

Firoz Khan vs The State (Nct Of Delhi) on 27 November, 2014

Author: S. Muralidhar

Bench: S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. No. 344 of 2014

Reserved on: November 18, 2014

Delivered on: November 27, 2014

FIROZ KHAN

..... Appellant

Through: Ms. Arundhati Katju and
Mr. Himanshu Suman, Advocates

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP
SI Govind Singh, PS: Uttam
Nagar, Delhi

WITH

CRL.A. No. 798 of 2014

NEWAL KUMAR PANDEY

..... Appellant

Through: Mr. Vikas Padora, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP
SI Govind Singh, PS: Uttam
Nagar, Delhi

AND

CRL.A. No. 637 of 2014

SHAHZAD HUSSAIN

..... Appellant

Through: Mr. D.B. Yadav, Advocate

versus

Criminal Appeal Nos. 344 of 2014, 798 of 2014 & 637 of 2014

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THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Rajat Katyal, APP
SI Govind Singh, PS: Uttam
Nagar, Delhi

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

27.11.2014

1. These appeals are directed against the impugned judgment dated 7th November 2013 passed by the learned Additional Sessions Judge in SC No. 378/1/10 convicting the three Appellants for the offences punishable under Sections 458/34 IPC and Section 392 read with Section 397 IPC and the order on sentence dated 22nd January 2014 convicting each of them to rigorous imprisonment („RI) for seven years along with fine of Rs. 10,000, and in default, to undergo simple imprisonment („SI) for six months for each of the aforementioned offences. All the sentences were directed to run concurrently.

Case of the prosecution

2. The case of the prosecution as spoken about by Mohd. Mukhtar Alam @ Azad (PW-3) in Court was that he had a readymade garment shop at Tank Road, Karol Bagh, Delhi. On 28th August 2009, at around 10:45 pm, he had dinner with his wife, Reshma (PW-11) and his two children

- son Mohd. Arman, aged 31/2 years and daughter Alia, aged about 8 months. After an hour, they all went to sleep in the same room. The premises was B-41, Gali Jamuna Wali, Som Bazar, Uttam Nagar, Delhi. The house measured 27 sq. yds., with one room each on the ground and first floor. On the ground floor, there was one double bed, a T.V., iron box, constructed almirah and hangers. As per the description of PW-3, there was a main gate and the room on the ground floor at a distance of 8 ft. from the main gate. There was a door to the room as well. According to PW-3, they never bolted the bedroom but bolted the main gate. There was a window on the side of the main gate of the premises meant for the cooler. The cooler was installed in that window at the relevant time.

3. PW-3 stated that while he and all the family members were sleeping on the same bed on the intervening night of 28th/29th August 2009, at around 2:30 am, he felt a sensation on his leg and woke up. He noticed three persons standing. He then woke up his wife. Of the three persons, one was 5' 8" tall, having a french cut beard and a knife in his hand; the other was 5' 7" tall and was also having a knife in his hand; the third was standing near the fridge. PW-3 stated that all the accused persons, on the point of knives, threatened him to surrender all the gold jewellery, cash etc. The accused took the gold ring that PW-3 was wearing on his finger and also two gold rings from the hands of PW-3's wife as well as her earrings.

4. The accused persons after forcing PW-3 to disclose that the cash was inside the gullak (made of soil) kept inside the drawer of the bed, broke open the drawer, took out the gullak as well as purse of PW-3's wife (PW-11). While the gullak had Rs. 3,000, PW-11's purse contained around Rs. 30,000. The accused also took PW-3's purse from his pant which was hanging on the wall and contained Rs. 35,000, two ATM cards of AXIS Bank, driving license, PAN Card and some personal papers/documents. The accused then opened the iron box which was lying in front of bed and took

out the clothes. They also took out the gold jhumka, one gold chain, one silver pazeab belonging to PW-11 and the kadas and payal of their children. PW-3 further stated that the accused also took two of his mobile phones. While deposing in the Court he disclosed the number of one of them as 9717030644. He could not recall and the number of the other mobile. According to him, the accused persons threw the SIM Card of the other mobile. While leaving, the accused threatened him and his family members not to raise any alarm. They bolted the room and the outer gate of the house from outside and ran away.

