Supreme Court of India
Thimmareddy & Ors vs State Of Karnataka on 21 April, 1947
Author: A.K.Sikri
Bench: Surinder Singh Nijjar, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.903/2014
(arising out of S.L.P.(Crl.) No. 6943/2011)

Thimmareddy & Ors. …..Appellants

Vs.

State of Karnataka …..Respondent

J U D G M E N T

A.K.SIKRI,J.

1. Leave granted.

2. With the consent of learned counsel for the parties, matter was heard finally.

3. Instant is an appeal filed by three persons who were accused of committing offence punishable under Section 397 read with Section 120-B IPC along with five others. After the trial of these accused persons, the Sessions Court had acquitted all the accused person holding that charge under the aforesaid provisions had not been proved against these accused persons beyond reasonable doubt. The State had questioned the validity of the judgment of the trial court by preferring the appeal under Section 378(1) and (3) of the Code of Criminal Procedure. During the pendency of the appeal, one of the accused persons, namely P.Laxman (A-3) died. Appeal was heard qua remaining seven accused persons. The High Court vide its judgment dated 1st December 2010 has convicted five of the seven accused persons for the offence punishable under Section 397 read with Section 120- B of the IPC and have imposed the sentence of rigorous imprisonment for a period of seven years. They have also been directed to pay compensation of Rs.50,000/- each for the aforesaid offences and in default of such payment, to undergo simple imprisonment for a period of one year. The persons who were convicted are accused No.1 to 5, 7 and 8. In respect of accused No.4 and 6, the judgment of the Sessions Judge is maintained holding that the charges against them are not proved and appeal in respect of the said two persons is dismissed. As mentioned above, out of the five accused convicted, only three have approached this Court with present appeal, who are A-1, A-2 and A-5.

4. The case of the prosecution has been stated by the High Court in the impugned judgment, which can be reproduced without any fear or contradiction, is as follows:-

> "On 8.10.2004 at about 10.30 p.m., a KSRTC bus bearing No.KA.36/3453 was proceeding on the Manvi-Raichur Road near Kapagal village. At that time, accused No.4 and accused No.6 who had conspired together andplanned to commit dacoity, gave information to accused No.1, accused No.2, accused No.3, accused No.7 & 8 and all of them committed the offence as per their plan. Accordingly, they went by bus from Gadwal and travelled in the Raichur Mantralayam-Hubli bus as passengers. A-2 by holding a sickle to the neck of the driver PW.2, asked him to stop the bus by assaulting him and threatening to injure him. Immediately the bus was stopped. Accused No.5 took the knife and accused No.1 took dagger and pressed on the chest of PW3 and threatened him with dire consequences. Then, accused No.3 robbed the suit case of PW6 and A-7 took out a knife and threatened PW15, Udaykumar, who suffered injuries on his left hand. A-8 snatched a bag containing money from PW1. Then A-1, A-5 and A-8 robbed the two suit cases of PW13 Jagadeesh and PW7 Jeelani. They also snatched the bag of PW20 Hanumanthappa. A-1,A-7 and A-8 snatched the cash bag from the complainant namely the conductor of the bus. They went at a distance opened the suit cases, took away the money and threw away the articles. Thereby all the accused committed dacoity of an amount of Rs.4,47,100/-. Thereafter, the complainant went to the Manvi Police Station and lodged a complaint. PWs.2, 6,7,13 and 15 accompanied him. The statements of PWs.2,6,7,13 and 15 were also recorded. Accordingly, a case in Crime No.182/2004 was registered by the Manvi Police Station for offences punishable under Section 120-B read with 397 IPC and investigation commenced. Thereafter the accused were arrested and a sum of Rs.28,000/- was recovered from A-1, a sum of Rs.54,000/- from A-2, a sum of Rs.32,000/- from A-3, a sum of Rs.36,000/- from A-4, a sum of Rs.35,000/- from A-5, a sum of Rs.12,000/- from A-6, a sum of Rs.500/- from A-7 and a sum of Rs.9,600/- from A-8. The weapons used in the offence was recovered on their voluntary statement. Various articles were also recovered. On completion of investigation, a charge sheet was filed by the prosecution and the accused were charged for the offence punishable under Section 120-B and 397 of the Indian Penal Code. "

5. The prosecution examined 24 witnesses and produced 78 documents which were exhibited. The prosecution also marked 37 material objects. The accused persons in their defence examined two witnesses and produced five documents.

