, Rohini could not be served as E-4 is only pocket number and house number was not recorded. When the Court ordered the service of public witness to be effect through the Investigating Officer for the date of hearing 02.11.2004, the Process Server reported that the IO SI Dharmender Kumar posted in the Special Cell refused to take the summons. Glaring example of how the service reports are fabricated, is the report on the summon of the public witness sent for the date of hearing 25.05.2004. The report is to the effect that the Process Server visited the given address and on finding the premises locked, affixed one copy of the summon at the given address. The question arises that if the address i.e. E-4, Sector-16, Rohini is non-existent, how the premises could be found locked and service effected on him through affixation.

16. I find that this is not the end of the matter as the signature of Tejinder Singh on his statement in the Court recorded on 18.03.2005, are at total variance from the signature appearing on the memos stated to have been signed by him during investigation of this case. In the given circumstances, it becomes doubtful that the person who signed the various memos on the date of occurrence is the same who was examined as Pw-18 in the Court on 18.03.2005.

17. Even if, this aspect is ignored, on perusal of the Trial Court record, it can be noticed that there are vital omissions and contradictions in the testimony of prosecution witness which were not considered by learned Trial Court.

18. At the outset, it is necessary to refer to the statement of Duty Officer who is normally termed as a formal witness but here his statement goes to the root of the matter and establishes the falsity of the prosecution story. PW-1 HC Ram Rattan has stated that on 31.03.2003 he was working as Duty Officer at PS Samay Pur

Badli. On that date at about 3.40 am, Ct.Shiv Kumar brought rukka sent by SI Dharmender on the basis of which he recorded FIR No.158/2003 Ex.PW1/A. He further stated that at about 4.00 am, Ct. Shiv Kumar brought rukka sent by SI Ramesh on the basis of which he recorded FIR No.159/2003 Ex.PW1/B. Then he stated that at about 4.15 am Ct. Shiv Kumar brought rukka sent by SI Rajinder Kumar on the basis of which he recorded FIR No.160/2003 Ex.PW1/C.

19. Ct.Shiv Kumar, who took rukkas to the Police Station for registration of FIRs, has been examined as PW-12. His statement on this aspect is to the effect that after the accused persons were apprehended and recovery effected from them, their disclosure statements were recorded and accused Roop Basant was arrested in this case. Thereafter SI Ramesh prepared rukka and handed over the same to him for registration of the case. He went to PS Samay Pur Badli for registration of the case and after getting the FIR registered, returned to the spot and handed over the rukka and copy of FIR to SI Ramesh. Thereafter they returned to their office. Thus, Ct.Shiv Kumar does not speak of he being handed over three different rukkas by the Investigating Officers of Case FIR Nos.158/2003, 159/2003 and 160/2003 nor he speaks about his visiting the police station thrice alongwith three different rukkas as stated by the Duty Officer. It is also relevant to mention here that in the FIRs in Column No.5, the distance of place of occurrence from Police Station is given as 6 kms. It is highly improbable that Ct.Shiv Kumar could make three rounds from the place of occurrence to the Police Station three times with three different rukkas. The rukka Ex.PW19/A in case FIR No.158/2003 Ex.PW1/A is running into more than five pages and the Duty Officer must have taken sufficient time in recording the FIR No.158/2003 in the first case under Section 186/307/34 IPC. As per endorsement on the rukka Ex.PW19/A by the Duty Officer, the kayami DD No.30-A was recorded at 3. Whereas time of dispatch of rukka from the spot is 2.50 am. It cannot be gathered from the record as to how Ct.Shiv Kumar travelled from the place of occurrence to PS Samay Pur Badli for the reason that all the members of the raiding party left only in one vehicle i.e. TATA 40 and it has not come on record that at that odd hour i.e. 2.50 am what mode of transport was used by Ct.Shiv Kumar so as to reach PS Samay Pur Baldi within 10 minutes. (Kayami DD No. 30-A recorded for registration of FIR No.158/2003 at 3 i.e. within ten minutes.) 20. Further rukka Ex.PW20/B of case FIR No.159/2003

is also running into five pages and kayami DD No.31-A (as per endorsement of Duty Officer on rukka Ex.PW20/B) had been recorded at 4.00 am by the same Duty Officer i.e. PW-1 HC Ram Rattan.