5. PWs 3 and 11 started weeping, and after some time, raised an alarm. On hearing the alarm, Paramjeet (who was examined as PW-1 and PW-

8), went over to their house , opened the gate and the door of the room. PW-1/PW-8 stated that he noticed that PW-3 had cut injuries below his neck on the front side. PW-3 disclosed to PW-1 about the robbery. PW- 1 did not find anyone in the gali outside. He returned to his house and called the police from his mobile phone. Within fifteen minutes, the police arrived there.

The commencement of investigation

6. Daily Diary („DD) No. 8A was recorded at around 3:15 am on 29th August 2009 that at D-41, Vikas Nagar, 10-12 boys having guns and knives had entered a house and had robbed valuable articles. Sub- Inspector („SI) Ved Prakash [PW-15] received the said DD-8A at Police Station („PS) Uttam Nagar. Along with Constable Nand Ram (PW-12), he went to the place of occurrence and met PWs 3 and 11. The crime team officials were called to the spot. PW-15 stated that he asked PW-3 to give a statement but he was under shock and unable to do so.

7. On 1st September 2009, PW-15 again visited the place of occurrence along with PW-12 and this time PW-3 gave his statement (Ex. PW- 3/A). In this statement, he stated that he woke up at around 2:30 am, when he felt some sensation on his feet. He woke up his wife and then noticed that there were three boys between the ages of 22-28. One of them was around 5' 8" tall with French cut beard, dark complexioned and a knife in his hand; the second person was around 5' 6" inch, medium built, again dark complexioned, who also had a knife and the third was 5' 8" tall, again dark complexioned and having a knife. The accused asked PW-3 where the gold and cash were and asked him to keep quiet. The accused took the gold ring that PW-3 was wearing. They also took the ring and earrings that PW-11 was wearing. PW-3 gave the IMEI Nos. and mobile numbers of both mobile phones taken by the accused i.e., 9717030644 and 9810291638. PW-3 stated that he himself had removed the SIM of the second mobile phone. PW-3 also stated that the three boys had entered the house by slipping their hands through the grill near the main gate and opening the lock.

8. On the same date, i.e., 1st September 2009, PW-15 also drew up a rough site plan (Ex. PW15/C) showing the gali outside the house of PW-3. In indicating the premises, three points were shown. Letter-A showed where the bed was placed, letter-B showed the box from where the jewellery was removed and letter-C was the point where the pant of PW-3 was hanging from. The site plan did not indicate any main gate or any grill near it or any cooler. It did not show any window much less a separate main gate.

9. The search for the three accused thereafter commenced. It has come in the evidence of Constable Pawan (PW-13) that on 3rd September 2009, he was posted with the Special Staff, West District. He along with 10 other policemen joined the raiding party and all of them went to Nangloi, since an information was received that the three accused who had committed the robbery at Uttam Nagar would come to Lokesh Cinema at Nangloi.

The arrest of the accused and the TIP proceedings

10. Sub-Inspector Nirakar Sharma (PW-18) was also posted with the Special Staff, West District. A secret informer told him that three accused persons who had committed robbery in the present case would come to Lokesh Cinema. He made DD No. 10A regarding the contents of the said secret information. He along with the raiding party, which comprised of PW-13, visited Nangloi in a government vehicle. According to PW-18, 5-6 passersby were asked to join the raiding party but they declined and left the spot without telling their names and addresses. They went to Lokesh Cinema and on the pointing out of the secret informer apprehended the three accused near the bus stand.

11. On interrogation, their names were revealed as Shahzad Hussain (A-1) [Appellant in CrI. A. No. 637 of 2014], Newal Kumar Pandey (A-

2) [Appellant in CrI. A. No. 798 of 2014] and Firoz Khan (A-3) [Appellant in CrI. A. No. 344 of 2014]. Their formal search was conducted. According to PW-18 and PW-13, from the search of A-1, one mobile phone make Nokia 1200 was recovered; from the personal search of A-2, one mobile phone black colour Nokia N-72 was recovered and from A-3, a gold chain and one white colour chain having a nug was recovered. The three accused were arrested by PW-

18. He prepared a kalandara under Section 41(1) (d) Cr PC (Ex. PW- 18/A to C) and brought them to the office of the Special Staff.

12. Head Constable Satish Kumar (PW-19) stated that, on 4th September 2009, he along with PW-15 and Constable Mahesh Pratap (PW-2) attended Tis Hazari Courts where, at around 2-2:30 pm, the three accused were produced by the Special Staff, District West. PW-15 filed an application seeking permission to interrogate the three accused. He thereafter interrogated them, formally arrested and prepared the arrest memos (Ex. PW 2 A to C) and personal search memos (Ex. PWs 2 D to F). From there, the three accused were sent to judicial custody.

