

(2020) 06 GUJ CK 0002
In the Gujarat High Court
Case No : R/Criminal Appeal No. 256 Of 2003

Aftab Ahmed @ Bhuria Bashirahmed Sheikh & 2 Other(s)	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 22-06-2020

Acts Referred:

Indian Penal Code, 1860 — Section 399, 402
Code Of Criminal Procedure, 1973 — Section 209, 313, 386
Bombay Police Act, 1951 — Section 135(1)

Citation : (2020) 06 GUJ CK 0002

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : M.A.Hussaini, Mm Tirmizi, Jirga Jhaveri

Final Decision : Allowed

Judgement

P.W.1,"Asrafkhan Aalamkhan
Chauhan",P.S.I,Exh.15
P.W.. 2,Indravadan Parsotambhai,"Panch
Witness",Exh.18
P.W.3,"Chetankumar Nanjibhai
Marwadi",Witness,Exh.19
P.W.4,"Gautambhai Nanjibhai
Marwadi",Witness,Exh.20
P.W.5,Ajaypalsing Siyaram Yadav,"Police
Constabl",Exh.22
P.W.6,"Jagdishbhai Temubha

Chudasama",P.I.,Exh.24

P.W.7,Dilipsinh Prabhatsinh,"Head

Constabl",Exh.25

10. Mr.M.A.Hussaini, learned advocate with Mr.M. M. Tirmizi, learned advocate for the appellants has , while reading the entire oral evidence," ,,,

submitted that there is no material on record to convict the accused for the offence punishable under Sections 399 and 402 of the Indian Penal Code.,,,

Further, he has vehemently submitted that all the police witnesses and independent witnesses have not supported the case of the prosecution," ,,,

especially Indravadan Parsottambhai, P.W.2 at Exhibit 18. He has submitted that all the police witnesses were alleged to be present at the place of" ,,,

occurrence and yet there are material contradictions in their evidence and the evidence of the police witnesses are not reliable, cogent and trustworthy" ,,,

and on that basis, the accused could not have been convicted. He has submitted that there are material contradictions in the version of the police" ,,,

witnesses regarding parking of Maruti Van. He has submitted that the evidence on record is not sufficient to prove that the accused have made,,,

preparation to commit dacoity and assembled for the same. While reading the impugned judgment and order, he has submitted that the Trial Court has" ,,,

not considered the evidence on record properly and has committed serious error of facts and law in convicting the accused and imposing the sentence,,,

upon them and the reasoning of the Trial Court is based on presumption and assumption. He has urged to allow the present appeal and to quash and,,,

set aside the impugned judgment and order of the Trial Court.,,,

11. Per contra, Mr.Jirga Jhaveri, learned Additional Public Prosecutor for the respondent â?" State has submitted that the Trial Court has not" ,,,

committed any serious error of facts and law in appreciating the evidence of the police witnesses who were present at the time of occurrence. She,,,

has submitted that there is no rule of law that the evidence of the police witnesses could not be accepted. According to her submission, on the basis of" ,,,

the information received by Ajaypalsing Siyaram Yadav, the entire raid was carried out after following due procedure and three accused were caught" ,,,

at the place of occurrence before committing any dacoity at the resident of Vasantlal and there is consistency in the evidence of the police witnesses,,,

and if any contradiction appears in their evidence, then, those contradictions are

minor in nature and it does not affect the case of the prosecution at",,,

all. She has submitted that the witnesses, whose car has been used by the accused, have also deposed that on the day of occurrence, maruti van was",,,

given to the accused for repairing work and the accused have used it in the alleged offence. She has submitted that the accused side has not produced,,,

any defence evidence nor it is their defence that they were not arrested from the place of occurrence and no weapon was found with them. It is her,,,

submission that the Trial Court has properly appreciated the evidence on record and has properly convicted the accused and imposed sentence upon,,,

them. She has submitted that the judgment and order of conviction and sentence passed by the Trial Court is sustainable in the eyes of law and does,,,

not warrant any interference. She has urged to dismiss the present appeal and to confirm the impugned judgment and order of the Trial Court.,,,

