



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 599/2018

WITH

CRIMINAL APPEAL NO. 404/2017

WITH

CRIMINAL APPEAL NO. 412/2017

WITH

CRIMINAL APPEAL NO. 428/2017

WITH

CRIMINAL APPEAL NO. 430/2017

WITH

CRIMINAL APPEAL NO. 431/2017

WITH

CRIMINAL APPEAL NO. 436/2017

WITH

CRIMINAL APPEAL NO. 445/2017

WITH

CRIMINAL APPEAL NO. 450/2017

WITH

CRIMINAL APPEAL NO. 454/2017

WITH

CRIMINAL APPEAL NO. 472/2017

WITH

CRIMINAL APPEAL NO. 473/2017

WITH

CRIMINAL APPEAL NO. 478/2017

WITH

CRIMINAL APPEAL NO. 535/2017

CRIMINAL APPEAL NO. 599 OF 2018

Pankaj S/o Vinayak Kanoje,
Aged : 31 years, Occu - Labour,
R/o. Itkheda, Dist. Gondia,
Presently in Central Prison,
Nagpur, C- 9766.

... APPELLANT

// VERSUS //

The State of Maharashtra
Through Police Station Officer,
Police Station - Karanja (Ghadge),
Tahsil Karanja (G), District - Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 404 OF 2017

1. **Ravindra @ Ravi S/o. Sampatrao Madekar,** Aged : 32 years,
Occu. :Labourer, R/o. Wanadongri,
Hingna, Nagpur.
2. **Sallukumar @ Selvakumar Balsubramanyam Kaunder,**
Aged : 27 years, Occu.: Education,
R/o. Gopal Nagar, Usman Layout,
Nagpur, Dist. Nagpur.
3. **Ashwind Singh @ Sonu S/o. Shatrughnasingh Chavan,**
Aged :28 years, Occu.: Labourer,
R/o. Kampti Road, Kamgar Nagar,
Tekanaka, Nagpur, Dist. Nagpur.

... APPELLANTS

// VERSUS //

The State of Maharashtra

Through Police Station Officer,
Police Station Karanja (Ghadge),
Tah. Karanja (G), Dist. Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 412/2017

Sachin S/o. Chandraprakash Shrivastav,
Aged: 34 years, Occu. : Property Dealer,
R/o. Plot No. 243, Govt. Press Colony,
Dabha, Dist. Nagpur.
(Presently District Prison at Wardha)

.... APPELLANT

// VERSUS //

State of Maharashtra

Through Police Station Officer,
Police Station Karanja (Ghadge),
Tah. Karanja (G), District - Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 428/2017

1. **Prashant S/o. Rambali Waghmare,**
Aged : 40 years, Occu.: Business,
R/o. Near Bhankheda Sidhartha Library
Gandhibagh Nagpur, District - Nagpur.
2. **Ravi @ Chhotu S/o. Tikaram Bagade,**
Aged : 34 years, Occu. : Business,
R/o. Rani Durgavati Chowk,
Sanjaygandhi Nagar, Nagpur.

.... APPELLANTS

// VERSUS //

State of Maharashtra

Through Police Station Officer,
Karanja (Ghadge) Tahsil Karanja,
District - Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 430/2017

Rehaan Baig S/o. Akram Baig,
Aged : 26 years, Occu.: Business,
R/o. Shanti Nagar, Nagpur,
District - Nagpur.

.... APPELLANT

// V E R S U S //

State of Maharashtra,
Through Police Station Officer,
Karanja (Ghadge) Tah : Karanja,
District - Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 431/2017

Sheikh Mustaq @ Sameer S/o Sheikh
Habib, Aged: 36 years,
Occu.: Labourer, R/o. Om Nagar,
Near Wox Cooler Company,
Koradi Road, Nagpur, District – Nagpur
(Presently Central Prison at Nagpur)

.... APPELLANT

// V E R S U S //

The State of Maharashtra,
Through Police Station Officer,
Police Station Karanja (Ghadge),
Tah- Karanja (G), District -Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 436/2017

1. **Mohd. Sadiq S/o Sheikh Mehaboob,**
Aged: 39 years, Occu. :- Labourer,
R/o. Ward No. 14, Near Badi Masjid
Sindi (Rly.), Tah- Seloo,
District - Wardha.

2. **Sheikh Altaf S/o. Sheikh Munaf,**
Aged : 42 years, Occu. :- Labourer,
R/o Ward No. 6, Pathanpura,
Nachangaon, District- Wardha.

... APPELLANTS

// VERSUS //

The State of Maharashtra,
Through Police Station Officer,
Police Station Karanja (Ghadge),
Tah- Karanja (Ghadge),
District- Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 445/2017

Mr. Mangal @ Satyaprakash S/o Nandlal
Yadav, Aged: 44 years Occu.: Business,
R/o. Plot No. 57/3, Deonagar,
Khamla Road, Nagpur.

... APPELLANT

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Police Station Rajapeth,
Karanja (Ghadge),
District - Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 450/2017

Shailesh @ Ravi S/o Bhaskarrao
Masram, Aged: 38 years, Occu.: Nil,
R/o. Durga Nagar, Plot No.9,
Hingna Road, MIDC, Nagpur,
District Nagpur.
(Presently lodged in Central Prison,
Nagpur)

... APPELLANT

// VERSUS //

The State of Maharashtra
Through its Police Station Officer,
Police Station Karanja (Ghadge),
Tahsil- Karanja (Ghadge),
District- Wardha.

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 454/2017

Sau. Sadhna W/o Kishor Itale,
Aged: 53 years, Occu.: Household,
R/o. 11/7 MIG Housing Board Colony,
Trimurti Nagar, Nagpur.

... APPELLANT

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Karnaja (Ghadge), Tah- Karanja,
District- Wardha

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 472/2017

Suleman S/o Yunus Surya,
Aged: 46 years, Occu.: Business,
R/o. Ward No. 7, Sindi (Rly.),
Tahsil- Seloo, District- Wardha. **... APPELLANT**

// V E R S U S //

State of Maharashtra,
Through Police Station Karanja
(Ghadge), Tah- Karanja (G),
District - Wardha. **... RESPONDENT**

WITH
CRIMINAL APPEAL NO. 473/2017

Mobin Ahmad Khan S/o. Saifulla Khan,
Aged : 35 years, Occu : Cultivator,
R/o. Oknath, Post - Chincholi,
Tahsil - Dhamangaon, Dist. Amravati **... APPELLANT**

// V E R S U S //

State of Maharashtra,
Police Station Karanja (Ghadge),
Tah. Karanja, District - Wardha. **... RESPONDENT**

WITH
CRIMINAL APPEAL NO. 478/2017

Mohd. Shamim S/o Abdul Ajj,
Aged : 34 years, Occu. : Mechanic,
R/o. Indira Gandhi Nagar,
Baramail Chowk, Kanji House Chowk,
Yashodhara Nagar, Nagpur. (In Jail) **... APPELLANT**

// VERSUS //

The State of Maharashtra,
Through Police Station Officer,
Police Station Karanja (Ghadge),
District - Wardha

... RESPONDENT

WITH
CRIMINAL APPEAL NO. 535/2017

Chandrashekhar Subhrahmanyam
Mudliyar, Aged: 44 years,
Occu: Property Dealer, R/o. Koradi
Road, Near Railway Naka Koradi,
Tah & Dist. Nagpur.

... APPELLANT

// VERSUS //

State of Maharashtra,
Through Police Station Officer,
Karanja (Ghadge), Tah- Karanja,
District - Wardha.

... RESPONDENT

Mr Adwait Manohar, Amicus Curiae appointed by the Court
Mr Atharva Manohar, Advocate (appointed) for the appellant in Appeal No.599/2018
Mr C. R. Thakur, Adv. alongwith Mr L. B. Khergade, Advocate for the appellants in
Appeal No. 404/2017 and 431/2017.
Mr Bhushan Dafale, Advocate for the appellants in Appeal No.412/2017 &
478/2017
Mr Y. B. Mandpe, Advocate for the appellants in Appeal No. 428/2017 & 535/2017
Mr R. M. Daga, Advocate for the appellant in Appeal No.430/2017
Mr. A. C. Jaltare, Advocate for the appellant in Appeal No. 436/2017
Mr Vishwajit Sambre, Adv. holding for Mr R. R. Vyas, Advocate for appellant in
Appeal No. 445/ 2017.
Mr. P. A. Abhyankar, Advocate for appellant in Appeal No.450/2017
Mr A. H. Joshi, Advocate for appellant in Appeal No.454/2017
Mr M. M. Agnihotri, Advocate for appellant in Appeal No. 472/2017
Mr P. K. Bezalwar, Advocate for the appellant in Appeal No. 473/2017
Mr. Amit Chutke and Mr Piyush Pendke, APPs for the State in all connected appeals

CORAM : G. A. SANAP, J.

JUDGMENT RESERVED ON : 29.11.2024

JUDGMENT PRONOUNCED ON : 20.12.2024

JUDGMENT :

1 All these appeals are arising out of the judgment and order dated 17.08.2017 passed by the learned Additional Sessions Judge, Wardha (for short, 'the learned Judge') and therefore, the appeals are being disposed of by common judgment. The particulars with regard to the accused numbers, appeal numbers and sentence can be tabulated as follows:

Accused No.	Criminal Appeal No.	Name of accused	Sentence
1.	535 of 2017	Chandrashekhar s/o Subhrahmanyam Mudliyar	1. To suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs.10,000/- each and in default of payment of fine to suffer Simple imprisonment for six (6) months each for the offence punishable under Section 395 of the IPC. 2. To suffer rigorous imprisonment for two (2) years and to pay a fine of Rs.5,000/- each and in default of payment of fine
4.	450 of 2017	Shailesh @ Ravi Bhaskarrao Masram	
5.	412 of 2017	Sachin S/o. Chandraprakash Shrivastav	

			<p>to suffer simple imprisonment for three (3) months each for the offence punishable under Section 120-B of the IPC</p> <p>3. To suffer rigorous imprisonment for six (6) months and to pay a fine of Rs.1,000/- each and in default of payment of fine to suffer simple imprisonment for one (1) month each for the offence punishable under Section 342 of the IPC.</p>
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Accused No.	Criminal Appeal No.	Name of accused	Sentence
2.	404 of 2017	Sallukumar @ Selvakumar Balsubramanyam Kaunder	To suffer rigorous imprisonment for three (3) years and to pay a fine of Rs.10,000/- each and in default of payment of fine to suffer Simple imprisonment for six (6) months each for the offence punishable under Section 412 of the IPC.
10.	404 of 2017	Ravindra @ Ravi S/o. Sampatrao Madekar	
11.	445 of 2017	Mangal @ Satyaprakash S/o. Nandlal Yadav	
12.	428 of 2017	Prashant S/o. Rambali Waghmare	
13.	428 of 2017	Ravi @ Chhotu S/o. Tikaram Bagade	
14.	436 of 2017	Mohd. Sadiq S/o. Sheikh Mehaboob	
15.	472 of 2017	Suleman S/o. Yunus Surya	