13. PW-15 stated that, on 4th September 2009 itself, he had filed an application for conducting a test identification parade („TIP ") of the accused. It was marked to the Link Metropolitan Magistrate („MM "), Mr. Mohinder Virat (PW-17). The TIP took place on 7th September 2009 at Central Jail No.1. Each of the accused refused to participate in the TIP proceedings, which was then recorded in the proceedings drawn up (Ex. PW-17/A). Each of the accused stated that he did not want to participate as "I was shown to the witness and my photographs were also taken by the police officials."

14. On 10th September 2009, PW-15 filed an application before the learned MM seeking police remand of all the three accused persons and thereafter they were taken on one day's police custody. They were got medically examined.

PW-3 identifies A-1 and A-3 at the police station

15. Constable Shambhu Dayal (PW-14) stated that on 11th September 2009, PW-3 came to the PS and met PW-15. The three accused persons were present there. PW-3, according to PW-14, identified two of the accused persons, i.e., Shahzad Hussain (A-1) and Firoz Khan (A-3). PW-14 along with the three accused persons went in the search of the remaining accused but they could not be traced. They returned to Vikas Nagar, where A-1 and A-3 pointed out the house where they had committed the dacoity.

16. According to PW-15, on 11th September 2014, PW-3 had come to the PS to know about the progress of the case. At that time, he identified accused A-1 and A-3 who had committed the offence.

Identification of the case property

17. On 5th October 2009, an application filed for identification of the case property was marked to PW-17. The Investigating Officer („IO) brought the case property in a parcel sealed with the seal of M.K. The parcel was opened. It contained a gold chain and a silver ring. The IO brought 4/ 5 chains and 4/5 rings of similar shape, colour and size. PW- 3 was called inside the chamber and asked to identify the case property.

PW-3 correctly identified his chain but he was unable to identify any of the rings. The TIP proceedings were drawn-up and marked as Ex. PW- 17/B. The trial and the statements of the accused

18. Charges were framed against the accused persons for the aforementioned offences. 19 witnesses were examined by the prosecution.

19. When the accused were confronted with the evidence under Section 313 Cr PC, they denied it and, claimed to have been falsely implicated. A-3 stated that he had been arrested from his house and that nothing had been recovered at his instance. A-2 likewise denied the evidence against him and claimed to have been falsely implicated and that nothing was recovered from him. He, too, stated that he had been arrested from his house. A-1 also answered likewise.

The judgment of the trial Court

20. The learned trial Court analysed the entire evidence in just one para, i.e para 29. The learned trial Court referred to the depositions of PWs 3, 8 and 11 as regards the actual incident and PW-11 as regards the recoveries. It was noted that although PW-11 had not identified A-2, the other witnesses including PW-3 had identified him. The learned trial Court simply concluded in one para that the prosecution had successfully proved its case against the accused beyond all reasonable doubt.

21. At the outset, it must be stated that the judgment of the learned trial Court lacks proper analysis of the prosecution evidence. It has simply set out the evidence, the submissions of learned counsel and the relevant sections of the IPC. As already noticed, the analysis is confined to just one para.

22. The Court has heard the submissions of Ms. Arundhati Katju, Mr. Vikas Padora and Mr. D.B. Yadav, learned counsel for the Appellants and Mr. Rajat Katyal, learned APP for the State.

Delay in recording statements and registering the FIR

23. One of the crucial aspects of the case was the proper identification of the three accused. It must be noted that PW-3 only gave general descriptions of the three accused. This too was not immediately after the incident but three days thereafter on 1st September 2009. Even if PW-3 was not in a fit state of mind to give a statement immediately after the incident, he could have given his statement on the following day i.e. 29th August 2009. Also, the documents to prove the ownership of the mobile phone in the form of bills and other particulars could easily have been gathered in the meanwhile. Further, it was not just PW-3 who was present at the scene of crime. PW-11 was also present and could have given a statement. here is no explanation why no statement, whatsoever, was recorded till 1st September 2009.