21. Kayami DD No.32 on the rukka Ex.PW10/A (runs into five pages) pertaining to FIR No.160/2003 had been recorded at 4.15 am by Duty Officer PW-1 HC Ram Rattan and there is overwriting on the time of recording this DD. The time of sending rukka Ex.PW20/B of FIR No.159/2003 and Ex.PW10/A of FIR No.160/2003 is also 2.50 am. There is no DD entry placed on record to show the arrival of Ct.Shiv Kumar at PS Samay Pur Badli with three rukkas and as noted above, there is material contradictions in the statement of Duty Officer about the time of arrival of Ct.Shiv Kumar at the police station i.e. at 3.00 am or 3.40 am, whether it was once or thrice and timing of recording DD Nos.30 to 32 of three different FIRs which itself creates serious doubt about the manner in which proceedings have been conducted.

22. DD No.8-A Ex.PW15/A placed in case FIR No.160/2003 is to the effect that at 4.25 am Duty Officer, PS Samay Pur Badli informed AATS/NW about apprehension of three bad elements near small gate of Primary School, Kadipur and senior officers had directed for sending some officer to the spot. This DD No.8-A was handed over to HC Hawa Singh who left for the spot. PW-1 HC Ram Rattan was the Duty Officer, PS Samay Pur Badli but he has nowhere stated having made any call to AATS/NW District to above effect. Rather as per Duty Officer i.e. PW1 HC Ram Rattan by 4.15 am, even the third FIR had been registered and in that circumstance, the information could have been specific about the name of the persons apprehended/arrested and the nature of offence especially when it was a case of firing on police party.

23. In the context of above conflicting material at the very inception of registration of FIRs and its effect on prosecution case, I consider it apposite to refer to observation in the report Josh s/o C.Mathew vs. The State of Maharashtra 2013 (2) ABR 429.wherein it was held that :

40. When the police record is, on the face of it, suspicious, obviously incorrect in several respects, and conflicting with the conclusions of the prosecution witnesses

themselves, it would be difficult to ascertain where the truth lies. Certainly, merely because there are conflicting pieces of evidence, the Court would not be justified in rejecting the entire evidence, but would be expected and required to weigh the conflicting pieces and try to ascertain, where truth lies, as far as such a process would be feasible. In this case, there are missing links in the prosecution story. The evidence is lacking on some vital points and there are obvious discrepancies in the evidence of the witnesses resulting into destruction of the whole structure of the prosecution case. Under these circumstances, an attempt to anxiously search for truth, which may be hidden somewhere in the evidence, would be hazardous and such an exercise cannot be justified by the consideration that two murders would go unpunished.

24. PW-18 Tejinder Singh has stated that after he was joined by the raiding team, he parked his two wheeler scooter in the school but at the same time he has also stated that there was no other vehicle, thus, denying the parking of TATA 40 in the school precinct. Apart from that, though as per prosecution case, SI Dharmender alongwith Ct.Swaraj, public witness Tejinder Singh and secret informer took position behind the wall, PW-18 Tejinder Singh nowhere states that he alongwith above members of the team was also hiding behind the wall at the time when three accused persons came and sat on the wall. Rather he stated that the secret informer pointed out three accused persons from a distance of 5-6 yards whereas as per other members of the raiding team, while SI Dharmender alongwith Ct.Swaraj, public witness Tejinder Singh and secret informer were hiding behind the wall and the three accused persons came and sat on the wall, at that time the secret informer pointed out towards them. Apart from that PW-18 Tejinder Singh has stated that he remained present with the police till 4.00 am whereas PW15 HC Hawa Singh stated that police party was present there upto 7.00 am. Unfortunately no DD entry has been placed on record to ascertain at what time alongwith three accused persons arrested, the police party reached the police station. It is also surprising that the public witness, though he was carrying a mobile and was having a scooter with registration number, neither registration number of the scooter nor his mobile number has been recorded by the IO. It remains a mystery as to how PW-18 Tejinder Singh could be produced in the Court with no clue about his residential address, work place, nature of the job, registration number of

the scooter or mobile number.