16.	473 of 2017	Mobin Ahmad Khan S/o. Saifulla Khan
17.	436 of 2017	Sheikh Altaf S/o. Sheikh Munaf
19.	454 of 2017	Sau Sadhna W/o. Kishor Itale
20.	404 of 2017	Ashwind Singh @ Sonu S/o. Shatrughnasingh Chavan

Accused No.	Criminal Appeal No.	Name of accused	Sentence
7.	431 of 2017	Sheikh Mustaq @ Sameer S/o. Sheikh Habib	To suffer rigorous imprisonment for seven (7) years and to pay a fine of Rs.10,000/- each and in default of payment of fine to suffer Simple imprisonment for six (6) months each for the offence punishable under Section 412 of the IPC.
8.	430 of 2017	Rehaan Baig S/o. Akram Baig	
21.	599 of 2018	Pankaj Vinayak Kanoje	

Accused No.	Criminal Appeal No.	Name of accused	Sentence
23	478 of 2017	Mohd. Shamim S/o Abdul Ajj	1. To suffer rigorous

imprisonment for seven (7) years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer Simple imprisonment for six (6) months for the offence punishable under Section 397 of the IPC.

2. To suffer rigorous imprisonment for two (2) years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer Simple imprisonment for three (3) months for the offence punishable under Section 120-B of the IPC.

3. To suffer rigorous six (6) months and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer simple

			imprisonment for one (1) month for the offence punishable under Section 342 of the IPC.
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Total 22 accused faced the trial before the learned Additional Sessions Judge, Wardha. Accused Nos.3, 9, 22, and 24 are acquitted of the offences punishable under Sections 395, 120-B, 342, 356, 407, 408, 409, 412 and 414 of the Indian Penal Code (for short, 'the IPC'). Accused Nos. 1 to 5, 7 to 17, 19 to 24, except two absconding accused were acquitted of the offences punishable under Sections 356, 357 and 414 of the IPC. Sessions Trial No. 131 of 2013 has been kept pending for trial of absconding accused Nos. 6 and 18.

2 Background facts:

The informant is PW-5 Domnik Ganiyan. The case of the prosecution, which can be gathered from the report and other materials, is that the Axis Bank had appointed

Security Trans India Private Limited for the transportation of cash from the currency chest of their bank to different branches of the Axis Bank. The Security Trans India Private Limited would transfer the cash through a cash van. The cash van was always maned by the custodian, gunman and other staff. On 05.03.2013, a cash van bearing registration No. MH-31/CQ-4758 was deployed at Axis Bank Currency Chest, Lakadganj, Nagpur. The custodian Domnik Ganiyan (PW-5) and his team were directed to bring cash from Axis Bank, Jalna. PW-5, accused No. 3 Wasim, gunman Sunilsingh (PW-7), gunman Wasudeo Khandare (PW-18) and the driver of the van Rajesh Virkhare (PW-6) proceeded for Jalna at about 11:00 a.m. They reached Jalna at around 01:30 p.m. On the next day, they collected the cash from Axis Bank, Jalna and brought the same to Axis Bank, Akola. They reached Akola at around 12:30 midnight. At Axis Bank, Akola the cash was unloaded. PW-5 and other members stayed at Akola.

3 It is stated that on the next day i.e. on 07.03.2013, they collected/loaded a sum of Rs.2,36,50,000/- (Rupees Two Crores Thirty Six Lakhs Fifty Thousand only) from the Axis Bank, Akola and started their journey for Nagpur at about 10:30 a.m. On the way, they took a brief halt for a meal at Badnera. Thereafter, they proceeded towards Nagpur. In the afternoon hours, they reached the tollbooth at Karanja. From Karanja, they proceeded towards Nagpur. On the way, after crossing village Thanegaon, one black colour four-wheeler vehicle came from the back side. The occupants of the said vehicle gave a stop signal to the driver and forced the occupants to stop the cash van. It is stated that on the windshield of the said vehicle a piece of paper with the sign 'On Duty' was affixed. Two persons from that vehicle got down and came towards the informant, who was sitting beside the driver seat. Those two persons demanded a gun licence. In the meantime, another person got down from that vehicle and came towards

the van. Out of the first two persons one person took out the pistol and pointed it at the head of PW-5. Other person went towards the gunman and pointed the pistol at his head. One person went towards the driver of the cash van and brought down the driver from the van and dragged him in their vehicle. One person occupied the driver's seat of the van and followed the black colour vehicle. Both vehicles crossed village Kondhali. After crossing village Kondhali, the vehicle of the accused persons took a left turn on kaccha road. The cash van followed the said vehicle.

4 After traveling some distance, they took the cash van in one field. The vehicles were stopped and thereafter, both the custodians Domnik and accused -Wasim were forcibly brought down from the cash van and made to sit in the black vehicle. It is stated that the person from the black vehicle opened the cash van and loaded the currency notes in gunny bags. They filled cash in two gunny bags. Thereafter, the

driver of the cash van was instructed to drive the van and follow the black colour vehicle. After travelling a distance of 12-13 km, both vehicles stopped in the forest. At the said place, the accused shifted the trunks loaded with cash in a black vehicle. The occupants of the black vehicle took search of the occupants of the cash van and snatched their mobile phones. It is stated that those persons locked the occupants of the cash van in the vault of the cash van and fled with the cash from the spot. The occupants of the cash van, with the help of the local people, broke open the door of the cash van and freed themselves. Thereafter, they went to Kondhali police station and reported the matter to the police. They were taken from Kondhali police station to Karanja (Ghadge) Police Station. At Karanja Police Station, PW-5 lodged the report of the incident.

5 Based on this report, crime bearing No. 30 of 2013 was registered. Initial investigation was carried out by Police Inspector Deepak Wanjari (PW-48). On the next date i.e., on

08.03.2013, police inspector Deepak Wanjari, the informant and the panchas went to the spot of the incident. The spot was pointed out by the informant. The informant initially pointed out the place where the cash van was stopped by the robbers. The vehicle was taken to village Sonpur Shivar. PW-48 drew the spot panchanama. The investigating officer seized the articles found on the spot, namely five locks, one tommy, one iron chain, four empty cash bags, pieces of nylon rope, one paper having letters 'On Duty', pieces of label put around currency notes, one empty bag of fertilizer and two stones. PW-5 took the investigating officer and panchas to the forest area where the vehicle was in abandoned condition. The panchanama of the vehicle/ condition of the vehicle was drawn. The services of the finger print expert had been availed to obtain the finger print on the empty cash box.

6 The first arrest in the crime was made on 09.03.2013. The investigating officer arrested accused No.1

Chandrashekhar Mudliyar at Koradi and took him to the Gittikhadan Police Station, Nagpur. Accused No.1 Chandrashekhar made a confessional statement and pursuant to the statement, the amount of Rs.37,50,000/- (Rupees Thirty Seven Lakhs Fifty Thousand Only) was seized from him. At the instance of accused No.1-Chandrashekhar, the Tata Safari Vehicle bearing registration No. MH-40/137, used in the crime, was seized from the house of accused No. 5 Sachin Shrivastav. The empty cash boxes were recovered at the instance of the accused Chandrashekhar from the farm house of accused No.4 Shailesh Masram. At the instance of accused Chandrashekhar, an amount of Rs.4,30,000/- (Rupees Four Lakhs Thirty Thousand only) was recovered from the possession of accused No.2 Sallukumar @ Selvakumar Kaunder. The interrogation of accused No.1 Chandrashekhar and accused No.2 Selvakumar revealed the involvement of accused No.3-Wasim Sheikh, who was the cash officer of the

cash van. Thereafter, accused No. 3 Wasim was arrested.

7 On 11.03.2013, Police Inspector, Local Crime Branch, received secret information that accused No. 4 Shailesh and accused No. 5 Sachin, involved in the crime, were coming to Nagpur. Accordingly, the trap was laid at Wadi Road tollbooth. Accused Nos. 4 and 5 came to that place in a Pajero vehicle. They were accosted and arrested. In the search of the vehicle, the amount of Rs.26,40,000/-(Rupees Twenty Six Lakhs Forty Thousand only) was found. The cash bundles were rapped with the label of Axis Bank. Two mobile phones were found in the car. The articles were seized. The accused were arrested. The arrested accused Chandrashekhar, gave the clue with regard to the involvement of the other accused. The remaining accused were arrested. The cash was recovered from them. These accused, according to the prosecution, dishonestly received the property stolen in the commission of dacoity. On 10.04.2013, on the basis of the secret information, accused No.

7 -Sheikh Mustaq @ Sameer was arrested. The search of his red colour Balero vehicle was carried out and in the search, one country made pistol, two bullets, one mobile of Lava Company, one mobile of Nokia Company, amount of Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty Only) and the bag containing Rs.90,000/- (Rupees Ninety Thousand only) were seized. As per the confessional statement of accused No. 7 Sheikh Mustaq @ Sameer, the amount of Rs.72,00,000/- (Rupees Seventy Two Lakhs only) concealed at the house of his friend Pintu resident of Nagpur was recovered. The accused No.23 Mohammad Shamim and accused No. 24-Vijay Sonekar were arrested. One pistol, one magazine and three bullets were recovered from them. During the course of investigation, the amount of Rs.1,97,07,300/- (Rupees One Crore Ninety Seven Lakhs seven thousand three hundred only) was recovered. The amount was deposited in the bank as per the order of the Court.

first part of the incident, the test identification parade through the eye-witnesses was conducted. The investigation conducted by the police revealed the involvement of all 24 accused. The charge-sheet was filed in the Court of Judicial Magistrate First Class, Karanja (Ghadge). Learned Magistrate committed the case to the Sessions Court. The learned Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge. Their defence is of false implication. The prosecution, in order to bring home the guilt of the accused, examined fifty witnesses. During the pendency of the case, the accused Nos.6 and 18 absconded. The learned Judge separated their trial. Learned Judge, on consideration of the evidence, held the appellants guilty and sentenced them as above. The original accused Nos.3, 9, 22 and 24 were acquitted of the offences punishable under Sections 395, 120B, 342, 356, 407, 408, 409, 412 and 414 of the IPC. The appellants are before this court against the judgment and order passed by Additional

Sessions Judge, Wardha.