24. Strangely, even the statements of Mr. Paramjeet Singh (PWs 1 and

8) and Reshma (PW-11), wife of PW-3, were recorded only on 1st September 2009. The Court does not find any valid explanation given by PW-15 for the delay in recording the statements, which, in turn, led to delay in registering the first information report („FIR), although the DD entry regarding the robbery was available with the police from 3:15 am on 29th August 2009 itself. Any unexplained delay in recording an FIR can easily lead to suspicion regarding possible manipulation and should not be easily condoned. [See for e.g., Thulia Kali v. State of Tamil Nadu AIR 1973 SC 50 and Pannayar v. State of Tamil Nadu 2009 [4] JCC 2669 (SC)] Lack of proper investigation

25. The second aspect of the matter is the lack of any proper investigation. The robbery is purported to have taken place in the residential premises of a busy locality. It was easily possible to draw a site plan of the place of occurrence and also produce the photographs of the scene of crime. The fact that the premises had a main gate which was simply locked from inside and the room had another separate door which was not locked from inside is not evident from the first statement (Ex. PW-3/A) which was itself recorded three days after the date of occurrence. This emerged for the first time in the deposition of PW-3 in Court.

26. The site plan does not show any main gate and its distance from the room where PW-3 and his family were sleeping. Further, in his statement to the police, although PW-3 mentioned that there was a grill near the main gate through which the robbers slipped their hands and opened the lock, no such grill is shown in the site plan. There is not even a photograph of the scene of crime. The crime scene report was not exhibited. These were obvious aspects which should not have been missed by the police. It is reflective of the casualness in the approach of the police to the task of scientific investigation.

Inconsistencies in the evidence of PW-3 and PW-11

27. It is also not clear how exactly the three accused entered the room where the family of PW-3 was sleeping. This becomes apparent when one compares the depositions of PW-3 and his wife, PW-11. PW-3 stated in his cross-examination that they normally slept after bolting the main gate of the house but not bolt from inside the bedroom and they keep the door of bedroom open during night time. In contrast, his wife, PW-11, stated as under:

"It is correct that there is only one main entrance in the house. There is one window at the side of main entrance. One cooler was fixed on the window. It is correct that a person has to enter from the main gate and one cannot enter from window. We used to bolt from inside during night time. It is correct that once the door is bolted from inside, one cannot enter inside the house. It is correct that there is no stairs from outside the house. It is correct that one cannot climb over the wall. Vol. One can open the gate by putting hands from the window side. The size of the window was bigger than the face of the cooler and I had put the carton on that open space, left after putting the cooler. The distance between the gate and the window is one feet. The window is situated just in the middle position of the gate at a distance of one feet. There is grill design in the window but one can easily put hand inside the grill of the window. There was a sliding latch (kunda on the gate). It is correct that once the gate is bolted from inside, the gate cannot be opened by pushing. It is correct that after bolting the door from inside, we went to sleep."

28. Therefore, according to PW-11, they did bolt the door from inside before they went to sleep and yet immediately thereafter, she contradicted herself as follows:-

"My husband used to return from his work between 10:30 and 11:00 pm and after his arrival, I used to bolt from inside and then used to go for sleeping. I used to put on the room light, due to small child and used to put of the other lights. There was a gate on the door, inside which we were sleeping. We never used to bolt from inside the room in which we used to sleep, as we used to bolt the main gate from inside. It is wrong to suggest that I used to keep the room in which we used to sleep, bolted from inside."

29. Perhaps to overcome this difficulty, when she was asked whether the lock on the door was broken, she stated as under:

"It is correct that Kundi of our door was intact and was not broken. Vol. Accused persons entered inside our house after removing the cooler from the window. Cooler was kept on the cooler stand and it was not fixed with the nut and bolt. The stand and the cooler were removable. It is wrong to suggest that cooler is fixed and it cannot be removed from that place."

30. The above answers, apart from contradicting PW-3, do not inspire any confidence that either PW-3 or PW-11 were stating the correct facts as to whether the door of the room was locked or not. It seems highly unlikely that the family of PW-3, comprising a husband and wife and two young children, were sleeping without locking either the main gate or bolting the room in which they were sleeping from inside.

The weaknesses of the prosecution case

31. In the absence of any photographs of the crime scene or a proper site plan, it is difficult to appreciate how the robbers entered the house. If, as PW-11 suggests, the accused entered the house after removing the cooler, then that fact ought to have been noticed by the IO when he reached the crime scene, soon after receiving the information in the early hours of 29th August 2009 itself. The IO makes no reference about any cooler having been kept aside, facilitating the entry of the three accused. Likewise, PW-12 with whom he went there does not state that he noticed the cooler having been kept aside.