6. As is clear from the provisions of IPC, charge whereupon was pressed, it was the case of the prosecution that eight accused persons had hatched a conspiracy to commit the dacoity and in furtherance of the said conspiracy they committed dacoity by intercepting KSRTC on 8.10.2004 at about 10.30 p.m. The trial court, accordingly, formulated following points which arose for consideration:

"1) Whether the prosecution proves that the accused conspired together in order to commit robbery on CW-3Y Yousuf in KSRTC bus. While he was travelling and also to other passengers in the bus?

2) Whether the prosecution proves that as a result of said conspiracy the accused committed the dacoity in the bus bearing No.KA- 36/3453 by showing the deadly weapons like sickle, knives near Kapgal Seema at Bailmerchad cross on Raichur Manvi road and committed Dacoity?

3) What order?"

7. Obviously, the first question which fell for consideration was as to whether the accused persons had conspired together in order to commit robbery on Yousuf (PW-6). Second aspect of the matter was as to whether prosecution was able to prove that as a result of the aforesaid conspiracy these accused persons had, in fact, committed dacoity in the said bus on the given date and time.

8. In so far as charge of conspiracy is concerned, it was noted by the trial court that the evidence produced in support of this charge was PW-19 Allabaksh and Yusuf (PW-6). The statement of PW-19 was that he knew Yusuf (PW-6) and Sitaramulu (A-6). One day before 9.30 a.m. before the alleged incident, eight accused persons were seen standing near the shop of Accused No.1 which was 50 km away from the shop of A-6 Siddaramyiah beneath the tree. A-6 was telling other accused persons that on the next date Yousuf was going out of town and other accused had to do their work. Thereafter they dispersed. On the next day, this witness (PW-19) came to know that there was a robbery in which Yousuf was robbed of Rs.3.60 Lakh. The learned Sessions Judge, after analyzing the testimony of PW-19, as well as PW-6 on this aspect came to the conclusion that the charge of conspiracy was not proved inasmuch as, the mere fact that eight accused persons were gathered on the previous day could not automatically connect to the commission of alleged crime. The relevant discussion in the judgment of the learned trial court on this aspect reads as under:

> "The requirement of criminal conspiracy, there must be an existence of an agreement to commit an offence. The conspiracy can be proved by the direct evidence though the same is rarely available, or by circumstantial evidence. As could be seen from the requirement of law there must be an agreement between the accused to commit an unlawful act lead to inference of conspiracy. The evidence of this Allabakash is not corroborated with any other evidence. He never speaks about anything unlawful act to be done and anything about an agreement between the parties with regard to the commission of an unlawful act. Necessary ingredients are not established by leading the evidence of this PW-19 during the course of cross-examination he has admitted that the accused were talking in open space. The publics were passing besides the accused. He did not hear what they were talking. He did not suspect about the accused. Two months after the incident the police came and enquired him. Seetharama A-6 is a merchant and good man. On that day whatever the accused were talking was not in respect of any wrongdoing. These answers of this witness during the course of cross-examination clearly gives goodbye to the theory of criminal conspiracy. Therefore, the materials available on record are not sufficient to establish that there was a criminal conspiracy among the accused in order to commit the

offence."

