
(2009) 08 AHC CK 0013
In the Allahabad High Court
Case No : Criminal A. No. 1008 of 1981

Amar Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 315

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 392, 397, 411

Citation : (2009) 3 ACR 3541

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Advocate : B.N. Asthana and Mukhtar Alam, Amicus Curiae, for the Appellant;
A.K. Jain and A.G.A., for the Respondent

Judgement

Shri Kant Tripathi, J.—The Appellant Amar Singh has preferred this appeal against the judgment and order dated 24.1.1981 rendered by Sri H. C. Rastogi, the then Ist Additional Sessions Judge, Agra, in State of U.P. v. Amar Singh, S.T. No. 199A of 1978, whereby the learned Additional Sessions Judge has convicted and sentenced the Appellant u/s 392 read with Section 397, I.P.C. to undergo rigorous imprisonment of seven years.

2. The facts leading to this appeal may be stated as follows.

3. The complainant Krishna Manohar (P.W. 1) was serving as a lecturer in Agra College, Agra and also used to run a Homoeopathic Clinic in Bag Muzaffar Khan within the limits of Hari Parvat, district Agra. On 8.7.1975 at about 9.05 p.m. when the complainant was about to close the clinic, the Appellant Amar Singh and co-accused Guddu alias Kailash Prasad and one unknown person entered inside the complainant's clinic and forcibly took his diary containing cash amount of Rs. 52 and few papers from his pocket and removed his roamer wrist watch. The Appellant and his associates did this act of robbery by pointing out a knife on the complainant. It is further alleged that the complainant raised alarm

whereupon certain passer-by arrived there but the Appellant and his associates fled away alongwith robbed wrist watch and diary including the cash amount of Rs. 52. The complainant Krishna Mohan lodged the F.I.R. Exhibit Ka-1 at the police station Hari Parvat on the same day at about 9.40 p.m. on which basis the police registered the case for investigation.

4. P.W. 3 Sub-Inspector, Chakradhar Dobal undertook the investigation and prepared the site plan Exhibit Ka-3 and recorded the statement of the complainant on 9.7.1975.

5. It may also be mentioned that on 9.7.1975 at about 5.15 p.m. P.W. 4 Sub-Inspector, Sukendra Pal Singh arrested the Appellant Amar Singh and his friends Pradeep and Guddu near the office of the Assistant Sales Tax Commissioner in the presence of the witnesses Basan and Munna on the basis of an information furnished by an informer. On search a knife and a roamer wrist watch were recovered from the possession of the Appellant Amar Singh who stated that the roamer wrist watch was robbed from the complainant. It may also be mentioned that the recovered roamer wrist watch was correctly identified by the complainant in an identification proceedings held by the Additional City Magistrate, Agra.

6. The Investigating Officer filed charge-sheet against the Appellant and other accused on completion of the investigation. The Appellant had absconded and as such his case was separated from the case of the co-accused and due to this he was tried later on separately.

7. The learned Additional Sessions Judge framed the charge u/s 392 read with Section 397, I.P.C. against the Appellant. An alternative charge u/s 411, I.P.C. was also framed against him. The Appellant denied the charges and claimed to be tried.

8. The prosecution examined as many as five witnesses in support of its case.

9. In regard to the incident of the robbery, the prosecution has examined P.W. 1 Krishna Manohar, who is the complainant. This witness has supported the prosecution story and has also proved the F.I.R., Exhibit Ka-1.

10. To prove the factum of recovery of the wrist watch from the Appellant, the prosecution has placed reliance on the evidence of P.W. 4 Sukhendra Pal Singh, Sub-Inspector and P.W. 5 Munna. P.W. 4 Sukhendra Pal Singh has not only proved the arrest of the Appellant and his associates Pradeep and Guddu on 9.7.1975 at about 5 p.m. - 5.15 p.m. on the basis of the information given by the informer, but has also proved the story of recovery of the knife and one wrist watch from the possession of the Appellant and the recovery memo Exhibit Ka-5. P.W. 5 Munna is alleged to be an independent witness of the recovery. He was a rickshaw-puller and is alleged to be present near Delhi Gate Chauraha before the recovery alongwith other witness Ramesh. This witness has also supported the prosecution story relating to the recovery of wrist watch and knife from the

possession of the Appellant.