32. Another aspect of the matter is that the finger prints were lifted from the fridge kept in the room but were not sent for comparison to the Forensic Science Laboratory („FSL). The report of the Finger Prints Bureau is available in the judicial record. However, it is apparent that the finger prints found on the fridge were not sent to the FSL for comparison with the finger prints of any of the three accused. Why this was not done is not clear. An adverse inference would have to be drawn against the prosecution in this regard.

33. In order to make it appear credible that both PWs 3 and 11 noticed the three accused in the early hours of 29th August 2009, both of them stated that they used to keep the light of the room on throughout the night. This does not seem to be believable for the simple reason that the robbers would not be emboldened to enter a house where a light is on. Secondly, this important factor is not mentioned in the statement made in the first instance by PW-3 to the police.

34. The three accused were supposedly identified by a secret informer. As happens in many of these cases, the identity of the secret informer is never revealed; the secret informer is never examined in Court. PW-13 stated that the secret informer gave him information that he somehow knew who the three robbers who were involved in the Uttam Nagar robbery were. How this information was cross-verified is not known. From the evidence of PW-18, it appears that he simply apprised his senior officers and a raiding party was constituted.

35. Although the arrest took place at Lokesh Cinema near Nangloi, no public witnesses were associated. As has become a routine with the Delhi Police, PW-18 simply states that "5-6 passersby were asked to join the raiding party but they declined and left the spot without telling their names and addresses." This again seems to be reflective of the lackadaisical approach of the police that when they are making the arrest of three persons of whom they have no previous description, except through a secret informer, they would proceed with the arrest without any public witnesses being associated.

36. Although the Courts have been deferential and have accepted in many cases the above explanation, in this particular case, given the surrounding circumstances where even the FIR was registered after a delay of 3 days, the manner of arrest of three accused upon the information and identification by a secret informer becomes highly suspicious. It is possible that there may be a series of crimes involving the same accused persons. That still does not permit the police to attribute all similar cases to the same set of persons without any credible evidence on record. Also, given the time of the arrest near Lokesh Cinema, which, according to the kalandara drawn up under Section 41 (1) (d) Cr PC, was at about 6:30 in the evening, it is impossible to believe that not a single public witness was available to be associated.

37. There are two bills produced to prove that the mobiles recovered belonged to PW-3. One which is Mark „B is a cash bill dated 23rd September 2007 carrying an IMEI number. This does not conclusively show that the mobile Nokia N-72 belonged to PW-3. Significantly, in respect of this particular mobile phone PW-3 was unable to recall the mobile number when examined in Court. The other bill, marked „A-1 dated 17th February 2009, is for a Nokia-1200 black phone. It was in the name of PW-3. However, neither shopkeeper was examined by the police or their statements recorded to verify the authenticity of the bills. For the gold chain identified by PW-3, he had no invoice. In fact, there was no document whatsoever to show that it actually belonged to him. In his cross-examination, he admitted that "there is no specific identification mark on the gold chain which is released to me on superdari. I cannot tell the exact weight of the chain."

38. In the circumstances, the mere recovery of the mobile phones- one from A-1 and the other from A-3 and the gold chain from A-2 - does not inspire much confidence since the recoveries again having been made in the absence of any public witness.

39. Another important factor which the learned trial Court appears to have completely missed noting is that although PW-1(who was also examined as PW-8), speaks of noticing a cut injury on the neck of PW-3 on the front side, PW-3 himself does not mention it in the very first statement made by him (Ex. PW-3/A). Strangely, even PW-15 or PW- 12, who reached the spot soon after the incident, do not speak about noticing any such injury on PW-3. Also, no medico legal examination was conducted of PW-3. All this makes it highly doubtful that PW-3 was injured with a knife by the three accused, or that each of them had in fact a knife. No knives were in fact recovered from the accused.

A-2 not identified

40. Yet another gap in the prosecution case, is the proper identification of A-2, Newal Kumar Pandey. Both PWs-14 and 18 stated that when the accused were brought to the PS, PW-3 came there and identified A-1 and A-3 and not A-2. PW-15 stated likewise. While PW-3 identified all the three accused in Court, PW-11 identified only A-1 and A-3. Therefore, PWs 14 and 18 were consistent that A-2 was not identified in the PS by PW-3. If he did so in Court, it was because A-2 was already shown to PW-3 in the PS.