9 I have heard the learned Advocates for the appellants. The appellant in appeal No. 599 of 2018 was not represented by any advocate. Therefore, Advocate Mr Atharva Manohar is appointed to represent the said appellant. Considering the bulky record and the intricate issues involved in all these appeals, learned Advocate Mr Adwait Manohar is appointed as an Amicus Curiae to assist the Court. Learned Advocate Mr Adwait Manohar has made submissions as an Amicus on all the points involved in the case. Learned Advocate Mr Adwait Manohar has made the following submissions:

The prosecution has failed to establish that the amount of Rs.2,36,50,000/- (Rupees Two Crores Thirty Six Lakhs Fifty Thousand only) was loaded in a cash van on 07.03.2013 by the officials of the Axis Bank, Akola. The

evidence of PW-50 – Amit Laturiya, the Assistant Manager of the Axis Bank, Akola, falls short to prove this principal aspect. The documentary evidence at Exh. 1588 a remittance register extract does not show that the amount of Rs.2,36,50,000/- was loaded in the cash van. The number of the currency notes of the particular denomination mentioned in the chart does not tally with the total amount of Rs.2,36,50,000/-. The calculation of the amount as per number of the currency notes of particular denomination would show that it is less than what is stated in the said document. There is no investigation on this aspect by the investigating officer. It was the duty of the investigating officer to interrogate the officials of the bank and obtain the evidence to prove that the cash worth Rs.2,36,50,000/- was loaded on the given date in the cash van. The document produced on record also does not support the case of the prosecution *inasmuch* as the relevant entries of the document do not bear the stamp of the bank. PW-5 has admitted that,

after loading the cash in the van, the denomination slip of the amount loaded in the van was handed over to him. The said slip has neither been collected during the investigation nor produced before the Court. The record from the bank has not been produced to prove that the cash of Rs.2,36,50,000/- was loaded in the cash van on 07.03.2013 for being carried to Nagpur. Learned Amicus submitted that, on this count, the investigation is faulty and the same would show that there is no material to prove that the informant and his companions were carrying an amount of Rs.2,36,50,000/-. In the absence of proof of this fact, the case of the prosecution becomes doubtful.

10 Learned Advocates appearing for accused Nos.1, 4,
5 and 23 adopted the submissions advanced by the learned
Amicus.

11 The learned APP Mr Amit Chutke submitted that
the accused have not disputed throughout that the cash of

Rs.2,36,50,000/- was not loaded in the cash van at Akola. The witness PW-50 examined by the prosecution, who is Assistant Manager of the Axis Bank, Akola has produced on record the original cash remittance register. The cash remittance register at Exh. 1588 shows that the cash of Rs.2,36,50,000/- was loaded in the cash van. The learned APP submitted that while making entry of the currency notes of Rs.100/- denomination, entry made was of '19500' currency notes. The learned APP submitted that while noting down the total number of notes of Rs.100/- denomination, the concerned officer has failed to add one '0' to 19500. It is pointed out that the total against the denomination of Rs.100/- and number of notes is Rs.1,95,00,000/- (Rupees One Crore Ninety Five Lakhs only). It is submitted that this was an unintentional mistake. It is submitted that therefore, on this ground, there is no substance in the submissions advanced by the learned Amicus.

adduced by the prosecution, it is necessary to note down the undisputed facts relevant for addressing this issue. Alongwith PW- 5 Domnik Ganiyan, Mr Wasim, was the cash officer in the van. Mr Wasim was made an accused in this case, being part of the conspiracy, with the other accused, who had committed the dacoity. The investigating officer has admitted that the statement of the then Manager of the Axis Bank, Akola branch, was not recorded. It has come on record that during the investigation neither the inquiry was made with the officials of the Axis Bank, at Branch Akola nor the relevant record was collected to establish that on 07.03.2013 the cash of Rs.2,36,50,000/- was loaded in the cash van. It has come on record that the relevant documents, namely Exh. 1587, 1588 and 1589 had been produced for the first time by PW-50, in the Court, at the time of his evidence. It has come on record that the police suspected the involvement of the occupants of the cash van in the crime. It has come on record that PW-5

Domnik Ganiyan and other occupants of the cash van had been detained in the police station for 11 days for the purpose of inquiry. In this backdrop, it is necessary to consider the evidence of PW-50.

13 PW-50 Amit Laturiya has stated that when this offence took place, he was not serving in the said branch. The then branch Manager of the Axis Bank has not been examined. He has stated that the cash remittance register has columns to show the dates of receipt and delivery of the cash, time, total amount, denominations, the name of the escorting officer, signature of the escorting officer, guard name, vehicle number and signature of the branch head/Manager. He has stated that on 07.03.2013, the bank had loaded cash of Rs.2,36,50,000/- in vehicle No. MH-31/CQ-4758. It was received by the escorting officers Wasim Sheikh and Domnik Ganiyan. He has also produced on record the account statement at Exh. 1591. The account statement shows the transaction details. It shows

that the transaction total is Rs.2,36,50,000/-. Perusal of this document does not show that the transaction amount was loaded in cash van on 07.03.2013. In this context, perusal of his cross-examination would be necessary. He has stated that the police, during the investigation, had obtained certain documents from the Branch Manager. Those documents have not been produced on record by the police. He has admitted that the entries in the remittance register are not in his handwriting. He has stated that the police might have seen the remittance register. He has stated that on the remittance register they used to obtain the stamp of the security company. He has admitted that against the entry in question there was no stamp. He was not working in the branch on 06.03.2013 and 07.03.2013. He has stated that he does not know that the then branch Manager was suspected to be involved in this case by the police.

1588 would show the denomination of the currency notes and the number of currency notes of a particular denomination. It is as follows:

100 X 19500	=	19,50,000 (written as 1,95,00,000/-)
50 X 63000	=	31,50,000
20 X 9000	=	1,80,000
10 X 82,000	=	<u>8,20,000</u>
	=	61,00,000

It shows that the total of the cash would come to around Rs.61,00,000/-. It is true that the mistake can occur while preparing the documents. It is to be noted that this entry was made by the responsible officer of the bank. Bank officials could have detected this mistake. The investigating officer was required to collect relevant documents during the investigation and record the statement of the concerned witness to rectify such a mistake. In my opinion person who had made this entry would have been the proper person to depose about this mistake and circumstance under which this mistake had

occurred. Prosecution has not examined such witness. It is evident that this mistake was not rectified at the stage of the evidence, when PW-50 deposed before the Court. He could have stated that while recording the number of the currency notes of denomination of Rs.100/-, one '0' was not added to the total of currency notes of this denomination. The total of Rs.100/- denomination notes recorded in this register comes to $100 \times 19500 = 19,50,000/-$. In the remittance register the total against the 100 denomination notes was mentioned as Rs.1,95,00,000/-. In my view, this is a basic flaw in this case. There was no investigation on this point. Learned Amicus brought this important fact to the notice of the Court. On appreciation of the material on record and more particularly in the absence of any explanation as to the occurrence of this mistake, the document has to be read as it is. If the document is read as it is and one '0' is not added to '19500' it would show that there were 19500 currency notes of Rs.100/-

denomination. The total of currency notes of 100 denomination as per this entry come to Rs.19,50,000/-. On this point, the investigating officer is silent. There is no explanation for not conducting the investigation on this basic or foundational fact. In my view, this defect noticed, at this stage, would go to the very root of the case of the prosecution.

15 There are two sets of accused in this case. The first set of the accused are those who were involved in the actual incident of dacoity. The second set of the accused are those who have been convicted for the offences punishable under Section 412 and 414 of the IPC. I will first deal with the case of the prosecution against the first set of accused.

16 The learned Amicus Mr Adwait Manohar took me through the record and made the following submissions:

 The prosecution has failed to examine independent witnesses as to the first part of the incident that occurred on the

highway. Failure to examine an independent witnesses, who in the ordinary circumstances would have been easily available, is fatal to the case of the prosecution. The manner of the occurrence stated by all the witnesses creates a doubt about the occurrence of the incident, as narrated by them. Perusal of the evidence would show that these witnesses have suppressed the actual incident that had occurred and the place of the occurrence of the incident. There was a Global Positioning System (for short 'the GPS') installed in the vehicle. But it was not seized. Failure on this count is an attempt to suppress the genesis of the incident. The important witness, who had helped the occupants of the cash van to come out of the van in the forest, has not been examined. There are material inconsistencies and discrepancies in the evidence of the material witnesses, which creates a doubt about the occurrence of the incident. The first information report is ante-time to suppress the material facts. The facts recorded in the spot panchanama

as well as in the panchanama of the vehicle clearly suggest that the true version of the case of the prosecution has not been *put forth*. The test identification parade of the accused conducted by the investigating officer has been vitiated *inasmuch* as the evidence of the witnesses on record proves beyond doubt that all the accused identified by the witnesses had been shown to the witnesses in the police station. The conduct of the occupants of the cash van is suspicious and doubtful. The police suspected their involvement in the commission of the crime. Accused Wasim, the cash officer, was arrested in this crime, being a member of the conspiracy, to commit the dacoity with other accused. The remaining occupants of the cash van, who have been examined as a witnesses, had been detained in the Karanja Police Station for 11 days. They were threatened and pressurized to act as per the suggestions of the police. Their statements had been recorded on a number of occasions and their statements, found suitable to the case of a prosecution,

were finally approved and made a part of the charge-sheet. The learned Amicus submitted that all these circumstances, if considered in totality, create a doubt about the occurrence of the incident at the given time and place and in the manner stated by the witnesses. It is submitted that overall perusal of the evidence shows that the police, in order to stop the public outcry, concocted the case and prosecuted the appellants.

17 Learned Advocates appearing for accused Nos. 1, 4, 5 and 23 adopted the submissions advanced by the learned Amicus. Besides, they took me through the record and proceedings and pointed out the fundamental drawbacks and defects in the conduct of the investigation by the investigating officer. On the basis of this material, they submitted that in order to show that a difficult case was solved within no time, they have committed various irregularities and those irregularities and defects are sufficient to conclude that the appellants have been falsely implicated in this case.