9. It would be pertinent to mention that even the High Court has not discarded the aforesaid findings of the trial court on the charge of conspiracy. As would be seen hereinafter, the reason for convicting five accused persons, out of eight who stood trial, is that testimonies of other witnesses who were in the bus and had purportedly seen the said accused persons. For want of establishment of charge of conspiracy A-6 and A-4 are let off by the High Court also as they were not named by any of the eye witnesses. We are, therefore, quite in agreement with the conclusion of the trial court that charge of conspiracy under Section 120-B of IPC has not been proved.

10. In so far as the charge under Section 397 IPC is concerned, the prosecution had relied upon the testimony of PW-1 ( conductor of the bus), PW-2 (driver of the bus), PW-6 Yusuf (one of the victims), PW-7(owner of a hotel), PW-9 (cleaner in a tempo), PW-16. Testimony of PW-9 has not been believed either by the trial court or the High Court and therefore no discussion about his deposition is necessitated.

11. PW-1 who is the conductor of the bus and an eye witness was the complainant as well. Apart from narrating the incident of dacoity, the material part of his testimony is that he had identified A-1 and A-5 and their overt acts. As per him, six persons boarded the bus near the Bailmerchad Cross and accused 1and 5 came near the driver. A-1 assaulted and threatened him with a sickle and asked him to stop the bus. PW-1 while deposing in Court identified A-1 and A-5 who had snatched his cash bag.

12. PW-2 (driver), likewise, deposed that he was hit from the back side by hand and a chopper was put on his neck. When he turned around he saw it was accused No.2 who hit him with his hand and put a chopper on his neck and as a result he suffered an injury. According to him he identified A-2.

13. PW-6 who is the main victim and one of the passengers deposed to the effect that he was carrying with him cash of Rs.3,53,000/-. He boarded the bus which was forcibly stopped by two persons who came near him and put a dragger on the left side of his chest. These two persons were A-1 and A-3 whom he identified.

14. PW-7 is owner of a hotel and according to him, accused persons had come and stayed there and he identified two of them, namely, A-1 and A-2 (at this stage we would like to point out that even the High Court has not returned the finding of guilt by referring to his testimony which in any case is not connected with the actual commission of offence).

15. PW-15(Udayakumar) is a Sales Executive Manager in Hubli Pipe Corporation. He deposed that he was also in the bus and was assaulted by a knife on his left hand wrist by A-7 and his bag was snatched away. When A-7 took his bag he stood up but was again assaulted. He identified two persons, namely A-7 and A-8 stating that A-7 caused injuries on him by knife and A-8 also assaulted him.

16. Apart from relying upon the aforesaid eye witnesses who deposed against thee accused persons at the time of trial, the prosecution also stated that after the arrest of the accused persons Test

Identification Parades (TIPs) had been conducted. In these TIPs, PW-2, PW-6 and PW-16 were called and participated who identified A-2, A-1 and A-3, as well as A-7 and A-8 respectively.

17. The trial court after analyzing the testimony of the aforesaid witnesses refused to believe them. Pertinent observation which is made by the trial court in this behalf is that when the statements of these witnesses were recorded under Section 161,Cr.P.C., at the time of investigation by the police officer, none of these witnesses stated that they had seen the accused persons and were in a position to identify them if they were brought before them. The trial court referred to Karnataka Police Manual and observed that the investigation was not done in accordance with the procedure for identifications contained therein. His analysis in this behalf reads as under:-