25. There are also material contradictions in the testimony of prosecution witnesses as to where the writing work was done. It has been stated by PW-18 Tejinder Singh that writing work was done at PS Samay Pur Badli but as per other members of the raiding party, the writing work was done at the spot. It has come in the testimony of all the members of the raiding party that there was no source of light at the place of occurrence. The manner in which the voluminous writing work of three cases including sketches of the weapons recovered in the cases seems to have been done, the same could not have been in the dim light inside TATA 40 by sitting in the vehicle by the three Investigating Officers.

26. Different version have been given about the height of the wall behind which the IO SI Dharmender Kumar alongwith Ct.Swaraj, secret informer and public witness Tejinder Singh took position and the accused persons came and sat on it. The height of the wall has been described from 4-5 feet to 10 feet by prosecution witnesses. It has also come on record that it was a dark night. If the members of the raiding party had taken position by hiding themselves behind the wall, in that circumstance, if the height of the wall was 4-5 feet then members could not have remained standing to notice the three person coming so as to be pointed out by the secret informer from a distance. If the members were sitting behind the wall, then neither the secret informer could have pointed out from distance nor it was possible for any member of the raiding party positioned behind the wall to see the accused persons coming from a distance to enable the secret informer to point out towards them. If the three persons were noticed only after they came and sat on the wall, none of the prosecution witnesses had stated about the conversation amongst them so as to gather the purpose of their assembly from their talk. The other members of the raiding party hiding behind Sonu Cycle Works or behind the school in bushes had hardly any possibility to notice the pointing out if any by the secret informer because it was a dark night and even whisper could have been heard by the persons sitting on the wall if four persons had taken position just behind that wall.

27. Learned Addl. Session Judge has not considered all the improbabilities and material contradictions surfaced in the testimony of material prosecution witnesses. PW-3 Inspector Ram Chander under whose supervision this raiding party was organized, had deposed that he accompanied the raiding party but none of the memo even bears his signature. His presence at the spot cannot be ascertained from any document except that his name find mention in the departure entry made vide DD No.14.

28. Perusal of the arrest memos of all the three accused persons reveal the time of arrest as 6.00 am and in the column Person of the arrestee to be informed it is mentioned By W.T. Message. There is no mention about the name and address/telephone number, if any, given of the person to be informed or informed about the arrest.

29. DW-3 Smt.Bala, wife of Appellant Satpal has stated about the lifting of Satpal and Pratap @ Pappu from their residence. The telegraphic information sent by Smt. Kela Devi, mother of accused to Commissioner of Police, DCP (North-West) and DCP (Vigilance) was also available on record (at page No.259 of Trial Court Record). Learned Trial Court failed to take note of the fact that the defence witnesses produced by the Appellants stated about they being lifted from their house on 25.03.2003. Their apprehension in this case is on the night intervening 30-31.03.2003. The photocopy of the communication to Commissioner of Police, DCP (North-West) and DCP (Vigilance) was sent on 28.03.2003 by Smt. Kela Devi, mother of Roop Basant and is to the following effect : My son Roop Basant son Kalu Ram resident of 502-B Gokulpuri, Delhi, another relative Pappu, son Babu and Satpal alias Gopal, son Babu forcible taken away from my house at 11 PM on 25.03.2003 illegally detained office Special Staff North-West District, Delhi at Shakurpur, Delhi. Severe torture whereabouts unknown apprehension false implication request safety. Postal receipt No.28303 of the same date i.e. 28.03.2003 was also available on record. The learned Addl. Session Judge could have examined this aspect especially in view of the fact that all the three accused persons were from poor family so much so that even in their personal search not even a single penny or paper was recovered. At least prosecution could have been asked by learned Trial Court to confirm whether any such telegraphic

information was received in the office and if so, the outcome of the same.