12. In view of the provision contains in Section 386 of the Criminal Procedure Code, 1973, in an appeal from a conviction, the Appellate Court can (i)",,,

reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to",,,

such Appellate Court or committed for trial; (ii) alter the finding, maintaining the sentence or (iii) with or without altering the finding, alter the nature or",,,

the extent, or the nature and extent, of the sentence, but not so as to enhance the same.",,,

13. It is well settled that it is the duty of the Appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as,,,

to whether the said evidence can be relied upon or not and even it can be relied upon then whether the prosecution can be said to have proved the,,,

case beyond reasonable doubt by leading evidence. The credibility of a witness has to be adjudged by the Appellate Court in drawing inference from,,,

proved admitted facts.,,,

14. It is also well settled that the law clearly expects the Appellate Court to dispose of the appeal on merits not merely by perusing the reasoning of,,,

the Trial Court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and",,,

findings recorded by the Trial Court are consistent with the materials on record.,,,

15. On consideration of the evidence on record, it appears that Ashrafkhan Alamkhan, P.W.1 at Exhibit 15, in his evidence, has stated that in",,,

December 2001, he was serving as Police Inspector in DCB, Ahmedabad city. He has stated that on 05.12.2001, the police constable Ajaypalsing",,,

Siyaram has informed him regarding the secret information to the effect that some 4 to 5 persons have planned to commit offence of dacoity in the,,,

house of Vasantlal Shah, who is residing in Geetanjali Flat and the accused are likely to go in Maruti Van bearing No.GJ-1-HA-4799 for the purpose",,,

of dacoity. He has stated that this information was conveyed to him at about 14.00 hours. He has stated that on receiving such information from the,,,

police constable, he has called two panchas and informed the panchas regarding the information received by the police. He has stated that at that time," ,,,

P.S.I. J. T. Chudasama as well as K. S. Desai and other staff members were present. According to his version, after preparing primary panchnama," ,,,

all of them went in government vehicles and parked them near Ellisbridge Town Hall and panchas as well as police personnel scattered near,,,

Geetanjali Flat. He has deposed that at about 15.50 hours, all accused came there in Maruti Van and parked the car opposite side of them and the" ,,,

persons alighted from the Maruti Van which was identified by the police constable Ajaypalsing. According to his version, near the gate, the police" ,,,

personnel has cordoned all of them and three persons were arrested, whereas, two persons run away. He has stated that the names of the persons" ,,,

were (1) Aaftab Ahemad Basir Ahemad Shaikh; (2) Umarali Jafarali Saiyed; (3) Akbarkhan Hafizkhan Shaikh. He has stated that they all were,,,

present and the weapon namely khurapi was found from Aaftab Ahemad which was having sharp-edged on one side, whereas, the driving licence" ,,,

was found from Umarali and a rampuri knife was found from Akbarkhan. He has stated that all these muddamal articles were seized and Maruti Van,,,

was driven by Umarali. Thereafter, he has filed the FIR for the offence under Section 399 of the Indian Penal Code and under Section 135(1) of the" ,,,

Bombay Police Act. He has identified his signature on the FIR which is produced at Exhibit 16.,,,

15.1 During his cross-examination, he has stated that there is difference between the khurapi, which is known as kukari in Nepali language. He has" ,,,

stated that when the information was given to him by Ajaypalsing, he himself was alone. He has stated that there was information that 6 to 7 persons" ,,,

were coming to commit dacoity. He has stated that no entry has been made in the station diary regarding such information. He has stated that as there,,,

was no sufficient time, he has not made any inquiry or investigation regarding the information received by police constable Ajaypalsing. He has stated",,,
that he believed the information to be true. He has stated that as soon as he received the information, he has directed the PSI Shri Desai to bring two",,,
panchas before him. He has stated that within 15 to 20 minutes, Shri Desai brought two panchas before him and panchas were informed by him",,,
regarding information and for that, 20 minutes was spent. He has stated that he has sent the police staff in private dress to the residence of Vasantlal",,,
Shah. He has stated that he did not remember as to who was sent to the resident of Vasantlal, he has sent. According to him, two persons were sent,",,
but, they were not sent with weapon. He has stated that he has given the address of Vasantlal Shah. He has stated that when he has informed the",,,
panchas, the staff members were called by him and informed them. He has stated that all of them have not in police dress and some of them were in",,,
simple dress. He has stated that he has narrated the facts of preparing primary panchnama in FIR.,,,