11. The third category of the prosecution evidence is the evidence of identification of the recovered wrist watch in the identification proceedings held by the Additional City Magistrate, Agra. P.W. 1 Krishna Manohar, the complainant, had participated in the identification proceedings and had correctly identified the recovered wrist watch. This witness has proved the factum of identification in the witness box. Moreover, the prosecution produced identification memo Ex. Ka-9 prepared by the Additional City Magistrate, Agra, whose genuineness was not disputed by the Appellant.

12. The fourth category of the prosecution evidence is of formal nature. P.W. 3 Chakradhar Dobal, Sub-Inspector, had investigated the case. This witness has proved the site plan, other formal papers and the fact that he had sent a report for holding the identification proceedings for identification of the wrist watch. After the transfer of P.W. 3 Chakradhar Dobal, the investigation was entrusted to P.W. 2 R. S. Bhatnagar, Sub-Inspector, who has proved the charge-sheet Ex. Ka-2.

13. The learned Additional Sessions Judge examined the Appellant u/s 313, Cr. P.C. who has denied the allegations made against him.

14. The Appellant has not adduced any evidence in defence.

15. I have heard Shri Mukhtar Alam, the learned amicus curiae appointed for the Appellant and Mr. A. K. Jain, the learned A.G.A. for the State and perused the record.

16. The learned Additional Sessions Judge has, on a thorough scrutiny of the statement of P.W. 1 Krishna Manohar, believed the prosecution story relating to the incident of robbery and held that the charge u/s 392 read with Section 397, I.P.C. was proved beyond all reasonable doubts against the Appellant Amar Singh but the learned Additional Sessions Judge has disbelieved the story of recovery of the wrist watch from the possession of the Appellant mainly on the ground that the wrist watch was not produced during the trial and P.W. 1 Krishna Manohar had not given any evidence that the recovered wrist watch was robbed from him in the incident in question. The identification proceedings could only be used for corroborating the substantive evidence of the complainant. Accordingly, the learned Additional Sessions Judge convicted and sentenced the Appellant u/s 392 read with Section 397, I.P.C. to undergo rigorous imprisonment of seven years.

17. The learned amicus curiae submitted that the sole statement of P.W. 1 Krishna Manohar, the complainant, which was self contradictory, was not sufficient to record the conviction against the Appellant. In the F.I.R., names of the passers-by, who had arrived at the time of the incident, were not disclosed. P.W. 1 Krishna Manohar did not disclose the names of the witnesses even during the trial. It was further submitted that in the present case presence of

independent witnesses has been alleged, the sole testimony of the complainant ought not to have been relied on. Non-examination of independent witnesses shakes the credibility of the prosecution story.

18. It is true that the complainant Krishna Manohar stated in the F.I.R. that certain passers by had arrived at the place of occurrence on hearing his alarm but it is nowhere stated that they disclosed their names, addresses and other details to the complainant. In a busy city like Agra, it is very difficult to identify the passers by and to locate their names, addresses and other details. It is ordinarily experienced that people do not come forward to support the cases relating to heinous crimes like robbery and dacoity, which are ordinarily committed by habitual offenders. In view of the facts and circumstances of the case, if the passers by did not come forward to support the version of the complainant or to disclose details of their identity including names and addresses, the complainant's sole testimony cannot be discarded on the ground that the independent witnesses, though available, were not examined. It is well-settled that it is the duty of the Court to assess intrinsic worth of the testimonies of the witnesses examined by the prosecution and if their evidence appears to be truthful, reliable and acceptable mere fact that some other witnesses have not been examined, they would not adversely affect the prosecution case. This proposition has been propounded in the case of *Pohlu v. State of Haryana* (2005) 10 SCC 196: 2006 (1) ACR 906 (SC). In my point of view, the submissions of the learned amicus curiae that non-examination of independent witnesses was fatal to the prosecution, has no substance.

19. The legal position in regard to the requirement of the number of witnesses to prove a fact has been fully settled by the Apex Court in various decisions. In *Chuhar Singh Vs. State of Haryana*, the Apex Court has held as follows:

What is important is not how many witnesses have been examined by the prosecution but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of (single witness), it is necessary to examine that evidence critically.

20. A similar view has been expressed in the case of *Namdeo v. State of Maharashtra* (2007) 14 SCC 150: 2006 (3) ACR 3207 (SC). In that case the Apex Court has held as follows:

It is no doubt true that there is only one eye-witness who is also a close relative of the deceased viz. his son. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. It is clear that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be a particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality

of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witnesses, therefore, has no force and must be negatived. As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver ; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. It is also a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law. Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon the facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the "sole" testimony of such witness.