41. The evidence is therefore doubtful as regards A-2 being one of the persons present at the scene of crime. With PW 11, in whose presence the robbery took place, unable to identify him despite repeatedly being asked by the learned APP, the learned trial Court ought to have rejected the prosecution evidence as regards A-2. It must be noticed at this stage that PW-11 repeatedly stated, when asked by the learned APP repeatedly, that she was not sure about A-2 "and that may be due to sudden occurrence and due to fear. It is wrong to suggest that I have seen accused Naval Kishore and I am not identifying him. Vol. I have already explained as to why I am unable to identify this accused." How this aspect of the matter was completely missed by the learned trial Court is a mystery. It simply concluded that both PWs 3 and 11 identified all the three accused in Court correctly.

The consequence of failure to participate in the TIP proceedings

42. There is an important aspect of the matter on which there were lengthy arguments. All the three accused had refused to participate in the TIP proceedings on the ground that they were shown to the accused. The police immediately applied for and obtained police remand of all three of them and took them to the PS. There, they were shown to PW-

3. He identified two of them, namely, A-1 and A-3 and not A-2. This happened on 11th September 2009. PW-3 was next examined in Court on 7th February 2011, well over a year thereafter, and now he identified all of them. The question that arises is whether the dock identification in Court by PW-3 has any value if, admittedly, the three accused were shown to him earlier in the PS.

43. Mr. Rajat Katyal, the learned APP, submitted that since the three accused unreasonably refused the TIP, they took the risk of an adverse inference being drawn against them, and of being subsequently identified by PW-3 when they were shown to him in the PS. He placed reliance on the two decisions of the Division Benches of this Court in Manju Kumar v. State NCT of Delhi ILR (2012) I Del 271 and Salam Kaviraj @ Chuha v. State (Govt. of NCT of Delhi) [decision dated 19th February 2014 in Crl. A. No. 716 of 2010]. Reliance is also placed on the two decisions of the learned Single Judges of this Court in Jainul Umar v. State [decision dated 11th February 2014 in Crl. A. No. 1478 of 2013] and Guddu v. State [decision dated 23rd April 2010 in Crl. A. No. 303 of 2000]. Mr. Katyal pointed out that when the accused were first produced before the MM their faces were muffled and were, thereafter throughout in judicial custody. Therefore, their being unmuffled when subsequently produced before the MM for the TIP did not affect the validity of TIP proceedings.

44. There can be no doubt that the above decisions have held it to be permissible for the police to bring the accused to the PS for identification by the witnesses subsequent to the refusal by the accused to participate in the TIP. Therefore the action of the police in bringing the accused to the PS on 11th September 2009, after they refused to participate in the TIP, and calling PW-3 to identify them, cannot per se be said to be illegal.

45. However, in the present case, the above factor by itself does not help the prosecution. Despite being unable to identify A-2 in the PS, PW-3 confidently identified him in Court. Clearly, this was only because A-2 had been shown to him in the PS. This gives rise to a reasonable doubt whether

PW-3 would on his own have been able to identify even A-1 and A-3 if they had not been shown to him in the PS. The Court, therefore, is not convinced in the present case that this manner of identification of the accused is safe and reliable. Also, this cannot be viewed in isolation but in the overall context of the case, which, as already noticed, has not been properly investigated. It raises too many questions that have not been answered.

46. It is not the responsibility of the Court to fill the gaps in the prosecution case. The Court has to decide on the basis of the evidence which is on record. If it is inadequate to return a finding of guilt beyond reasonable doubt, then the Court must not hesitate to give the benefit of doubt to the accused.

Conclusion

47. The Appellants are acquitted of the offences with which they were charged. The impugned judgment dated 7th November 2013 and the order on sentence dated 22nd January 2014 of the trial Court are set aside. The appeals are allowed.

48. The bail bonds of the accused will be in force for a period of three months under Section 437-A Cr PC. The Appellants be released from jail forthwith unless wanted in some other case.

49. The Court records its appreciation of the competent presentation of the case by learned counsel for the Appellants Ms. Arundhati Katju, Mr. Vikas Padora and Mr. D.B. Yadav and the learned APP for the State, Mr. Rajat Katyal.

50. A certified copy of this order along with the trial Court record be sent back forthwith to the learned trial Court.

S. MURALIDHAR, J.

NOVEMBER 27, 2014 tp