> "After seeing the above statement the victims of the incident, before the police, it is clear that none of the victim has given any clue to identify the accused persons. Now the question is what are the materials available with the police to search these accused has to be looked into. Here I would like to refer the Karnataka Police Manual, where a chapter is provided, which gives the procedure for identifications. They have to ascertain the kind of light, which was present at the time of incident. The details of the opportunities of seeing the accused at the time of offence. Anything outstanding in the features or conduct of the accused which impressed him (identifier). The distance from which he saw the accused and the context of time during he say the accused. It is mandatory on the part of the I.O. to record in the case diary, the description in detail with the above said ingredients. As could be seen from the case diary available on record there are no materials placed by the prosecution to show that they had identification feature of the accused with them after the incident. Therfore, there is a lapse on the part of the investigating agency to collect the material information, which gives to the prosecution an opportunities to identify the accused. But they have failed to establish the identify of the accused persons of this case. Therefore, as could be seen from the statements of eye witnesses who had suffered injuries in the hands of the Dacoits who had an opportunity of seeing the accused with very close range have not given any description of the identification feature of the accused.
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> The next stage comes where the I.O. gets an opportunity of examining the witnesses who have said to have seen the accused persons. The important witnesses are PW-8 Shankrappa and PW-9 Khaja Pasha. Their statements were also recorded by the police. The said Khaja Pasha who is the Tempo cleaner, who says that he came near Gorkal cross at about 7.00 a.m. there 6 persons were boarded his tempo. Three of them were not wearing chappals and they were talking in telgue, aged about 25 to 30 years, wearing pant and shirt and holding a plastic bag and legs of the persons were with full of mud. They were also taken the tickets and got down in Gilleasugur. Again they boarded to Mantralayam bus. He says that if the person were shown to him he can identify the persons. Therefore, this witness had an opportunity to see the accused persons from very nearer point and he was capable of giving the identification feature of the accused, which were not recorded in his statement by the

I.O."

18. The trial court also found serious loopholes in the manner in which investigation was carried out, leaving serious flaws and the discussion exposing these flaws in the judgment of the trial court which reads as under:

> "In this case the prosecution has lost several valuable opportunities where they could very good material for finding out those culprits. I have already discussed above that the fingerprints of the accused persons were available on the handles of the bus fixed near the door. These fingerprints were not lifted by the I.O. for comparing with the fingerprints of the accused persons. Secondly, the footprints of the accused persons were available in the land at Kurdi village they were also not collected by the agency in order to compare them with the accused persons. The prosecution should have collected some important identification features in order to fix the accused in the offence. The materials aspects are absent then how he can connect this accused to the crime is a big question. Therefore, the circle is incomplete. The link to connect the accused with the crime has lost at Mantralayam. Because all of a sudden the I.O. visits to Swagat Lodge and verified the register and he gets suspicion in the name of one Timmareddy. The contention of the defence Advocate is that Mantralayam is such a place, where the passangers come from various places, where the passengers come from various places, and there is no direct bus facility to go their place. Therefore, they got down at Mantralayam and take the rooms for bathing and performing the Pooja. After completion of pooja, immediately they will vacate the rooms and they continue their travel to their respective places. Can we cannot rule out and we have to differentiate from such type of passengers with the accused. Then, how the I.O. came to know that Timmareddy was one of the accused persons, who gave the information to him. As could be seen from the eye witnesses have given any identification feature with regard to the accused. Even during the second stage of the investigation neither the Shankarappa nor Khaja Pasha have given identification feature of the accused. Then the I.O. says that an information has given the clue of the accused. The only he will capable to give the clue with regard to the accused persons. Under such circumstances, there is incomplete investigation and without that link we cannot connect the crime with the accused and here the prosecution has completely failed to establish the link of the offence with the accused. Therefore, the decision relied upon by the prosecutor are not applicable to the present circumstances of the case at hand. Because the connecting link is lost in order to identify the accused."

19. In so far as recovery on the basis of purported voluntary statement of the accused persons is concerned, the trial court found that while recording alleged voluntary statement of the accused persons, procedure as laid down under Sections 165 and 166 of the Code of Criminal Procedure was not followed. The accused from outside the State were arrested within the limits of some other police station without following the procedure under Section 166 Cr.P.C. It is further pointed out that when the accused persons were brought in Manvi Police Station and their voluntary statements

were allegedly recorded, the police committed major irregularities which were incurable. According to the prosecution the voluntary statements were recorded on 29.10.2004 in respect of Timmareddy, Venkateshagouda, T.Laxman, Anjaneyallu, P.Devanna by PW-23. PW-23 says that after the arrest of the above said accused persons he requested the Tahsildar Manvi to provide 2 official panchas at 4.00 A.M. In the meanwhile, he recorded the voluntary statements of A-1 to 5 as per Ex.p-66 to P-70. Thereafter, on the basis of the said voluntary statements and in the presence of 2 official panchas deputed by the Tahsildar Manvi, he proceeded to recover the cash from their houses under the panchanamas.