15.2 He has further stated that they all went in two vehicles. He has stated that he along with PSI Mr.J.T.Chudasama, PSI Mr.K.S.Desai, PO",,,

Valjibhai Laxmanbai and Ajaypalsing Siyaram and Kaushikkumar Hemshankar were in the jeep, whereas, other persons were in a second vehicle. He",,,

has stated that he did not remember the name of the driver, who was driving the jeep nor did he remember regarding the drivers of the said vehicles.",,,

According to him, after parking their vehicles near the Town Hall, they were gone to the Geetanjali Flat by walking and they reached there within 5 to",,,

7 minutes thereof. He has stated that he has not earlier seen the flat. He has stated that the informant, who has provided information to Ajaypalsing,",,

was not with them at the time of raid. He has deposed that near the gate of Geetanjali Flat, two security persons, who were assigned duty, were",,,

present there. He has stated that they (security persons) have told him that Vasantlal was in his house. He has stated that near Geetanjali Flat, there is",,,

a building known as Medicare and there are offices of the doctors and many medical shops are situated there. He has stated that there is a petrol",,,

pump in front of the Medicare and usually, there is heavy traffic between 3 pm to 4 pm. He has stated that the gate of Geetanjali Flat is of 10 to 15",,,

feet width. He has stated that he has not inquired as to on which floor Vasantlal is residing. He has stated that he has not seen any security persons of",,,

the flats at the time of raid.,,,

15.3 He has stated that there is parking place on the ground floor of the flat and the accused have parked the van on the road which is open place. He,,,

has stated that they have tried to arrest the accused by cordoning them before they could enter in the flat. He has stated that without hearing anything,,,

from the accused, they have arrested the accused. He has stated that two persons ran away from the place towards Railway Crossing. He has stated",,,

that two police personnel ran behind them (accused) to catch them, but, he himself has not run behind them. He has stated that the public persons",,,

were also gathering there. According to him, the persons, who have run away, were arrested later on by the police personnel.",,,

16. On perusal of the evidence of Indravadan Parshotamdas Soni, P.W.2 at Exhibit 18, it appears that he has stated in his evidence that on 05.12.2001",,,

in night hour at about 9.15 pm, he was called by the police as a panch and at that time, no other panch was present. According to him, he was called",,,

near Rajeshwari Hotel and police has just asked his name and address and got 2 to 3 signatures. According to him, the panchnama was not read over",,,

to him by the police nor even explained him as to contents of the panchnama. According to him, the police has not seized any muddamal articles in his",,,

presence nor any accused were arrested. As he has not supported the case of the prosecution, he has been declared hostile and the prosecution has",,,

cross-examined. But, in such cross-examination also, he has not supported the version of the prosecution.",,,

17. On perusal of the evidence of Chetankumar Nanjibhai Marwadi, P.W.3 at Exhibit 19, it appears that he has stated in his evidence that he was",,,

residing in Dhal Ni Pole, Astodia and Maruti Van No.GJ-1-HA-4799 belongs to his brother and the same was given to Umarbhai for repairing purpose",,,

and he used to give the van for repairing purpose to Umarbhai. He has stated that on 05.12.2001, he himself gave Maruti Van to Umarbhai in the",,,

morning and it has to return to him in evening. But, on that day, Maruti Van was not returned back. According to him, when police came to his house",,,

he came to know that Umarbhai has used Maruti Van for the purpose to commit dacoity. He has stated that thereafter, the police has got back Maruti",,,

Van.,,,

17.1 During his cross-examination on behalf of the defence, he has stated that

the police has informed him that Umarbhai has used Maruti Van for the",,,
purpose to commit dacoity. But, he has no personal knowledge to that effect. He
has stated that he has given spare-parts of Rs.700/- to Umarbhai for",,,
repairing purpose. He has stated that Umarbhai was also doing the business of
purchase and selling the motor car and accordingly, he has informed",,,
Umarbhai for selling the Maruti Van.,,,