18 The learned APP Mr Amit Chutke submitted that the investigating officers, during their evidence, have crystalized all the relevant factual aspects. The informant and other occupants of the cash van had no reason to falsely implicate the accused. The dacoity committed by the accused was pursuant to the conspiracy hatched by them. One occupant of the cash van by name, Wasim was instrumental in hatching the conspiracy and in providing the information with regard to their movement throughout. The evidence of PW-5, 6, 7 and 18 is consistent. The failure of the investigating officer to seize the GPS gadget may not go against the prosecution *inasmuch* as the prosecution on the basis of the evidence of the material witnesses, has established the occurrence of the incident at various spots in great detail. PW-5, 6, 7 and 18 had sufficient opportunity to see the accused at the time of commission of the offence and therefore, all these accused were identified by them in the test identification parade conducted by PW-31 Ganesh

Barve. Learned APP submitted that the incident had occurred in a broad daylight. It is submitted that the serious nature of the incident and threat extended to the occupants of the cash van at gunpoint by the accused is the circumstance in favour of the prosecution. The mistakes committed by the witnesses while narrating the incident would not be sufficient to discard the evidence of the eyewitnesses. The evidence of the eyewitnesses has been supported by the contemporaneous documentary evidence and other evidence collected during the course of the investigation. The cash, which was the subject matter of the dacoity, was seized at the instance of accused Nos.1, 4 and 5. This is a strong circumstance to corroborate the evidence of the eyewitnesses as to the occurrence of the incident. The accused have not explained the recovery of the cash from their respective possession. Though the panch witnesses have turned hostile, the recovery of the cash and other articles has been proved through the evidence of the

investigating officer. The learned APP submitted that on the basis of the evidence, the involvement of the accused Nos. 1, 4, 5 and 23 has been established beyond reasonable doubt with other absconding accused in the incident of dacoity. Learned APP took me through the judgment and order passed by the learned Judge and submitted that the learned Judge has thoroughly appreciated the evidence and on appreciation of the evidence, has recorded the cogent reasons in support of his findings.

19 I have carefully perused the record and proceedings. I have gone through the evidence of the material witnesses. The incident in this case occurred in a broad daylight. As per the case of the prosecution, the cash van was stopped on the national highway by the accused. There is no independent witness to the occurrence of this incident. The prosecution, in order to prove this incident on the highway and thereafter, in the agricultural land and in the forest, has placed

heavy reliance on the evidence of PW-5, 6, 7 and 18. The first part of the incident occurred on the national highway after the tollbooth. It has come on record in the evidence of PW-5 that the incident on the highway lasted for about 10-15 minutes. PW-6 has stated in his evidence that approximately 50 vehicles pass on this highway in one minute. The evidence of the witnesses deserves minute scrutiny to consider the probability/possibility of the incident on the highway. The manner of the occurrence of the incident on the highway for 10-15 minutes, narrated by PW-5, 6, 7 and 18, would show that the same would have attracted the attention of the persons passing through the highway. I may now deal with that part of the evidence.

20 PW-5 has stated that when they crossed Thanegaon, one black colour four-wheeler vehicle came from behind and therefore, the driver of the cash van gave a side to that vehicle. He has stated that thereafter the said vehicle came

parallel to their vehicle and when the said vehicle was parallel to their vehicle, one person sitting in that vehicle gave a stop signal to their vehicle by showing his hand. He has stated that on the rear side glass of that vehicle 'On Duty' sticker was pasted. He has stated that said vehicle overtook their van and after overtaking, the accused stopped their vehicle. He has stated that two persons got down from the said vehicle and came towards their vehicle. Those two persons came to him (PW-5) and asked for a gun licence. He has stated that he thought that those persons were police officers and therefore, he asked his gunman to show his gun licence. He has stated that a third person from the black four-wheeler vehicle came down and approached their vehicle. Out of the first two persons, one person took out the pistol and pointed at his head. Another person went towards the gunman and pointed his pistol at his head. The third person went towards the driver, caught hold him and dragged him into their black vehicle. The

third person again came back towards the van and occupied the driver's seat and then drove the cash van behind the black colour vehicle. So this is his version as to the occurrence of the incident.

21 At this stage, it is necessary to mention that there were two gunmen in the cash van, namely PW-7 Sunil Singh and PW-18 Wasudeo Khandare. Their guns were loaded each with two bullets. PW-5 has nowhere stated that those persons overpowered Wasim. It has come on record that neither PW-5 nor two gunmen either obstructed or resisted the force used by the accused.

22 PW-6 Rajesh Virkhare is the driver of the cash van. He has stated that on the spot one vehicle came behind their vehicle. That vehicle gave horn for 2-3 times. He has stated that his vehicle was in a right lane and after blowing the horn by the said vehicle, he took his vehicle in a left lane. He has

stated that the black colour vehicle came parallel to their vehicle and thereafter came in front of their vehicle. He was required to stop his vehicle. In his evidence, he has not stated that one of the occupants of the said black vehicle gave a stop signal. He has stated that thereafter, two persons got down from the middle seat of that vehicle. One person came from the driver side and the other person came from the conductor side. He has stated that one person came towards him and asked him for his driving licence. The said person climbed on the vehicle and opened the door and thereafter that person kept a gun at this neck. This part of the evidence of PW-6 is contrary to the evidence of PW-5. PW-5 has nowhere stated that one of the occupants of the said black vehicle pointed a gun at the neck of the PW-6. This shows that there is variance in the evidence of the PW-5 and 6 on these material aspects. He has stated that he was dragged from his seat and taken to the black colour vehicle. He has stated that he was made to sit in the middle seat

of the vehicle and then he was not able to see anything happening outside.

23 PW-7 Sunil Singh is the gunman. As far as this part of the incident is concerned, he has stated that after Thanegaon, after 10-12 km, one black vehicle came from behind. The driver of the said vehicle blew the horn. He has stated that PW-6 took the cash van in the left lane. The black vehicle overtook their vehicle and came across their vehicle. Therefore, their vehicle was stopped. Two persons from the middle seat of the said vehicle came towards the cash van. One went towards the driver and another came from the conductor side. The person coming from conductor side pointed a pistol at the head of Domnik (PW-5). The said person demanded a gun licence. The person going to the driver's seat dragged the driver from the driver's seat and took him in their vehicle. The said person came back and sat behind him in the cash van. He was sitting on the rear seat of the cash van. He has stated that those

persons assaulted Domnik and Wasim and snatched their mobile phones. He has nowhere stated that two persons carried the pistol. He has nowhere stated that the pistol was pointed at his head by one of those persons. This is contrary to the evidence of PW-5 Domnik. His evidence that those persons assaulted Domnik and snatched their mobiles is also contrary to the evidence of PW-5 and 6. It is not the case of the prosecution that their mobile phones had been snatched at the said place. It is the case of the prosecution that their mobile phones had been snatched in the forest when they were put in the cash van. He has further stated that out of two persons sitting in the cash van, one was holding a pistol and another was holding barber's knife razor. This is also contrary to the evidence of PW-5 and PW-6.

24 PW-18 is another gunman. As far as this part of the incident is concerned, he has stated that after crossing Karanja (Ghadge) tollbooth, near village Thanegaon, one black colour

safari came from behind at a fast speed. The person sitting in the black safari shouted like a police man and told them to stop the cash van. He has stated that the black safari came across the vehicle and therefore, the driver was forced to stop the cash van. He has stated that they shouted by saying, “Ruk ja kaise gadi chala raha hai”. He has stated that when their vehicle was stopped, two persons got down from the said black safari vehicle. One person climbed into their vehicle from the driver side and another person climbed from Domnik side. The person climbing from the side of Domnik was holding the pistol and kept the said pistol at the head of Domnik. He has stated that after keeping the pistol at the head of Domnik, that person came inside the vehicle. He has stated that the person climbing into their vehicle from the driver side was holding a pistol. He has stated that two persons dragged their driver from the driver’s seat and took him in their vehicle. His evidence is contrary to the other witnesses on material aspects. PW-6, 7

and 18 have nowhere stated that they saw sticker 'On Duty' pasted on the backside glass of the said Tata Safari vehicle. It has come on record that Domnik was occupying the conductor seat beside the driver. PW-18 was sitting just behind the driver on back seat. Sunil Singh was by his side and by the side of Sunil Singh, Wasim was sitting. The driver could have noticed the said sticker on the vehicle. Except Domnik, no other witnesses stated that they saw the sticker with the words 'On Duty' pasted on the vehicle. PW-7 and PW-18 nowhere stated that the pistol was pointed at the head of Sunil Singh.

25 It is true that in such an incident the occupants are bound to get frightened. It needs to be stated that they were not the ordinary occupants of any vehicle carrying the passengers. They were doing their duty on a cash van employed for the transportation of the cash from one bank to another bank. They had their protocol. The guns are provided to the security guards to protect the vehicle and cash in such an

incident. It is to be noted that the cash van was 407 Tata make mini truck. It is not easy to enter this vehicle like a Car. One has to climb and then open the door and then get entry into the vehicle. It is not the case of Domnik that their gunmen had no licence. The conduct of Domnik would assume importance in this situation. He would have taken out the gun licences from the gunmen and shown them to that officer. Domnik, considering their protocol, would have alerted the gunmen and taken the account of the situation. The two gunmen did not move an inch from their place, which is not acceptable. They would have shown a due diligence and protested this act. So on this first part of the incident, there are major inconsistencies in their evidence. The incident of dragging the driver from the cash van to their vehicle by force and then taking control of their vehicle at the gunpoint on the highway lasted for 10-15 minutes. It is to be noted that such an incident would not have gone unnoticed by the passersby. It has come on record that

from the spot the vehicles proceeded on the highway for 4-5 km. There was no protest as well as there was no due diligence to protect their van. Domnik and other occupants within no time would have realized that the occupants were not the police officers. Their conduct in this factual position appears to be inconsistent. It creates a doubt about the occurrence of the incident in the manner narrated by them on the highway in a broad daylight.

26 The next part of the incident occurred in the field at Sonpur Shivar. PW-5, as to this part of the incident, has stated that the cash van followed the black colour vehicle of the accused. After crossing Kondhali, the black colour vehicle took a left turn on kaccha road and they followed the said vehicle. After travelling for 4-5 km, the vehicles were stopped in one field having a hut. He has stated that at that place he and Wasim were brought down by force from the cash van and taken in a black safari vehicle and made to sit on a middle seat.