21. A similar proposition has been laid down by the Apex Court in several other decisions and some of them are as follows:

- (i) Vadivelu Thevar Vs. The State of Madras,
- (ii) Anil Phukan Vs. State of Assam,
- (iii) Kartik Malhar Vs. State of Bihar,
- (iv) Chittar Lal Vs. State of Rajasthan, and
- (v) Bhimappa Chandappa Hosamani and Others Vs. State of Karnataka,

22. In our judicial system, emphasis is laid on the quality and not the quantity of the evidence for proving or disproving a fact. As a general rule, Courts can and may act on the testimony of a solitary witness even without corroboration. A single trustworthy witness outweighs the testimony of number of the witnesses of indifferent character. What is required in law, is to scrutinise the testimony of the witness and if on such scrutiny his evidence is found reliable, probable and trustworthy, the evidence of the solitary evidence can be made as the basis for recording a valid conviction. In my opinion, the submissions of the learned amicus curiae that the learned Additional Sessions Judge has committed illegality in placing reliance on the sole testimony of P.W. 1 Krishna Manohar, has no substance.

23. The learned Additional Sessions Judge has very elaborately scrutinised the statement of P.W. 1 Krishna Manohar, who had very clearly deposed on oath that on 8.7.1975 at 9.05 p.m. he was inside his clinic (shop) and was about to close

the clinic, three miscreants, namely, the Appellant Amar Singh, co-accused Guddu and one unknown person entered inside the clinic. The Appellant Amar Singh put a knife on his neck and then all miscreants demanded that he should handover whatever he had in his pocket. P.W. 1 Krishna Manohar further deposed that when he did not respond, the miscreants removed his purse from the pocket of his pant. The purse had cash amount of Rs. 52 and a small diary. P.W. 1 Krishna Manohar further stated that the Appellant Amar Singh searched his pockets and removed his Roamer 17 Jewels wrist watch. After taking the purse and the wrist watch, the Appellant Amar Singh and his companions fled away. In this way, P.W. 1 Krishna Manohar has supported the prosecution story, whose statement could not be shaken during the cross-examination. It may not be out of context to mention that P.W. 1 Krishna Manohar, being a lecturer in Agra College, Agra was not only a respectable person but also had no animosity against the Appellant and there was no other reason for him to falsely implicate the Appellant and his companions. As the complainant P.W. 1 Krishna Manohar knew the Appellant and his companion Guddu from before the occurrence, there was no possibility of wrong identification of the miscreants, who committed the robbery. The learned Additional Sessions Judge has very elaborately dealt with the various contradictions that have occurred in the statement of P.W. 1 Krishna Manohar and has held that the contradictions were not material and evidence of P.W. 1 Krishna Manohar remained intact despite minor contradictions. The relevant portion of the judgment of the learned trial court is reproduced as follows:

It has been next contended on behalf of the accused that the complainant (P.W. 1)ing statements at various stages and, therefore, his testimony uncorroborated by any independent person should not be believed. In this connection, he has pointed out that the statement of complainant at the trial is that accused Amar Singh put a knife on his neck and that he searched his other pockets and removed roamer watch from his wrist while his statement before the Sessions Judge in the trial against accused Guddu and Pradeep was that accused Amar Singh had put a knife on his chest. Not only that, the complainant in his cross-examination at the present trial has given out that the companions of the present accused had nothing in their hands while his statement in the court of Chief Judicial Magistrate as well as before the Sessions Judge was that all the three accused had knives with them. In the court of C.J.M. he had also stated that he could not raise alarm because the accused had put knives on his neck and stomach. No such case was, however, mentioned in the first information report. The complainant has admitted that he had made statement before the C.J.M. as well as before the court of Sessions Judge that all the three accused had knives and has given out that a long time has been elapsed and, therefore, he made the statement by mistake that the other companions of the accused had no knife. As regards his statements at the trial that accused Amar Singh had put a knife on his neck and before the Sessions Judge at the chest, he has pointed out that both would be same thing inasmuch as the knife was put near the collar

bone. This explanation is quite plausible. It is wrong to say that the first information report is silent upon this part of the story. It was clearly mentioned in the first information report that the accused had robbed him at the point of knife. It was not expected to the complainant to mention in the first information report as to how the knives were brandished. It has been complainant's consistent evidence that accused Amar Singh had a knife and used the same in committing robbery. Therefore, the mere fact that complainant has given out now that his other companions were empty handed does not weaken his evidence so far as the case of the present accused is concerned. It is common knowledge that such highway robberies are committed mostly by use of deadly weapons and threat. As such the complainant's version about the use of knife by the present accused appears to be very natural and is worthy of belief. The learned Counsel for the accused has also pointed out that the complainant has asserted at the present trial that he was running a charitable homoeopathic clinic but this runs counter to his statement in the previous session trial against accused Guddu and Pradeep wherein he had given out that he used to sell homoeopathic medicines. The complainant has explained the previous statement and has given out that he had kept a separate box in which the patients used to put 25 paise and it may be called either sale of the medicines or as contribution towards charity. This so called contradiction is also not very material and has no bearing upon the case.