18. On perusal of the evidence of Gautambhai Nanjibhai Marwadi, P.W.4 at
Exhibit 20, it appears that he is owner of Maruti Van which was given to",,,
Umarbhai for repairing purpose on the day. He has stated that his Maruti Van
was used by his brother. According to him, on 05.12.2001, the police",,,
has come to him and asked regarding the Maruti Van and accordingly, the police
have informed him that the said Maruti Van has been used by the",,,
accused for the purpose to commit dacoity. He has stated that the police have
seized the Maruti Van and, thereafter, he has applied to the concerned",,,
Court and accordingly, he has got the Maruti Van as per the order of the
concerned Court.",,,

18.1 During his cross-examination, he has stated that he has narrated in the
application filed before the concerned Court that on 05.12.2001 in the",,,
evening, the police officer of DCB has come to his house.",,,

19. On perusal of the evidence of Ajaypalsing Siyaram Yadav, P.W.5 at Exhibit 22,
who is said to have received the information of dacoity, it appears",,,
that he has stated that on 05.12.2001, he was serving as police constable in DCB
Branch, Ahmedabad city, and he got secret information that four",,,
persons were preparing to commit dacoity. He has stated that one Aaftab Ahmed
along with other persons was going to commit dacoity. He has,,,
stated that such place of dacoity was said to be near the Ellisbridge Police
Station. Accordingly, he has given the information to PSI Shri Chauhan and",,,
thereafter, all of them were gathered in the Police Station and it was decided that
the persons who were purported to commit dacoity were to be",,,
arrested. He has stated that thereafter, all of them went there in private vehicle
on the next moment. He has stated that he went in a government",,,
vehicle. It is further stated by him that he does not remember as to how many
vehicles were there. He has stated that when they reached near the,,,
flat, a green colour Maruti Van was there and Aaftab and other four persons
came there and three persons were caught and other persons ran away.",,,

He has stated that one dagger (katar) and one knife were seized from them. He has stated that he did not remember as to in whose house the,,,

accused were intending to commit dacoity.,,,

19.1 During his cross-examination, he has stated that no khurapi has been produced in the case and he has not stated in his police statement that the",,,

dagger was seized. He has stated that he did not remember the place and time of receiving the information. According to him, after receiving the",,,

secret information and after passing of one hour, he has informed Mr.Chauhan regarding the information. He has stated that at the time of raid, the",,,

informant was not with them. He has stated that he was knowing the name of the flat. He has stated that he did not know as to how many persons,,,

were there while raiding the place. He has stated that they went at 11 to 12 hours for raiding the place. He has stated that it was not so happened that,,,

when they went to the place, some police personnel went to the place. He has stated that the accused have parked their vehicle near the gate of the",,,

flat. He has stated that he did not meet the accused earlier and he has, for the first time, seen the accused at the time of arrest. He has stated that the",,,

informant was standing at a distance from them. But, they and informant were standing at a distance to see each other and on giving signal by the",,,

informant, they have arrested the accused.",,,

19.2 On the questions asked by the concerned Trial Court, the witness has stated that the informant has given details regarding the name and",,,

description of each accused. He has stated that he himself has arrested Aaftab, whereas, Mr.Desai has arrested Umarbhai, and he did not know the",,,

third accused and did not know who has arrested third accused. He has stated that no public persons were with them in their vehicle at the time of,,,

raid. He has stated that they have brought all the three persons in Crime Branch Office and shown his ignorance as and when search was made in the,,,

Police Station. He has stated that Mr.Chauhan has given the FIR where the accused were arrested. The panchnama was also carried out at the place,,,

of occurrence. Initially, he has stated that he did not remember as to how many persons were called as panch witness. But, on the next moment, he",,,

has stated that there were two persons. He has stated that they have called two panchas from the road. But he did not know the name of the,,,