He has stated that the accused opened the back door of the cash van. It is to be noted at this stage that the van was a packed vehicle meant for carrying the cash. The cash van had security features. PW-5, being the senior cash officer, was supposed to have the keys of the lock. He has not stated that the accused demanded the keys from him and he provided the keys to the accused. On this aspect, all the witnesses are silent. It is not the case that the accused at this spot broke open the lock of the cash van. He has stated that they loaded the cash in two gunny bags and then closed the door of the van. Thereafter, they brought their driver to the cash van and told him to drive the cash van behind the black colour vehicle. As far as this part of the incident is concerned, PW-6 has stated that after taking a left turn at Thanegaon, they followed the black colour vehicle. He has further stated that when they stopped the vehicle they were giving command as 'Chabi Lelo Jaldi Jaldi Nikalo'. He has stated that they released his hand and made him occupy the

driver's seat of the cash van. PW-5 Domnik is silent about this part of the incident. He has also not stated that they loaded the cash from the trunks in the gunny bags. He is silent about the opening of the door of the cash van.

27 PW-7 has stated that after taking a left turn at Thanegaon, they traveled 15-20 km by inside road and in the field, the vehicles were stopped. PW-5 and 6 have stated that they traveled 4-5 km. PW-7 has stated that they traveled 15-20 km. He has stated that after stopping vehicles, the accused brought down the custodians and opened the cash van. He is also silent as to whether the cash van was opened with the keys snatched or provided by the custodian. He has stated that when he was sitting in the vehicle, he heard the sound of breaking of something. It is not the case of the prosecution that the lock was broke open by the accused.

28 PW-18 has stated that the accused were telling

them to show road. He has stated that thereafter the vehicles were taken in a barren field. He has stated that after stopping the vehicles, he heard the loud sound of breaking of the safe vault. He has stated that the person holding the pistol was beside them and he was shouting 'Gold dikhao bore bharo'. He has stated that thereafter they told the driver of the cash van to drive the cash van. It is to be noted that at this place also there was no resistance to the accused by these persons. The gunmen were expected to show due diligence. They could have fired the bullets. It is to be noted that this most important fact, which has not been noticed by the learned Judge, has a great significance. The accused knew that the cash van was fully protected. They had seen the two security guards with two guns. In ordinary circumstances, the first thing that the accused would have done was to have snatched the guns from the security guards and kept the same in their vehicle or with one of them. In my view, this circumstance is very material. It was

not possible for the accused to anticipate that the two security guards with loaded guns would not fire the bullets on them.

29 Before proceeding to the third and the most important part of the incident in the forest area, it would be necessary to consider the description/condition of the cash van. The description of the cash van can be seen from the panchanama at Exh. 1358. The cash van was a Metadoor model 407 bearing registration No. MH-31/CQ-4758. It was packed and fully protected. It had all security features. On the front side windshield, the protective iron net was fixed. The panchanama shows that the front side windshield was broken on the driver side and two stones were stuck in the net. It is not the case of the prosecution that for the purpose of stopping this vehicle, the accused pelted stones. It is also not the case of the prosecution that the front side windshield was broken by the accused. It is important to note that on the backside there were two compartments to this van. It can be seen that the first gate

from the backside of the van was opened. Similarly, the door of the cash vault was also opened. The first compartment on the backside was meant for sitting of the security guards. In the cash vault, the door with all security features was fixed. It is not clear from this description as to whether the door to the cash vault had an auto-lock facility or locking facility with the latch. It is the case of the prosecution that after unloading the cash from the trunks, the occupants of the van were forcibly pushed in the cash vault and the door was locked from outside. It is stated that before fleeing from the spot, the accused had snatched the mobile phones of the occupants. The articles which were found on the spot contained a broken handle of the gate. In my view, the description of van and articles found on the spot would assume significance while appreciating the evidence.

30 PW-5 and other witnesses have deposed that from the field, the driver of the cash van instructed them to follow

the black coloured Tata Safari vehicle. They took the cash van in the forest area. They had no bags to unload the cash. Therefore, they opened the cash vault and unloaded all the trunks in the black safari vehicle. It is to be noted that the size of the trunks has not been stated anywhere. Therefore, the question is whether it was possible to load 4-5 trunks filled with the cash in a Tata Safari vehicle. This is another important circumstance to create a doubt about the occurrence of the incident in the manner stated by them. It has come on record in their evidence that thereafter, the accused persons took them in a cash vault. They searched them and snatched their mobile phones. They have stated that they locked them in a vault and ran away with the cash in a black coloured vehicle. They have stated that they could not open the door. After some time, one person on a two-wheeler was passing by the cash van. They shouted and called him. They told him to open the backside door of the cash van. They have stated that the said person

could not open the back door. The said person gave an iron rod, lying near the van, to them and they opened the back door of the cash van with the help of that rod. Thereafter, they came out of the vehicle. It is to be noted that the backside window glass of the van was broken. The backside of the vehicle was divided into two parts. The first part was cabin meant for the guard and thereafter, there was a cash vault. Perusal of the description of the vehicle would show that there was no glass to the cash vault. The witnesses have not stated that they broke the window glass. It is pertinent to note that if all the witnesses had been locked in the cash vault then they would have broken that part of the glass and tried to come out of the vehicle. In my view, this is a very doubtful circumstance. Perusal of the evidence would show that the person, who was passing by the van, could not open the door even with the help of the rod. The door was locked. It is evident that there is complete vacuum on this important part of the case of the prosecution

and which creates a doubt. If the person on the outside of the vehicle was not able to break open the door or lock, how the witnesses who were inside the cash vault could have opened that door. It is further seen on perusal of their evidence that the lock put to the door from outside was not broken. Even if it is assumed that they broke open the door from inside either by pushing or with the help of the tommy, then the latch with the intact lock would have either fallen on the ground or partially attached to that door. The panchanama of the vehicle shows that the broken handle of the door was lying on the spot. If the handle was broken, then it would have been with the lock, which was not admittedly broken. It is further pertinent to note that the said person who had helped the occupants of the cash van has not been examined as a witness by the prosecution. Similarly, the statement of the said person was not recorded. In my view, this is a very important circumstance against the case of the prosecution.

31 It has come on record in the further evidence that Sunil Singh (PW-7) tried to search for someone to get the mobile phone and contact their office at Nagpur. It has come on record that he went to one field and brought one person to the spot, who was having the mobile phone. PW-5 then contacted their incharge Mr Barman, at Nagpur and informed him about the incident. It is not their case that the person who helped them to break open the door was not having the mobile phone. In my view, this exaggerated account is also doubtful. The person, who had helped them to come out of the cash vault as well as who provided them the mobile phone would have been the proper witnesses. The investigating officer was required to record the statements of such an important independent witnesses. It is therefore apparent that the condition of the vehicle on the spot is such that it creates a doubt about the occurrence of the incident in the manner narrated by them. In my view, in this backdrop, the failure on

the part of the investigating officer to seize the GPS system installed in the said vehicle is another circumstance against the case of the prosecution. The seizure of the GPS system and analysis of the gadget could have given the exact time, the location and the movement of the vehicle during this period. In my view, this is a very vital and important circumstance against the case of the prosecution.

32 In the above background, the submission advanced by the learned Amicus that the FIR in this case was ante-timed needs consideration. PW-5 has stated that, after the incident, in the forest, the people from nearby villages started gathering near the cash van. In his evidence, he has stated that at about 6:00 p.m., police from Kondhali and Karanja Police Stations came to the spot and took them to Kondhali Police Station. In his examination-in-chief, he has nowhere stated that he personally informed Mr Barman, their superior at Security Trans India Private Limited, Nagpur, about the occurrence of

the incident. PW-7, in his evidence, has stated that he made a phone call to Barman after getting the mobile phone from the villager. He has stated that Domnik (PW-5) had also talked with Barman. He has stated that after some time, police came to the spot. PW-6 has not stated that before the arrival of the police to the spot, he had personally informed the police about the occurrence of the incident. It is further seen that PW-5 and 7 are silent about the actual information given to Mr. Barman at Nagpur. PW-5, in his further evidence, has stated that from the spot they were taken, first to the Kondhali Police Station, and from the Kondhali Police Station they were taken to the Karanja (Ghadge) Police Station. He has stated that at Karanja Police Station he lodged the report. The report is at Exh. 435. In this backdrop, it is necessary to mention that the FIR was registered at Karanja police station at 5:15 p.m. PW-5 has stated that the incident occurred between 4:00 p.m. and 6:00 p.m. PW-5, 6, 7, and 18 have stated that at about 7:30 p.m.

they were at the Kondhali police station. They have stated that they left for Karanja police station around 8:30 to 9:00 p.m. It has further come in their evidence that after reaching Karanja police station, the police inquired with them about the incident for 2 to 3 hours. They were interrogated till 5:00 a.m. in the morning of 08.03.2013. PW-5 has admitted that his statement was recorded by the police on the next morning and prior to that his signature was not obtained on any paper. The first information report, which was registered at 5:15 p.m., bears the signature of the informant PW-5. It therefore goes without saying that the report was ante-timed and ante-dated.

33 PW-4 Leeladhar Ukande, the police constable, who registered the FIR, has stated that his duty hours on 07.03.2013 were from 14:00 hours to 20:00 hours and during his duty hours, police inspector Deepak Wanjari (PW-48) reduced into writing the report of PW-5. As per the evidence of PW-4, the report was lodged before 08:00 p.m. on

07.03.2013. Perusal of the evidence of the informant would show that by 8:00 p.m. on 07.03.2013 they were at the Kondhali police station. PW-6, in his evidence, has stated that they reached Karanja police station at 12 in the midnight and writing work started around 08:00 a.m. on the next day. PW-5 has stated in para No. 14 of his cross-examination that from 07.03.2013, the police made an inquiry with him. The police had suspicion that he was involved in this crime. He has admitted that police kept him in custody and inquired with him. He has stated that the police assaulted them in the police station *inasmuch* as the police had suspicion on him. He has stated that the police interrogated him till 05:00 a.m. He has further admitted that he put his signature on papers on the say of the police. He has further admitted that he, alongwith his colleagues, was detained at Karanja police station for 11 days.