24. The finding of the learned Additional Sessions Judge, in regard to contradictions and minor infirmities, being based on sound and cogent reasons, appears to be perfectly correct and requires no interference, specially when the statement of P.W. 1 Krishna Manohar was recorded in the Court after about five years of the occurrence and after a gap of such long period, minor contradictions were natural and bound to occur.

25. The learned amicus curiae further submitted that the F.I.R. Ex. Ka-1 was highly doubtful. It was prepared at the behest of the police. It was nowhere stated in the F.I.R. that the Appellant and his companions robbed the purse of the complainant rather it was stated therein that the complainant's diary, cash amount of Rs. 52 and few papers were robbed by the Appellant and his companions. Even the names of persons who arrived at the scene of occurrence were also not disclosed in the F.I.R. In my opinion, every minute details of the incident is not required to be mentioned in the F.I.R. as it is not an encyclopaedia. In the case of Animireddy Venkata Ramana and Others Vs. Public Prosecutor, H.C. of A.P., the Apex Court observed in regard to the contents of, and omissions in, the F.I.R. and held in para 12 of the judgment that in the first information report all the accused persons were named and overt acts on their part were also stated at some length. Each and every detail of the incident was not necessary to be stated. A first information report is not meant to be encyclopaedic. While considering the effect of some omissions in the first information report on the part of the informant, a Court cannot fail to take into consideration the probable physical and mental condition of the first informant.

One of the important factors which may weigh with the Court is as to whether there was a possibility of false implication of the Appellant. Only with a view to test the veracity of the correctness of the contents of the report, the Court applies certain well-known principles of caution. A similar observation has been made in the case of *Bishna @ Bhiswadeb Mahato and Others Vs. State of West Bengal*, of the judgment. It was held in that case that it is not necessary that all relevant and irrelevant facts in details should be stated in the F.I.R.

26. If the F.I.R. discloses brief facts relating to mode, manner, time and place of the occurrence and the details of the persons who committed the crime and their overt acts, the F.I.R. shall be deemed to be a complete document of the incident and the prosecution case cannot be thrown out on the ground that certain other details or elaborate facts have been omitted in the F.I.R. The discrepancies in regard to the F.I.R. as pointed out by the learned amicus curiae have been elaborately considered by the learned Additional Sessions Judge, who has arrived at the conclusion that the discrepancies were minor and were not material to discard the prosecution case. It is true that it has been stated in the F.I.R. that the Appellant and his companions forcibly took away the complainant's diary containing cash amount of Rs. 52 and not the purse from his pocket but P.W. 1 Krishna Manohar has clarified the position by saying that the purse was like a diary. It was in the form of a diary as well as purse. In view of this explanation the facts that the term purse was not mentioned in the F.I.R. has no material significance. The learned amicus curiae further submitted that it was not stated in the F.I.R. that the miscreants including the Appellant put a knife on his neck rather it was stated that the robbery was committed by showing a knife. In my opinion, this contradiction is also very minor and was rightly ignored by the learned Additional Sessions Judge. So far as the contention of the learned amicus curiae that the F.I.R. was written at the instance of the police is concerned, it has also no substance. The learned Additional Sessions Judge has very clearly observed that P.W. 1 Krishna Manohar admitted that he went to the police station to lodge a report but was asked to give a report in writing. If the police required P.W. 1 Krishna Manohar to give a written report, it cannot be inferred that the report was written at the behest of the police specially when the P.W. 1 Krishna Manohar has clarified stated that he wrote the report in a restaurant situating in front of the police station. The learned Additional Sessions Judge was of the view that if report had been written at the instance of police, the names of some witnesses would have been introduced in it and accordingly held that the F.I.R. was not written at the instance of the police. The opinion of the learned Additional Sessions Judge based on proper appreciation of the evidence seems to be correct and requires no interference. In my opinion, the credibility of the F.I.R. Ex. Ka-1 has been fully established especially when it was promptly lodged without any delay, within 35 minutes of the occurrence, and the complainant, the author of the F.I.R. had no enmity against the Appellant and also had no other reason to falsely implicate him.