30. What should be the approach of Trial Court in a criminal trial was enumerated by the Supreme Court in the case of *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble* (2003) 7 SCC 74. which is as under: The courts exist for doing justice to the persons who are affected. The trial/first appellate courts cannot get swayed by abstract technicalities and close their eyes to factors which need to be positively probed and noticed. The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth, and oblivious to the active role to be played for which there is not only ample scope but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice in a case where the role of the prosecuting agency itself is put in issue.

31. Learned Trial Court has failed to appreciate the testimony of defence witnesses without properly examining the defence that could be produced by them to prove their innocence. The defence witnesses could not have been discredited in the manner the learned Addl. Session Judge has done.

32. The Supreme Court in the case of *Munshi Prasad & Ors. vs. State of Bihar* AIR 200.SC 3031. has dealt with this tendency of the Courts to reject the statement of defence witnesses observing as under : Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at par with that of the prosecution - a lapse on the part of the defence witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses.

33. The prosecution has to establish its case beyond reasonable doubt. Judicial jurisprudence does not allow the prosecution to prove its case by placing reliance on sketchy witnesses. Bare analysis of the Trial Court judgment shows that it failed to appreciate the evidence of the material prosecution witnesses and look into the contradictions which were going to the root of the matter right from its

inception that is to say from the stage of registration of FIR.

34. Accordingly, having comprehensive view of the matter and taking into account the discrepancies almost on all aspects in the prosecution case, I am of the considered view that Appellants Satpal and Pratap @ Pappu deserve to be acquitted.

35. In view of above, this appeal qua Satpal and Pratap @ Pappu is allowed. Their conviction and sentence awarded vide impugned judgment and order on sentence are set aside and they are acquitted of the charge framed.

36. Perusal of the record shows that Appellants Pratap @ Pappu and Satpal were granted bail till the disposal of this appeal vide orders 19.04.2006 and 29.11.2006 respectively. [As per earlier nominal roll of the Appellant Pratap @ Pappu received from Tihar Jail, he has undergone sentence of 6 months and 11 days as on 11.10.2003 in case FIR Nos.158/2003 and 160/2003, PS Samay Pur Badli. It is also mentioned in this nominal roll that this Appellant Pratap @ Pappu was sent for Court production at Sonapat Court, Haryana on 11.10.2003 where he was convicted in case FIR No.54/2000, PS Kundi, Haryana, so he was detained in Sonapat Jail. In view of this report received from Tihar Jail, report was called from District Jail, Sonapat. Report dated 27.05.2013 was received from District Jail, Sonapat as per which Appellant Pratap @ Pappu was released on bail on 13.06.2006 in case FIR No.54/2000 under Section 395/397/511, PS Kundli. In this report, in the column Details of Pending Undertrial Case Appellant Pratap @ Pappu is also shown to be on bail in case FIR No.820/2002 under Section 459/360/34 IPC, PS Badli, Delhi and in case FIR No.175/2004 under Section 309 IPC, PS City Sonapat, he has undergone the sentence. As per the nominal roll of the appellant Satpal received from District Jail, Karnal (Haryana), he was sent to the said Jail on 02.03.2008 on transfer from District Jail, Sonapat in compliance of order of Director General of Prisons, Haryana on administrative ground. As per this nominal roll, he was convicted in various cases and was finally released from jail custody on 26.04.2008. As per the nominal roll of Satpal @ Gopal received from Tihar Jail, he was not admitted to this jail as convict and presently he is not in the Jail.] 37. TCR be sent back alongwith copy of this order. PRATIBHA RANI, J

August 02, 2013 st

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