34 In this context, it would be necessary to consider the evidence of DW-2 Suresh Sheshrao Mude (ASI) attached to

the Kondhali Police Station, at the relevant time. He was examined to prove the station diary entry dated 07.03.2013 made at police station Kondhali. He has stated that on 07.03.2013 at about 16:40 hours telephonic information was received from one retired colonel Vijay Premraj Barman. Mr. Barman had informed that his 407 Metador carrying cash of Rs.2,50,00,000/- was robbed by six unknown persons. He has stated that on the basis of this information, subsequently, an offence was registered at Karanja police station. He has stated that after receiving this information, the police staff went to the spot. It is undisputed that the FIR was registered at 5:15 p.m. at Karanja police station. PW-5 has stated that in the morning of 08.03.2013, at about 8:00 a.m., his signature was obtained for the first time on the paper. It is therefore apparent that the FIR is ante-dated and ante-timed. It has been established on the basis of evidence of PW-5.

decision of the Apex Court in the case of *Meharaj Singh .v/s. State of U.P. with Kalu .v/s. State of U.P. and others*¹. In this case, the Apex Court has considered consequences of ante-timed and ante-dated FIR. Paragraph 12 of this decision is relevant. It is extracted below:

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the

1 (1994) 5 SCC 188

prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

36 In this case, the Apex Court has held that ante-timed and ante-dated FIR is the strong circumstance in favour of the accused. The FIR on this count loses its value and authenticity. The ante-timed and ante-dated FIR, if proved, suggest that it was a handy work of police to obviate the delay

in lodging the FIR on account of due deliberation and embellishment. The investigating officer PW-48 was confronted with this factual position. The explanation sought to be placed on record by him, contrary to the evidence of PW-5 and other witnesses, is further creating doubt in the mind of the Court. In my view, this ante-dated and ante-timed FIR is the most important circumstance to create a doubt about the occurrence of the incident in the manner stated by the witnesses and the involvement of the accused in this crime.

37 In the above backdrop, it is necessary to consider whether the evidence adduced by the prosecution with regard to the identification of the accused in the test identification parade and before the Court at the time of the evidence inspires confidence or not. It is the basic contention of the accused that the entire test identification parade has been vitiated *inasmuch* as the witnesses, before the actual conduct of the test identification parade, had an opportunity to see them in the

police station. In order to appreciate these submissions, the evidence of the witnesses and other materials is required to be appreciated. PW-5, 6, 7 and 18 are the main witnesses to the occurrence of the incident and, as such, for the identification of the accused at the test identification parade. At the cost of repetition, it is necessary to mention at this stage that the police had a suspicion that all these witnesses were involved in the crime. It has come on record in the evidence of PW-5, 6, 7 and 18 that from the time of the lodging report for 11 days they were kept in Karanja police station. Accused Nos.1, 2 and 3 were arrested on 09.03.2013. Accused Nos.4 and 5 were arrested on 11.03.2013. Accused No. 23 was arrested on 31.07.2013. It is the case of the prosecution that PW-5 identified accused Nos. 1 and 4 at the test identification parade conducted on 08.04.2013. PW-5 identified accused Nos.5 and 6 at the test identification parade, conducted on 23.04.2013 and identified accused No. 23 in the test

identification parade conducted on 21.08.2013. PW-5 identified all these above accused in the Court at the time of his evidence. PW-6, the driver of the cash van, identified accused Nos.1, 4 and 5 at the test identification parade. Similarly, he identified these accused in the Court at the time of his evidence. PW-7, the gunman, identified accused Nos.1, 4, 6, 23 and 24 at the test identification parade. Similarly, in his examination-in-chief, he identified these accused. However, in his cross-examination, conducted on behalf of the defence advocate, he has admitted that he cannot identify the accused involved in the incident. The learned Judge, in view of the doubtful nature of his evidence, has discarded his evidence. PW-18, the gunman, identified accused Nos.1, 4 and 6 at the test identification parade. He has identified these accused in the Court at the time of his evidence. He did not identify the pistol. Similarly, PW-7 also did not identify the pistol.

of the above witnesses and submitted that their evidence proves beyond doubt that this identification of the accused by these witnesses was vitiated. All these witnesses had been subjected to searching and grueling cross-examination touching the relevant aspects as to the test identification parade. PW-5 has admitted that the police had suspicion that they were involved in the commission of the crime and therefore, from 07.03.2013, they were kept in the police station. In his cross-examination, he has admitted that PW-7 and his other colleagues were also with him at Karanja police station for 11 days. He has admitted that police inspector Bhusari told them that they should narrate the incident as suggested by police otherwise they would be booked in this crime. He has stated that therefore they acted as per the say of police inspector Bhusari. He has categorically admitted that during this period of 11 days, police inspector Bhusari used to show all the accused arrested by the police in the crime to them. He has

admitted that during this period, the police showed the case diary to them. In the case diary, there were photographs of the accused persons arrested in the crime. He has further admitted that at the time of the identification parade, police pointed out the persons standing for the test identification parade to ascertain their involvement in the incident. He has stated that the same thing had happened while conducting a test identification parade on three dates.

39 PW-6 has admitted that his statement was recorded on 08.03.2013. He has admitted that the room for recording the statement is at the entrance and besides that room there is a lockup. He has further admitted that there was pressure on police machinery to detect the crime in a short time. He has stated that on the way to the central jail at Wardha, for the purpose of test identification parade Police constable accompanied them. The police constable was carrying the case papers. He has denied the suggestions that police had shown

the photographs of the accused to them. This statement is contrary to the admission given by PW-5. He has further admitted that during this period they were under pressure. During this period of five days, the accused were arrested. He has stated that they were kept in the wireless room of the police station at Karanja. The lockup was by the side of this room. He has stated that at the time of the test identification parade, they had a discussion. He has categorically admitted that the officer, who had accompanied them from Karanja Police Station to jail, was sitting in front of the room where they were brought for the test identification parade.

40 As far as evidence of PW-7 is concerned, it has been discarded by the learned Judge. In his examination-in-chief, he identified the accused persons present in the Court. However, in his cross-examination he took a somersault. He has admitted that for 11 days he, alongwith his other colleagues, was kept at Karanja police station. He was under

pressure of the police authority. He has stated that due to the pressure of the police, he followed the instructions of the police. He has categorically admitted that at the test identification parade, he identified the accused on the say of the police. He has further admitted that at the time of test identification parade, they all were under pressure of the police.

41 PW-18 identified some of the accused before the Court at the time of his evidence. It has come on record in his evidence that police recorded his statement 7-8 times during this period. It has come on record that the statements of all these witnesses were recorded multiple times. The witnesses have stated that their fresh statements were recorded because statements made by them were not found suitable by the police for the case. PW-18, in his cross-examination, has categorically stated that he was called for an identification parade only on 08.04.2013 and 23.04.2013 and thereafter, he was not called. His examination-in-chief and other evidence would show that

on 21.08.2013 he identified two accused at test identification parade.

42 PW-5, 6, 7 and 18 are the main witnesses of the prosecution to establish the identity and, as such, the complicity of the accused persons in the offence of dacoity. In view of the shaky nature of the evidence of these witnesses, it is not possible to believe the evidence and ultimately the case of the prosecution. The evidence of these witnesses is sufficient to conclude that during the period of 11 days, when they were detained in the Karanja police station, the accused arrested in the crime and particularly the main accused were shown to these witnesses.

43 Learned Advocate Mr Atharva Manohar, relying upon a decision in the case of *Gireesan Nair and others .v/s. State of Kerala*², submitted that the test identification parade

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conducted was mere formality having no legal value and therefore has to be discarded. In this case, the Apex Court has held as follows:

"In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence. (Para 31)

If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless."

44 In the backdrop of the aforesaid legal position and the shaky evidence of the witnesses discussed above, the submissions advanced by the learned Amicus deserve acceptance. It is to be noted that in this case the police

suspected the involvement of all the above-stated witnesses in the crime. The investigation conducted in the crime has failed to address more than one doubtful circumstance. On the contrary, the evidence of these witnesses would show that the police were in a tearing hurry to detect the crime and therefore, they were pressurized to act as suggested by the police. While appreciating the evidence of the witnesses as to the manner of the occurrence of the incident, I have observed that the evidence does not inspire confidence. There was no reason for the police to detain the witnesses for 11 days in the police station. Similarly, there was no reason to call all the witnesses first to the Karanja Police Station and then to take them together with the case record to Wardha Central Prison for a test identification parade. In my view, the evidence of the witnesses is sufficient to conclude that the test identification parade loses its significance. In view of this, the identification of the accused by the witnesses in the Court loses its value and

credibility. It is evident that the investigating officer, on account of supervision of the Superintendent of Police Wardha District, was in a tearing hurry to detect the crime and answer the public outcry and the perception.

45 PW-31 is the Nayab Tahsildar, who had conducted the test identification parade. He was not concerned with the investigation. He has prepared the record of the test identification parade. The evidence of PW-31, as to the conduct of the test identification parade, by itself would not be sufficient to attach credibility to the factum of the identification of the accused persons at the test identification parade as recorded in the test identification parade memorandums. In my view, therefore, the edifice of the case of the prosecution with regard to the identification of the main accused involved in the incident of dacoity falls flat. The evidence of the witnesses as to the identification of the accused persons at the test identification parade and at the time of their evidence in

the Court is tainted. The evidence is shaky and doubtful. Therefore, I am not inclined to accept the evidence of these witnesses on the point of the identification of the accused at test identification parade as well as in the Court.

46 Learned Amicus submitted that the role of the police officers creates a doubt about the involvement of the accused and the very genesis of the crime. It is submitted that the overall investigation conducted in this crime was tainted. The learned Amicus took me through the evidence of witnesses to fortify this submission. It is seen that PW-48 has deposed about the recovery of the pistol from the Vainganga lodge at Gadchiroli. PW-48 has deposed that accused No. 23 was involved in this crime of dacoity and the pistol used by him was recovered at his instance. PW-29 Devendra Bisen, the owner of the lodge is examined to prove this fact. The panch witness to this recovery of the pistol has not supported the case of the prosecution. Exh. 1500 and 1501 are the bills of the lodge

issued to the accused No. 23 and his companion. The bills would show that they stayed at the lodge for more than a month. PW-29 has admitted that the police used to regularly visit their lodge and have an inspection on a routine basis and used to make an inquiry about the persons staying in the lodge for a long period. He has admitted that the registers were also regularly submitted for police verification. The register maintained at the lodge is not part of the record. The documents, which are purported to be the bills issued to accused Nos. 23 and 24, would show that these documents are created just for the purpose of this case. The bills further show that for a one month's stay the accused Nos. 23 and 24 paid only Rs.2000/-. Perusal of bill Exh. 1501 shows that in this bill departure date and departure time is not mentioned. The suitcase was kept in the storeroom. At the time of the visit of the police that storeroom was locked. PW-29 has stated that the Manager of the lodge broke open the lock of the storeroom.