27. The learned amicus curiae further submitted that the Appellant and his

companion Guddu were known to the complainant from before the occurrence and as such it was quite improbable that they would commit robbery without concealing their identity. It is not always proper to reject a prosecution case only on the ground that the previously known accused had not concealed his identity while committing the offence of robbery or dacoity. If the prosecution evidence relating to the incident is trustworthy, reliable and free from material infirmities, the accused cannot be let free on the ground suggested by the learned amicus curiae.

28. It was also submitted on behalf of the Appellant that P.W. 1 Krishna Manohar admitted that he had also kept his brief-case inside the clinic but the Appellant and his companions did not touch the brief case. If the Appellant and his companions had entered inside the complainant's clinic to commit robbery they would have taken the complainant's brief case too. In my opinion, the offences of robbery and dacoity are committed at the spur of moment and if the persons committing the robbery or dacoity do not take any property and leaves the same it cannot be contended that the robbery/dacoity of other articles was not committed. It has come in the evidence that the complainant raised alarm as and when Appellant and his companions put a knife on his neck and required him to handover whatever he had and immediately thereafter passers by arrived, there was, thus, no scope as well as time for the Appellant and his companions to rob any other property from the clinic of the complainant and they had to feel satisfied whatever they got from the personal search of the complainant. In this view of the matter, if the Appellant and his companions did not take away the complainant's brief case, the prosecution story cannot be said to be untrustworthy on that ground.

29. The learned amicus curiae further submitted that it was not safe to convict the Appellant for the offence of robbery in view of the fact that the learned Additional Sessions Judge has already disbelieved the part prosecution story relating to the recovery of the wrist watch. In my opinion, the maxim "*falsus in uno falsus in omnibus*" is not applicable in India. It is quite illegal to discard the entire prosecution story if a part of the prosecution story is not proved. The story which is found trustworthy and reliable on careful scrutiny must be acted upon notwithstanding that other part of the story is not reliable. It is the duty of the Court to separate the grain from the chaff and act upon the reliable portion of the evidence. In the instant case, the incident of robbery that took place on 8.7.1975 has been fully proved by P.W. 1 Krishna Manohar and the same remained intact even after his lengthy cross-examination. That part of the story is separable from the incident of the recovery which took place on 9.7.1975, specially when P.W. 1 Krishna Manohar was not a witness of the recovery. The incident of recovery being quite separable from the incident of robbery cannot be taken as a ground to discard the incident of robbery. This submission of the learned amicus curiae also fails.

30. It was lastly submitted on behalf of the Appellant that the Appellant was not

properly examined u/s 313, Cr. P.C. No question was put to the Appellant in regard to the F.I.R. Ex. Ka-1 and also in regard to the recovery of wrist watch. No question in regard to the presence of different witnesses at the time of recovery was put to the Appellant. The learned amicus curiae placed reliance on Ajay Singh Vs. State of Maharashtra, and Smt. Kaushalya Devi Vs. State of Rajasthan and Others, in support of his submissions.

31. In the case of Ajai Singh (supra), the Apex Court held as follows:

10. The purpose of Section 313 of Code is set out in its opening words - "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him." In Hate Singh Bhagat Singh Vs. State of Madhya Bharat, it has been laid down by Bose, J., that the statements of accused persons recorded u/s 313 of the Code "are among the most important matters to be considered at the trial." It was pointed out that the statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way, in the witness box and that they have to be received in evidence and treated as evidence and be duly considered at the trial. This position remains unaltered even after the insertion of Section 315 in the Code and any statement u/s 313 has to be considered in the same way as if Section 315 is not there.

11. The object of examination under this Section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.

12. The word "generally" in Sub-section (1) (b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.

13. The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not sufficient compliance to

string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand.

32. In the case of Smt. Kaushalya Devi (supra), the Rajasthan High Court has held as follows:

It is a settled principle of law, since long, that if there is any incriminating circumstances flowing from any event/ circumstances or documentary evidence, question in that respect has to be put to the accused Petitioner seeking his reply/ explanation in his statement u/s 313, Cr. P.C. If it is not so done then such circumstance has to be excluded and in no case, any order prejudice or conviction, can be passed against the accused persons on the basis of such circumstance. If question on such circumstances has been ignored by the trial court, then it is an illegality and amounts to an abuse of the process of Court. In the present case, the trial court has committed an abuse of the process of the Court by not allowing the Petitioner to put question in respect of the incriminating circumstance to the accused persons in their statement u/s 313, Cr. P.C. despite of specific request having been made by the Petitioner, although, the document/judgment has been taken on record, which pertains to the legal possession entitling the Petitioner in the matter.