panchas. He has shown his ignorance as to the business of the panchas and the

time of registration of the FIR. He has stated that there was a,,, distance of 15 feet between the vehicle of the accused and the vehicle of the police. According to him, first Mr.Desai was alighted from the",,,, government vehicle and, thereafter, all other were alighted. He has stated that the informant has given the number of the vehicle. However, he did not",,,, remember the number of the vehicle. He has stated that he himself has got the information, but, he has not reduced in writing in register or in separate",,,, paper. He has stated that they were not keeping register regarding the information. He has admitted that he has not informed anybody regarding the,,, information till passing of an hour. He has stated that at that time, his superior officer was there, however, he has not passed the information to him.",,,, 20. On perusal of the evidence of Jagdishsinh Temubha Chudasama, P.W.6 at Exhibit 24, it appears that he has stated in his evidence that in",,,, December 2001, he was serving as Police Inspector in DCB, Ahmedabad City and Mr.Chauhan was his superior officer and he was Police Inspector.",,,, He has stated that on 05.12.2001, he was present in the chamber of Police Inspector and at that time, the police constable Ajaypalsing has passed on",,,, the information received by him. According to him, the information was regarding the plan of Aftab resident of Khanpur along with four persons to",,,, commit dacoity in the house of one Vasantlal Shah, situated at Geetanjali Flat and the time was fixed between 15 to 16 hour and they were coming in",,,, dark green colour Maruti Van No.GJ-1-HA- 4799. He has stated that thereafter, the Police Inspector has called all the staff members and two",,,, panchas and, thereafter, panchas were informed regarding the information. According to him, thereafter, all the staff members and panchas were",,,, gone in the government vehicle and parked the same near the Town Hall compound and they have scattered near Geetanjali Flat. He has stated that,,, thereafter, within short time, one Maruti Van of the same number and colour as mentioned above came there and parked near other parking vehicles",,,, and five persons alighted from it. He has stated that one person having small beard, who has been identified as Aaftab by Ajaypalsing alighted and,",,, thereafter, the staff members have cordoned them and the staff members were run to catch two persons who have run away during raid. He has",,,, stated that the weapons and driving licence were seized from the accused. He has stated that the names of the persons, who ran away, were given by",,,,

the other accused. According to him, Police Inspector Mr.Chauhan has prepared the panchnama and filed the FIR. According to him, the investigation",,,

was handed over to him and he has recorded the statement of Vasantlal Shah. He has stated that he has recorded the statement of Gautambhai,,,

Nanjibhai Marwadi and his brother Chetankumar Nanjibhai Marwadi and has also recorded the statement of the informant. According to him, he has",,,

recorded the statement of the police personnel and also recorded the statement of the officer of the Finance Company namely Ashish Shah.,,,

According to him, after getting necessary evidence, he has filed the charge-sheet.",,,

20.1 During his cross-examination, he has stated that at the time of raid along with him, Police Constable Madhusinh Bharatsinh, Police Constable",,,

Ghanshyambhai Kanjibhai, Police Constable Kaushik Hemshankar, Police Constable Rameshkumar Somabhai were present. However, he has not",,,

recorded the statements of those police constables. He has stated that he has visited the house of Vasantlal Shah, but he has not inquired as to",,,

whether he was at his house or not. At the next moment, he has stated that Vasantlal Shah was found in the house. However, he has not recorded the",,,

statement of Vasantlal Shah. According to him, the statement of Vasantlal Shah was recorded in the police station. He has stated that he has",,,

recorded the statements of one Babubhai Kasambhai and others. But, he has not produced the statements of Babubhai Kasambhai, Umarali and",,,

Vasantbhai and Ashish Shah along with the charge-sheet nor he has shown them as witnesses in the matter. He has denied the suggestion that as",,,

narration in the statements is helpful to the accused, he has not produced the same along with the charge- sheet.",,,

20.2 He has stated that he has not inquired as to whether Vasantbhai was in his house or not when the accused came at the place of occurrence. He,,,

has stated that after arresting the accused, he went to the house of Vasantbhai and that too, after preparation of the panchnama. He has stated that",,,

he did not remember as to who was other person present in the house of Vasantbhai. He has stated that he told Vasantbhai about happening of the",,,

incident and called him in Police Station and, thereafter, his statement was recorded. He has stated that no security arrangement was made for",,,

Vasantbhai. But at the same time, he has stated that he could not find two police constables kept there for security purpose. He has stated that",,,