20. The aforesaid procedure is commented by the trial court in the following manner:

> "Now the question that would arise is whey the police officer has requested the Tahsildar to provide Government official to act as panchas. What is the reason for taking the Government official to act as panchas. According to the procedure, the police officer has to take the assistance of local people as panchas, and he must give reasons if he does not take the assistance of local people. Before recording the voluntary statements he requests the Tahsildar for giving panchs. How he came to know whether these accused persons would give voluntary statements regarding recovery of the cast. Then o the basis of those voluntary statements the amount was recovered from the respective houses and subsequently, the amount was recovered from other accused persons as per their voluntary statements. The I.O. has not stated about the details of the panchnamas under which the recovery was made. It has to be proved by the prosecution by leading cogent evidence."

21. On the basis of the aforesaid analysis, the trial court did not believe the version of eye witnesses, faulty TIP as well as legality of the recoveries at the instance of the accused persons. With this discussion, the trial court concluded that even if there was some incriminating material against the accused persons that was not sufficient to prove the guilt of the accused persons beyond reasonable doubt as cogent evidence was not produced and the investigation was faulty. This resulted in the acquittal of all the persons by the trial court.

22. Coming to the judgment of the High Court, we find that the High Court has referred to the testimonies of PW-1,2 ,6, 7 and 15 briefly and highlighted the fact that they had identified, between themselves, A-1,A- 2,A-5,A-7 and A-8. Since these are the eye witnesses who had identified these five accused persons, the trial court failed to consider the statements of these witnesses and a generalized finding was recorded to the effect that the accused persons had not been identified. Primarily, on this ground and believing the aforesaid persons' version as eye witnesses, the High Court has convicted these five accused persons.

23. Mr. K.L. Janjani, learned counsel appearing for the appellants questioned the wisdom of the High Court in arriving the aforesaid finding by making following submissions:

(1) The date of alleged offence was 8.10.2004 and the accused persons were arrested on 28.10.2004. However, first TIP was conducted on 9.11.2004 and second TIP on 30.1. 2005. Therefore, this

abnormal delay in conducting the TIPs, that too when the accused persons were not previously known to the alleged eye witnesses rendered the entire exercise of TIPs as invalid to which no credence could be given. He referred to few judgments in support: In Hari Nath vs. State of U.P. 1988 (1) SCC 14 wherein reliance was placed on the following observations:

> "Even on the premise that there was no such prior acquaintance, the evidence establishing the identity of the culprits assumes particular materiality in a case, as here, of a dacoity occurring in the darkness of the night. The evidence of the test identification would call for a careful scrutiny. In a case of this kind where the eyewitnesses, on their own admission, did not know the appellants before the occurrence, their identification of the accused persons for the first time in the dock after a long lapse of time would have been improper. In Halsbury's Laws of England (Fourth Edn., Vol. 11, para 363) this passage occurs and is worth recalling:

"It is undesirable that witnesses should be asked to identify a defendant for the first time in the dock at his trial; and as a general practice it is preferable that he should have been placed previously on a parade with other persons, so that potential witnesses can be asked to pick him out." Other judgment relied upon was on Rajesh Govind Jagesha vs. State of Maharashtra 1999 (8) SCC 428 wherein the proposal of law is discussed as under:

> "This Court in State of A.P. v. M.V. Ramana Reddy (Dr) held that where there is unexplained delay in holding the identification parade, the evidence of the prosecution regarding identity of an accused cannot be held absolutely reliable and in such a case the accused is entitled to the benefit of doubt. The explanation for delay in holding the identification parade offered by the prosecution in the instant case is not trustworthy. The non- availability of a Magistrate in a city like Bombay for over a period of five weeks from the date of the arrest of Accused 1 and 2 and three weeks from the arrest of Accused 3 and 4 cannot be accepted. It is not denied that scores of Magistrates are available in the city of Bombay and that the investigating agency was not obliged to get the parade conducted from a specified Magistrate. The High Court was not justified in holding that the parade could not be held early on account of alleged difficulties of the Special Executive Magistrate. It was not for the defence to prove that the parade held was suffering from legal infirmities because, admittedly, the onus of proof in criminal case never shifts as the accused is presumed to be innocent till proved otherwise, beyond all reasonable doubts, by the prosecution. In cases where a person is alleged to have committed the offence and is not previously known to the witnesses, it is obligatory on the part of the investigating agency to hold identification parade for the purposes of enabling the witnesses to identify the person alleged to have committed the offence. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Such a parade may not be necessary in a case where the accused person is arrested on the spot immediately after the occurrence. The evidence of identifying the accused person at the trial, for the first time, is from its very nature, inherently of a weak character. This Court in

> Budhsen v. State of U.P. held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witnesses came to pick out the accused person and the details of the part which such persons played in the crime in question with reasonable particularity. The test identification is considered as a safe rule of prudence for corroboration. Though the holding of the identification proceedings may not be substantive evidence, yet such proceedings are used for corroboration purposes in order to believe or not the involvement of the person brought before the court for the commission of the crime. The holding of identification parade being a rule of prudence is required to be followed strictly in accordance with the settled position of law and expeditiously. The delay, if any, has to be explained satisfactorily by the prosecution." (2) His next submission was that PW-1 and PW-7 had identified A-

1 and A-5 in the court and PW-7 had identified A-1 and A-2 in the court. However, they were never called at the time of conducting TIP.

(3) In respect of all these eye witnesses, namely PW-1,PW-2, PW- 6, PW-7 and PW-15 his submission was that the High Court had simply taken into account their version in the examination-in-chief and did not discuss the cross-examination at all, which exposed the falsity of their statement.

(4) It was further argued that PW-2 (driver) had categorically stated that the faces of all these persons who boarded the bus gathered with kerchief and since their faces were hidden there was no question of identifying these persons by any of the witnesses.

(5) It was also submitted that there is no discussion in the judgment at all as to how the trial court went wrong and the reasons given by the trial court particularly with reference to Karnataka Police Manual and faulty investigation are not dealt with at all.

(6) Another submission of the learned counsel was that at the time when their statements were recorded under Section 161,Cr.P.C. none of these witnesses stated that they were in a position to identify the culprits. There was, thus, clear violation of the procedure contained in Karnataka Police Manual and it was a clear case of improvement by these witnesses at a later stage either in belated TIPs or before the court when they were examined as witnesses.

24. Mr. C.B.Gururaj, learned counsel appearing for the State referred to the testimonies of the aforesaid eye witnesses and argued that the eye witnesses were believable and the conviction based on their testimony was just and legal. In a sense, he relied upon the discussion contained in the judgment of the High Court returning the finding of guilt against the appellants.

25. After considering the respective submissions and going through the record, we are inclined to accept this appeal as we are of the opinion that High Court has committed grave error in recording the conviction solely on the basis of the statement of the so called eye witnesses, and wrongly believing their version. From the discussion contained in the judgment of the High Court, it

becomes apparent that except stating what these witnesses have mentioned in their examination-in-chief, no further discussion is there in the judgment and the testimony is of all these persons are believed as gospel truth. The High Court was duty bound to consider their testimonies in entirety i.e. along with the cross- examination in order to find out their truthfulness and to see whether their version in examination in chief has remained unshaken and worthy of credence. No such exercise is done at all. No doubt, the trial court has indulged in wholesome discussion while discarding the testimony of eye witnesses. Fact remains that while doing so, the trial court discussed the infirmities in the procedure adopted which led to the disbelieving of all these witnesses. The discussion of the trial court adversely commenting upon the faulty procedure and imperfect investigation is completely ignored and sidelined by the High Court.