It is to be noted that when the luggage of a guest/visitor is kept in the storeroom of the hotel or the lodge, the necessary entry is made in the guest register. The suitcase was kept in the storeroom for months together. It is to be noted that when the guest checks out, the luggage kept with the hotel or lodge is returned to the guest. The suitcase was lying in the storeroom for months together. There is no contemporaneous record to establish that any such suitcase was kept in the storeroom. It is further seen that the electricity bill of the lodge/premises has been produced. Perusal of the bills and electricity bill would show that the pin code on the two bills and the electricity bill is different. In my view, this circumstance clearly shows that the investigation on this count is tainted.

47 PW-40 API Pravin Kale has stated that he arrested accused No. 7 Sheikh Mustaq @ Sameer at Amaravati in a Balero vehicle. He was shown arrested on 10.04.2013. PW-40 has admitted that on that day the location of his mobile phone

might be at Wardha. In my view, this shows the extent of the falsehood of the investigating officer. The accused was shown to have been arrested from Amravati, whereas the location of the mobile phone of PW-40 was at Wardha. As far as the defective investigation is concerned, it is apparent that the first part with regard to the loading of the actual cash in the cash van was not at all investigated. The investigating officer was required to collect the documentary evidence with regard to the cash loaded in the cash van. The record was available with the bank. Similarly, PW-40 has admitted that he is not aware of the person who had obtained a description of the currency notes of Axis Bank from Domnik. He has admitted that he had not obtained any information about the description of the currency notes prior to proceeding with the investigation. The police have failed to seize the GPS system installed in the cash van to cross-check or verify the story of the informant and his companions. It is further seen that the investigating officer did

not avail the services of the panch witnesses from the Government offices. It has come on record that the station diary entries were made by the police officer while proceeding for the investigation. It is evident on perusal of these station diary entries that the names of the panch witnesses were not recorded in those station diary entries. The panch witnesses have not supported the case of the prosecution.

48 As far as the genesis of the crime is concerned, perusal of the evidence of PW-5, 6, 7 and 18 would show that the police have suppressed the same. PW-5, 6, 7 and 18 have admitted that they were kept at Karanja Police Station for about 11 days. The police initially suspected that this crime was the handy work of PW-5, 6, 7 and 18. It has come on record in their evidence that they were threatened by the police and their statements were recorded multiple times. The witnesses have stated that when the police were satisfied that the statements made by them were proper to suit their purpose, those

statements were finally made a part of the record. It therefore goes without saying that the police have deliberately suppressed the multiple statements made by these witnesses. It creates a doubt that the police have *put forth* a fabricated and concocted version of the prosecution case. The police have suppressed the genesis of the crime namely, the actual cash loaded in the cash van at Akola as well as the involvement of the real culprits.

49 The learned Amicus relied upon a decision of the Division Bench of this Court, to which I was one of the Member, in the case of *Hasankhan Jabajkhan .v/s. State of Maharashtra*³ to substantiate his contention that the suppression of the genesis of the case of the prosecution is very fatal and as such, creates a reasonable doubt about the case of the prosecution. This issue has been addressed in paragraph No. 51 of the decision. Paragraph No. 51 is extracted below:

3 2022 (3) ABR (Cri.) 149

“51. The learned advocates for the appellants placed reliance on the reported decisions to substantiate their submissions. Learned advocate Shri A.S. Manohar, relying upon the decision in the case of Lakshmi Singh and others v. State of Bihar, reported in AIR 1976 SC 2263, submitted that if the evidence on record indicates conspiracy of all witnesses to implicate innocent persons, then in that situation, the truth and falsehood get inextricably mixed together and it becomes difficult to separate them. The learned advocate submitted that benefit, in such a case, has to be extended to the accused. On appreciation of the evidence, it is found that it is not possible to disengage the truth from falsehood. It is found that truth and falsehood are so inextricably mixed together that it is difficult to separate them. If an attempt is made to do so, it would amount to reconstructing a new case for the prosecution, which would not be permissible in a criminal trial. Learned advocate Shri Manohar, relying upon the decision in the case of Takhaji Hiraji v. Thakore Kubersingh Chamansingh and others, reported in (2001) 6 SCC 145 : (AIR 2001 SC 2328), submitted that if the best witness is not examined then an adverse inference has to be drawn against the case of the prosecution and in favour of the accused. In this case, it is held that if there is failure on the part of the prosecution to examine material witnesses, then it becomes fatal to the case of the prosecution. It is held that it is more so when the evidence available on record creates a doubt and is not sufficient to unfold the genesis of the incident or an essential part of the prosecution case. In the case on hand, it is found that the

prosecution has failed to examine material independent witnesses, who could have unfolded the genesis of the incident. The witnesses examined have enmity with the accused and are interested witnesses. In support of the above submission, reliance is also placed upon the decision in the case of Arshad Hussain v. State of Rajasthan, reported in (2013) 14 SCC 104 : (AIR 2013 SC 3001). In this case, it is held that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Suppression of the genesis and the manner of the incident is sufficient to create a doubt about the case of the prosecution. The doubt could be said to be, in such a situation, a reasonable doubt. The proposition, in our opinion, would be applicable to the present case.”

50 In this case, it is held that the suppression of the genesis and the manner of the occurrence of the incident is sufficient circumstance to create a doubt about the case of the prosecution. In my view, the learned Amicus is supported on this point by this decision. On analysis of the material on record, I am satisfied that the police have suppressed the genesis of the incident. It is the most doubtful circumstance.

51 On minute scrutiny and appreciation of the evidence, I am satisfied that the evidence does not inspire confidence. The genesis of the incident has been suppressed by the investigating officer. The FIR is ante-dated and ante-timed. The test identification parade of the accused person is shaky and doubtful. The evidence woefully fall short to prove that the amount of Rs.2,36,50,000/- was loaded in the cash van at Akola. In the facts and circumstances, therefore, the evidence adduced by the prosecution cannot be made the basis of the conviction of the accused, who have been held guilty of the dacoity under Sections 395 and 397 of the IPC.

The charge under Sections 412 and 414 of the Indian Penal Code

52 Learned Advocate Mr Atharva Manohar, appointed to represent accused No.21, advanced the lead argument. The advocates appearing for the remaining accused facing the similar charge, submitted their written notes of arguments and

at the stage of the arguments before the Court, adopted the submissions advanced by the learned Advocate Mr Atharva Manohar. Learned Advocate Mr. Atharva Manohar assailed the findings of the learned Judge on multiple grounds. Learned Advocate submitted that the prosecution is duty bound to prove, by leading cogent evidence, that the accused had knowledge or reasonable grounds to believe that the property was stolen in dacoity. It is submitted that the dishonest intent of the accused is crucial and as such, it must be proved by leading cogent and concrete evidence. Learned Advocate submitted that the prosecution has relied upon statements made by the accused persons to the police officers with regard to the possession of the money, which was the subject matter of dacoity committed by the accused persons. Learned advocate submitted that this evidence is inadmissible. The prosecution has not adduced cogent and concrete evidence to attribute the knowledge to the accused that any dacoity was committed and

the money was subject matter of dacoity. Learned Advocate submitted that the prosecution has relied upon the statements of the co-accused made before the police officers, which led to the recovery of the cash, as prime evidence. In the submission of the learned Advocate, there is no independent evidence to prove that the accused persons made memorandum statements under Section 27 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') and the statements made by the respective accused led to the recovery of the cash. It is pointed out that the panch witnesses, who are the stock witnesses of the Karanja Police station, have turned their back to the prosecution. There is hardly any independent evidence to prove the statements made by the accused persons before the police officers, which ultimately led to recovery of the money. Learned Advocate submitted that the evidence of the investigating officers does not inspire confidence. The investigation is faulty and colourable. The investigating officers have suppressed the

material facts. It is submitted that the investigating officer Mr. Wanjari (PW-48), has failed to carry out the investigation and establish that on 07.03.2013, the cash worth Rs.2,36,50,000/- was loaded in the cash van. Learned Advocate submitted that the failure to establish this fact is the strong circumstance to conclude that the recovery attributed at the instance of the accused persons was not pertaining to the dacoity. In order to seek support to his submissions, learned Advocate has relied upon the decision in the case of *Shiv Kumar .v/s. State of Madhya Pradesh*⁴. In this case, the Hon'ble Apex Court has held that in order to establish that the person is dealing with stolen property, the 'believe' factor of the person is of stellar importance. For successful prosecution, it is not enough to prove that the accused was either negligent or that he had a cause to think that the property was stolen or that he had failed to make enough inquiries to comprehend the nature of the goods procured by him. It is held that the failure of the

4 (2022) 9 SCC 676

prosecution to establish *mens rea* or knowledge that the property in question was stolen property is the strong circumstance in favour of the accused.

53 Learned Advocate Shri R. M. Daga, appearing for accused No. 8, in support of his submission, has placed heavy reliance on the decision in the case of ***K. Venkateshwara Rao .v/s. State represented by Inspector of Police, A.P.***⁵. In this case, the Apex Court has held that the onus is on the prosecution to establish that the accused had knowledge that the property was stolen property or he has a reason to believe that it is stolen property. It is further held that in the absence of such proof, the accused could not be held guilty under Section 412 of the IPC, *more so* when he has specifically denied the recovery.

54 Learned APP Mr. Pendke for the state submitted

5 (2002) 6 SCC 247

that the evidence of the police officers is of stellar quality, and on the basis of the evidence of the police officers, the prosecution has established that the accused persons, while in the custody of the police, made a statement with regard to the concealment of the cash, the subject matter of dacoity and pursuant to those statements, the cash had been recovered. In the submission of the learned APP, the recovery of the cash at the instance of the accused persons is a strong circumstance against the accused. Learned APP submitted that the recovery of the cash is sufficient to attribute the knowledge to the accused that it was stolen property. It is submitted that, on the basis of the recovery of the cash, reasonable grounds to believe that the property was stolen in dacoity have to be attributed to each one of the accused, albeit separately with regard to their respective statement and recovery. Learned APP submitted that the evidence of the police officers inspires confidence. The failure of the panch witnesses to support the case of the

prosecution is not always fatal to the prosecution case. It is submitted that the accused persons have failed to establish their right *vis-a-vis* the cash and the source of the cash. Learned APP submitted that the learned Judge has properly appreciated the evidence and has come to unassailable conclusion on this point.

55 I have minutely perused the evidence adduced by the prosecution. I have also gone through the reasons recorded by the learned Judge in support of his findings. On going through the available evidence on record and the reasons recorded by the learned Judge, I am satisfied that the prosecution, on this count, has miserably failed to prove its case beyond reasonable doubt.