Vasantbhai was carrying on business of purchase and selling of the vehicles. He has stated that Ajaypalsing has not given any version regarding his,,, information. He has stated that the PSI Mr.Desai and other staff members were with him. He has stated that Ajaypalsing has shown some person,,, who is Aaftab and they have been arrested. He has stated that at 6.00 pm, he came to his office and at about 7.00 pm, he has recorded the statement",,,, of Gautambhai Nanjibhai. He has denied that it is not so happened that they went to the house of Gautambhai at 4.00 pm.,,,,

20.3 He has further stated that no register of information was being kept in the Crime Branch. He has stated that he has recorded the statement of,,, the informant. But, he did not remember as to at which, it was recorded. He has stated that he did not know as to the informant, who has given the",,,, information of the place of occurrence to Ajaypalsing. He has denied the suggestion that he has given the description to Ajaypalsing and on that basis",,,, the accused were arrested on the spot. He has stated that he did not know the business of the panchas.,,,,

21. On perusal of the evidence of Dilipsinh Prabhatsinh, P.W.7 at Exhibit 25, it appears that at the relevant time, he was serving as police constable in",,,,

DCB Branch and was working as writer of PSI J.T.Chudasama. He has stated that the incident has happened on 05.12.2001 and the police constable,,,

has conveyed the information to him to the effect that 5 to 6 persons were coming in Maruti Van to commit dacoity in the house of Vasantlal Shah at,,,,

about 15.00 to 16.00 hours. According to him, thereafter, PI Mr.Chauhan has called two panchas and informed them about the facts of information",,,,

and they have given consent to be panch witnesses and the staff members were also informed. He has stated that the primary panchnama between,,,,

14.20 hours to 14.40 hours, was prepared in the office and, thereafter, they all went in the government vehicle from the Crime Branch Office. He has",,,,

stated that the government vehicle was parked near the Town Hall and they scattered near the flat. He has stated that at about,,,,

15.50 hours, the Maruti Van came there and when it was parked, at that time, they all were cordoned and three persons were arrested when they",,,,

alighted and two persons ran away from the place. He has stated that the weapon namely kukari found from Aaftab, whereas, the driving licence was",,,,

found from Umarali and rampuri knife was found from Akbarkhan which were seized by preparing panchnama and Mr.Chauhan has given the FIR.,,,,

He has stated that he was member of the raiding party and on 05.12.2001, his statement was recorded." ,,,

21.1 During his cross-examination, he has stated that at the time of conveying secret information by Ajaypalsing in the chamber of Mr.Chauhan," ,,,

Mr.J.T.Chudasama and PSI Mr.K. S. Desai were present. He has stated that he did not know as to who was sent by Mr.Chauhan to bring panchas.,,,

He did not know as to the exact time of getting information. He has stated that the staff members who were present and having knowledge regarding ,,,

the information where he himself, head constable Ranjitsinh Sursinh, head constable Ghanshyamsinh Kanji, head constable Madhusing, police" ,,,

constable Ajaypal, police constable Valjibhai, police constable Kaushikkumar, police constable Rameshbhai and panchas were present. He has stated" ,,,

that they all were seated in the government vehicle at 14.20 hours. At the next moment, he has stated that the time was about 14.40 hours and he was" ,,,

with Mr.Chauhan in his jeep. But he did not remember the name of the driver of both the vehicles. He has stated that both the drivers were not part of ,,,

the raiding party. He has stated that they all were in two groups and standing in two groups. He has stated that the staff members were scattered in ,,,

such a way that one side Mr.Chauhan, Ajaypal and he himself and panchas were standing on one side. He has stated that Maruti Van was kept in" ,,,

compound of the flat. He has stated that he did not know as to on which side the other two accused ran away. He has stated that he himself has ,,,

caught hold Aaftab. However, he did not remember as to who has caught hold the other two accused. He has stated that before arresting the" ,,,

accused, they have not gone to the flat for inquiry. He has stated that he did not see the watchman there nor he went for inquiry of Vasantlal and he" ,,,

did not know the business of panchas and who has called them.,,,

22. It also appears from the record that as per the evidence of police personnel, the persons of public were gathered there. But not a single person" ,,,

from the public i.e. independent witness has been examined by the prosecution. Not only that the witnesses whose names have been narrated by the ,,,

police personnel in their depositions and whose statements have been recorded are not examined by the prosecution. Under these circumstances, an" ,,,

adverse inference can be drawn against the prosecution. At this juncture, it is worthwhile to refer to the decision of the Apex Court in the case of" ,,,