26. In so far as eye witnesses are concerned, as pointed out above, the High Court has accepted his truthfulness and relied upon the testimonies of PW-1 (conductor who had identified A-1 and A-5), PW-2 (the driver who had identified A-2), PW-6 (victim who had identified A-1 and A-3) and PW-15 (passenger who had identified A-7 and A-8). It is stated by the High Court that these witnesses stood by their statement, their evidence is unimpeachable and there are no discrepancies in their evidence. However, as pointed out, these observations are on the basis of examination in chief of these witnesses without taking into consideration their cross-examination. In so far as PW-1 is concerned, in his cross-examination he has accepted the faces of the two persons covered with kerchief. If that was so, he has not at all explained as to whether their faces were uncovered at any point of time how and when he was able to see their faces. He did not explain in his statement recorded under Section 161 Cr.P.C. as to why he did not state he would be in a position to identify two persons. In that statement, he is conspicuously silent about having seen two persons.

27. Likewise, in so far PW-2, driver is concerned, apart from the features pointed out qua PW-1 which apply in his case, he mentioned in his examination in chief that “somebody hit me from back side by means of hand. They put chopper on neck from back side.” In his cross-examination he not only accepted that when he was hit on the back of the neck, he did not shout, he further specifically stated that “there was no chance for me to see back side since the vehicle was in a running vehicle. The vehicle was moving at the speed of 20 kms. I did not turn back till the accused get down from the bus.”

28. In so far as PW-6 is concerned, he has allegedly identified A1 and A-

3. Out of these two i.e. A-1 is identified by PW-1 as well. However, as stated above PW-1 mentioned that face of A-1 was covered. Again, he had not explained as to under what circumstances he could identify these accused persons. PW-15 was another passenger in the bus who has identified A-7 and A-8. He, inter-alia, has stated that two persons had knife on the chest of PW-6 and snatched his bag and came towards him. He was assaulted by means of knife on his left hand wrist and his bag was also snatched. The two persons who snatched the bag from PW-6, according to PW-6 were A1 and A-3. However, PW-15 identified two other persons namely A-7 and A-8. That apart he has also admitted that one of them had covered his face that one person has closed his face upto nose by means of the cloth. In these circumstances, how he could identify that person is not explained.

29. There is another important aspect which cannot be lost sight of, namely as per PW-1 the faces of all the accused persons were covered with kerchief. It is not at all stated by any of the witnesses as to when these persons removed those kerchief and their faces became naked which could be seen by these witnesses. PW-1 was subsequently confronted with the statement under Section 161, Cr.P.C. to this effect that in the cross- examination he accepted that he made the statement. Therefore, it was for him to clarify as to under what circumstances he could see the faces of A-1 and A-5 on the same ground how their faces could be seen by other witnesses, remains a mystery which is not explained by the prosecution.

30. In this backdrop, the flaws in the investigation pointed out by the trial court become crucial. Curiously, High Court has not even adverted to those flaws.

31. We are, therefore, of the opinion that the judgment of the High Court holding the appellants guilty of the offence is unsustainable. The same is accordingly set aside. This appeal is allowed holding that charge against the appellants under Section 397 IPC read with Section 120-B has not been proved beyond reasonable doubt.

32. The appellants are entitled to be released forthwith and it is directed accordingly.

.....J.

(Surinder Singh Nijjar)

.....J.

(A.K. Sikri)

New Delhi,
April 21, 2014