56 It has come on record that considering the magnitude and seriousness of the crime, the police might be under tremendous pressure to arrest the culprits and recover the

cash. The panch witnesses to the memorandum and discovery panchanamas, attributed to the respective accused persons, have not supported the case of the prosecution. The panch witnesses have turned hostile. It has come on record that the panch witnesses selected even for the memorandum and discovery panchnamas, conducted at Nagpur and other places, were from Karanja. It has come on record that the services of one panch witness have been availed of by the investigating officer for multiple such memorandum and discovery panchnamas. On this count, the police have committed a mistake. It appears that the police were in a tearing hurry to arrest the culprits and answer the public outcry. In a crime of such magnitude and seriousness, the investigating officer is required to avail the services of the panch witnesses from the government offices. It is common knowledge that the panch witnesses from the government offices, namely the government servants normally do not turn hostile. Those panch witnesses support the case of

the prosecution. In this case, the investigating officers were required to avail the services of the panch witnesses from the government offices. At the stage of investigation, the investigating officer must ensure that the evidence collected during the course of the investigation is sufficient to sustain the charge against the accused. In case of availing the services of the stock panch witnesses, there is always a danger of those witnesses turning their back to the prosecution.

57 It is evident that the investigating officers, while proceeding with the investigation with the panch witnesses, have prepared the station diaries. It is seen on perusal of the record that, barring one or two station diaries, the names of the panch witnesses had not been mentioned. The station diary is most important contemporaneous documentary evidence in such a factual situation. It is to be noted that the investigating officer must take proper care to maintain the contemporaneous documentary evidence. When the panch witness turns hostile,

the submission is advanced that the panch witness was not present throughout and signatures of the panch witness were obtained in the police station. In my view, in order to meet such submission, there must be contemporaneous documentary evidence. The panch witnesses have admitted their signatures on the panchnamas. The panch witnesses have not supported the prosecution with regard to the contents of the memorandum and discovery panchnamas. In my view, this is a vital circumstance against the case of the prosecution.

58 Section 27 of the Evidence Act allows for the admissibility of only that part of the confessional statement which lead to the discovery of a new fact. This means that if the information provided by the accused results in the discovery of something previously unknown to the police, then that part of the statement can be used as evidence. The absence of independent witnesses does not necessarily invalidate the evidentiary value of the statement. However, the credibility

and reliability of the statement need to be scrutinized more vigorously by the Court. It is to be noted that the exact information or a statement made by the accused, admissible under law, must be proved. The information must be directly related to the discovery of the fact and must be specific enough to lead to the discovery. It has been held in the catena of decisions that the discovered fact must be something that was not previously known to the police.

59 In the case of *Pulukuri Kottaya and others .v/s. Emperor*⁶, it has been held that only that part of the confessional statement would be taken into account, which may lead to the discovery of fact, and that discovery should be a physical object and not only a mental fact. Therefore, the actual statement made by the accused before police must be specifically proved. It must be proved that the statement is admissible as a confession and it must lead to the discovery of a

6 AIR (34) 1947 Privy Council 67

physical object and not only a mental fact.

60 In this case, except for the statements of the accused persons, there is no other independent evidence. The prosecution, in order to prove this fact, has relied upon the evidence of the investigating officers before whom the statements had been made by the respective accused. It has come on record that at multiple places the recovery of a cash had been made. It is the submission of the learned APP, in the backdrop of the recovery of such a huge cash, inference consistent with the voluntary and truthful nature of the confessional statements by the respective accused has to be drawn. It is submitted by the learned APP that it would not be possible for the investigating officer to plant the amount, which runs into Rs.1,97,00,000/-. In my view, this submission cannot be accepted for more than one reason. The prosecution has failed to prove that the cash worth Rs.2,36,50,000/- was loaded in the cash van on 07.03.2013. The documentary evidence on

record beyond doubt proves that the cash worth Rs.61,00,000/- was loaded in the cash van. PW-5, who was the cash officer and incharge of the cash van, did not produce before the police the denomination slip handed over to him, when the cash was loaded in the van. Similarly, the investigating officer did not conduct any investigation on this point. It is evident that the remittance register was produced for the first time in the Court at the time of the evidence of Assistant Manager (PW-50). In my view, therefore, the submission of the learned APP that the Court has to draw an inference that such a huge cash could not be planted and it must be presumed to be the stolen cash cannot be accepted.

61 It is to be noted that in order to attract the provisions of Sections 412 and 414 of the IPC, the prosecution is duty bound to prove that the amount recovered was stolen cash of dacoity. The prosecution is duty bound to prove, by leading cogent evidence, that the accused had knowledge or

reasonable grounds to believe that the property was stolen in a dacoity. The phrase “had a reason to believe” is crucial in legal context, particularly in criminal law, as it pertains to the mental state of the accused. In this case, the recovery at the instance of the accused persons attributed to the respective accused has not been proved by leading cogent, concrete and independent evidence. The investigating officer in a tearing hurry proceeded further with the investigation and availed the services of the stock panch witnesses, who did not support the prosecution. I have noticed number of lacunas and drawbacks in the investigation. The investigation, by and large, was a defective investigation. The investigating officer could not collect evidence to establish the very genesis of the incident. In such a crime, the dishonest intention of the accused is crucial and must be demonstrated through evidence. The recovery of the cash by itself would not be sufficient to conclude that it was stolen property connected with the dacoity.

62 In the facts and circumstances, I conclude that the prosecution has miserably failed to prove the charge under Sections 412 and 414 of the IPC. The confessional statements have not been proved. Minute perusal of the evidence of the police officers, would show that the police officers have not categorically stated in their substantive evidence about the actual statement made by the accused. It is seen that the learned Judge at the stage of the evidence of the police officers, despite objection on the part of the learned defence advocates, admitted the entire memorandum panchanama in evidence. It is necessary to mention that at the stage of the evidence, the admissible portion of that confessional statement under Section 27 of the Evidence Act has to be categorically recorded before the Court and that part of the statement from the memorandum panchanama needs to be admitted in evidence. The Court cannot leave the issue of admissibility of that part of a statement for final adjudication. In view of this, I conclude

that on this count also the evidence adduced by the prosecution is awfully lacking. The defective investigation and the failure to unearth the genesis of the crime by the investigating officer are the strong circumstances to discard and disbelieve the case of the prosecution *vis-a-vis* the charge under Sections 412 and 414 of the IPC. In my view, the interested evidence of the police officers therefore cannot be accepted. It needs to be stated that the evidence of the police officers cannot be thrown overboard merely because the panch witness does not support the case of the prosecution. The evidence of the investigating officer can be made the basis of a conviction provided the evidence inspires confidence. The evidence shall not give scope to any inference other than the fact investigated and *put forth* before the Court by the investigating officer. In this case, there were multiple investigating officers. There was nothing wrong on the part of the Superintendent of Police, Wardha to appoint as many investigating officers as possible for conducting the

investigation. However, it was necessary to maintain the proper coordination amongst the investigating officers. In view of this, I am not prepared to accept the evidence of the investigating officers as a gospel truth to bring home the guilt of the accused under Sections 412 and 414 of the IPC.

63 In view of the above, I conclude that the prosecution has miserably failed to prove the guilt of the appellants. The evidence adduced by the prosecution is doubtful and shaky. The evidence awfully falls short to prove the charge against the appellants. In view of this, the appeals are deserves to be allowed.

64 Before parting with the matter, it is necessary to acknowledge the assistance rendered by the learned Amicus Curiae Mr Adwait Manohar, Advocate. Similarly, it is necessary to acknowledge the assistance rendered by learned Advocate Mr Atharva Manohar, who has been appointed to represent the

appellant in Criminal Appeal No. 599 of 2018. Similarly, the efforts put in by the remaining advocates also deserve to be acknowledged. The efforts and assistance rendered by the learned APP Mr Amit Chutke and Mr Piyush Pendke also need acknowledgment. I place on record my appreciation for the able assistance rendered by the learned Amicus curiae and other advocates in the appeals. I also place on record my appreciation for the able assistance rendered by learned APPs Mr Amit Chutke and Mr Piyush Pendke. In view of this, I proceed to pass the following order:

ORDER

1. All criminal appeals are allowed.

2. The judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Wardha dated 17.08.2017 to the extent of the appellants/accused is quashed and set aside.

3. Accused No.1 – Chandrashekhar s/o Subhrahmanyam Mudliyar, accused No. 4 - Shailesh @ Ravi S/o. Bhaskarrao Masram and accused No. 5 - Sachin S/o. Chandraprakash Shrivastav are acquitted of the offences punishable under Sections 395, 120-B and 342 of the Indian Penal Code.

4. Accused No. 2 -Sallukumar @ Selvakumar Balsubramanyam Kaunder, accused No-10 Ravindra @ Ravi S/o. Sampatrao Madekar, accused No.11-Mangal @ Satyaprakash S/o. Nandlal Yadav, accused No. 12- Prashant S/o. Rambali Waghmare, accused No. 13- Ravi @ Chhotu S/o. Tikaram Bagade, accused No. 14- Mohd. Sadiq S/o. Sheikh Mehaboob, accused No. 15- Suleman S/o. Yunus Surya, accused No. 16- Mobin Ahmad Khan S/o. Saifulla Khan, accused No. 17- Sheikh Altaf S/o. Sheikh Munaf, accused No. 19 - Sau. Sadhna W/o. Kishor Itale and accused No. 20- Ashwind Singh @ Sonu S/o. Shatrughnasingh Chavhan are acquitted of the offence punishable under Section 412 of the

Indian Penal Code.

5. Accused No. 7 -Sheikh Mustaq @ Sameer S/o. Sheikh Habib, accused No. 8- Rehaan Baig S/o. Akram Baig and accused No. 21- Pankaj S/o. Vinayak Kanoje are acquitted of the offence punishable under Section 412 of the Indian Penal Code.

6. Accused No. 23- Mohd. Shamim S/o. Abdul Ajj is acquitted of the offences punishable under Sections 397, 120-B and 342 of the Indian Penal Code.

7. Their bail bonds stand cancelled.

8. Mr Atharva Manohar, learned Advocate appointed to represent appellant in Criminal Appeal No. 599 of 2018, is entitled to receive the fee. The High Court Legal Services Sub Committee, Nagpur is directed to pay the fee of the learned

appointed Advocate, as per the rules.

9. The criminal appeals stand disposed of, accordingly. Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)

Namrata