33. In the case of State of Punjab Vs. Sawaran Singh, the Apex Court observed in para 10 as follows:

10. The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the Court in evaluating the evidence properly, the Court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be so that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had

been asked. There shall not be failure of justice on account of an unfair trial.

34. In Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, a three Judges Bench of the Apex Court considered the fall out of omission to put to the accused a question u/s 313, Cr. P.C. and observed as follows:

It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the Court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction.

35. In view of the aforesaid decisions of the Apex Court, it is clear that the accused has a right to know the evidence and the circumstances appearing against him during the trial and to put forth his own version before the Court in regard to such evidence and circumstances. This legal requirement is not only a compulsion u/s 313, Cr. P.C. but is also an integral part of fair trial, which provides a procedural safeguard to an accused. The opportunity to be provided to the accused to explain the evidence and circumstances appearing against him in the prosecution evidence is a valuable one and cannot be ignored. It is the duty of the Court not only to ascertain the evidence as well as circumstances appearing against the accused but also put the same to him, as required by Section 313, Cr. P.C. so that the accused may get an opportunity to explain the evidence and circumstances. While framing necessary questions to be put to the accused, the Court has to be very cautious and composite question must be avoided. The question to be put to the accused must be fair and couched in a form which an ignorant or illiterate person may understand properly without any confusion. The accused must be questioned separately about each material substance which is intended to be used against him. It is, however, not necessary to put the entire prosecution evidence in verbatim to the accused but efforts should be made to frame questions in such a way as to cover the gist of the relevant evidence and circumstances appearing against the accused. It is equally well-settled that improper or defective examination of the accused u/s 313, Cr. P.C. will have significance only when it is shown that some prejudice has been caused to the accused or miscarriage of justice has occasioned in the case.

In that situation the appellate court has power to call upon the accused or his counsel to explain the circumstances or the evidence appearing against the accused and as such it is not necessary, if some defect or omission is noticed in regard to observance of Section 313, Cr. P.C. to direct for retrial or for re-examination of the accused u/s 313, Cr. P.C.

36. In the instant case, it appears that the learned Additional Sessions Judge has properly examined the Appellant u/s 313, Cr. P.C. and as many as 12 questions were put to the Appellant. Question Nos. 1 and 2 were in regard to the evidence relating to the incident of robbery. Question No. 3 was to the effect that the complainant Krishna Manohar knew the Appellant and co-accused Guddu from before the occurrence. Question No. 4 related to the evidence of recovery of the wrist watch. Question No. 5 was in regard to the fact that the recovered wrist watch was robbed from the complainant. Question No. 6 was in regard to the identification proceedings held for identification of the wrist watch. Other questions were formal in nature. In view of the fact that all the relevant evidence appearing against the Appellant were put to the Appellant u/s 313, Cr. P.C. and he was given an opportunity to explain the same. As such it cannot be contended that the defence of the Appellant was prejudiced in any way or he was misled by the manner adopted by the learned lower court in examining the Appellant u/s 313, Cr. P.C.

37. In regard to the sentence, the learned amicus curiae submitted that the sentence of 7 years imposed on the Appellant is very excessive and unreasonable as it was a petty robbery of Rs. 52 and a wrist watch and as such sentence of 7 years R.I. cannot be said to be justified. In my opinion, this submission has also no merit. The Appellant has committed the offence of robbery by using a deadly weapon like knife. It has also come in evidence that it was the Appellant, who used the knife while committing the robbery. Section 397, I.P.C. provides imposition of minimum punishment of 7 years, if while committing the offence of robbery or dacoity, deadly weapon is used or grievous hurt is caused or an attempt is made to cause death or grievous hurt. It was, therefore, mandatory for the learned Additional Sessions Judge to impose the minimum sentence of 7 years" on the Appellant. I do not consider it proper to interfere with the punishment inflicted on the Appellant.

38. For the reasons disclosed above, the appeal has no merit and it is accordingly dismissed.

39. The Appellant Amar Singh shall be taken into custody for serving out the sentence. The learned Additional Sessions Judge, Court No. 1, Agra is directed to make compliance of the order and submit compliance report within two months.

40. A sum of Rs. 7,000 (seven thousand only) shall be paid as fee from the State Exchequer to Mr. Mukhtar Alam, the learned amicus curiae.