Ram Prasad and others Vs. State of U.P, AIR 1973 SC 2673 = (1974) 3 SCC 38.8
The Apex Court has observed that in case the Court finds that the",,,

prosecution has not examined the witnesses for the reasons not tenable or not proper, the Court would be justified in drawing an adverse inference",,,

against the prosecution. This decision has been relied on and endorsed by the Apex Court in the case of State of U.P Vs. Punni and others, AIR 2008",,,

SC 932.,,,

23. Now, on re-appreciating the above oral evidence, it clearly appears that there are material contradictions in the evidence of the police witnesses.",,,

The police inspector and other witnesses have stated that the informant was not there. However, as per the evidence of Ajaypalsing Siyaram Yadav",,,

the informant was present at the place of occurrence and he has identified the accused and on that basis, the raid was carried out. It also appears",,,

from the evidence of the Investigating Officer that there were other police constables and head police constables in the raid and their statements have",,,

been recorded. However, no such statement has been produced with the charge-sheet. It also appears from the record that as per the information",,,

the decoity was to be committed at the house of Vasantlal Shah. However, for the best reasons known to the prosecution, Vasantlal Shah has not",,,

been examined by the prosecution. It also reveals that as per the evidence of the Investigating Officer, he has recorded the statement of the",,,

informant, but, he has not been examined. Further, as per the evidence of Dilipsinh Prabhatsinh, the raiding party was standing in two different",,,

scattered position, whereas, the police personnel have deposed that all were scattered. It also reveals that the Police Inspector Shri Chauhan has",,,

stated that Maruti Van was parked outside the compound wall of the flat, whereas, as per the evidence of other witnesses, it was parked in a parking",,,

place of Geetanjali Flat itself. Had all the persons present in raid, then, there could not have been such difference regarding the place of parking of the",,,

vehicles. It also appears from the evidence of Ajaypalsing that prior to the raid, the names or descriptions of all accused were provided by informant.",,,

It also appears from the evidence of Ajaypalsing that as per the signal of the informant, he has identified the main accused, whereas, as per the Police",,,

Inspector Shri Chauhan and other police constables, the informant was not present.",,,

24. It also appears from the evidence on record that the factum of preparation of the panchnama has not been supported by the panch witness and he,,,

has clearly stated in his evidence that he has never been called at the Police Station and was not explained anything regarding the contents of the,,,

panchnama and his signature was taken at 9.00 p.m. The panch witness has also clearly stated that when he has signed the panchnama, no other",,,,

panch was present and the police has asked his name and address only. Of course, he has been declared hostile, but, the prosecution has not cared to",,,,

examine the other panch in support its case as to the preparation of the panchnama in presence of panchas.,,,,

25. On re-appreciating the evidence available on record, it clearly transpires that there are material contradictions in the evidence of the prosecution",,,,

and the evidence tendered by the police personnel is not trustworthy. No reliance can be placed on such evidence.,,,,

26. Now, on perusal of the impugned judgment and order of the Trial Court, it appears that the Trial Court has committed serious error of facts and",,,,

law in appreciating the evidence on record and has also committed the serious error in convicting the accused. The impugned judgment and order of",,,,

conviction is not sustainable in the eyes of law and the same warrants interference.,,,,

27. For the foregoing reasons, present appeal is liable to be allowed. Accordingly, present appeal is allowed. The impugned judgment and order of",,,,

conviction and sentence passed by learned Principal Judge, City Sessions Court No.1, Ahmedabad City in Sessions Case No. 150 of 2002 dated",,,,

05.03.2003 for the offence under Sections 399 and 402 of the Indian Penal Code is hereby quashed and set aside. The accused are acquitted from the",,,,

charges leveled against them. Fine, if any, paid to be refunded to the accused. Bail bond stands cancelled. Record and proceedings be sent back to the",,,,

concerned Trial Court forthwith.,,,,