

(1999) 07 AHC CK 0024
In the Allahabad High Court
Case No : Criminal Appeal No. 475 of 1989

Yogendra Kumar and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 394

Citation : (1999) CriLJ 4685

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Surendra Pratap Singh and S.D.N. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This appeal against the judgment and order dated 17-2-1989 passed by Sri Chhotey Lal, the then Special Judge (D.A.A.), Banda in Spl. Trial No. 52 of 1987, State of U. P. v. Yogendra Kumar and others whereby he convicted all the accused appellants Yogendra Kumar, Ram Murti, Raj Kumar and Maan Singh of the offence punishable u/s 394, 1.P.C. and sentenced each of them under Rigorous Imprisonment for a period of four years.

2. Heard learned counsel for the parties. The informant in this case is Lal Bihari Agrawal. He was Store Keeper/Cashier of the Municipal Board, Atarra, district Bapda on the date of occurrence. The prosecution case is that on 4-10-1986, he had taken payment of Rs. 22,770.22 p. from State Bank of India, Banda of the salary bill of the Municipal Board staff out of which he kept a sum of Rs. 10,270.22 p. in the pocket of his Patloon and the rest amount of Rs. 12,500/- in his bag and then came to Atarra and got down at Atarra Bus Stand from Bus and took his cycle from there and proceeded on it towards his office, that when he reached on the Rasta in front of Gauri Baba Marg near the house of Natthu Ram

at about 3.00 P.M. all the four accused appellants Raj Kumar, Ram Murti, Maan Singh and Yogendra Singh came out from behind the Tractor trolley armed with tamanchas and assaulted him and holding the handle of the cycle felling him to the ground and started snatching his bag, that Yogendra Kumar accused appellant fired twice and that the accused appellants succeeded in snatching the bag along with a sum of Rs. 12,500/- which was in it, that the Badhi of the bag was left in his hands, that he raised an alarm whereupon Ram Sanehi Patel, Satish Awasthi, Rajendra Kumar Agrawal and others came there and chased the accused appellants but could not succeed in catching hold of any of them, that from there he was taken by the witnesses to the local hospital but the doctor declined to treat him without an F.I.R., that after it he went to the Police Station and lodged there the F.I.R. scribed by himself, at 3.45 P.M., the distance of the Police Station from the scene of occurrence being I-1/2 kl. mts.

3. On the basis of the written F.I.R. a case u/s 394, 1.P.C. was registered against all the accused appellants at the Police Station, Atarra and the informant was sent to District Hospital, Banda for medical examination.

4. Dr. K. C. Gupta, Medical Officer, District Hospital, Banda medically examined Lal Bihari Agrawal informant the same day at 5.30 P.M. He found the following injuries on his person :

(1) Lacerated wound 3 cm x 1/4 cm x muscle deep over Rt. side eye brow. Bleeding present.

(2) Lacerated wound 2 cm x 1/4 cm x muscle deep over Rt. side upper lid, V2 cm below the previous injury. Bleeding present.

(3) Contusion 4 cm x 4 cm over the upper & lower lid of the Rt. eye. Blue in colour. Sub conjunctival Haemorrhage present.

(4) Lacerated wound 4 cm x 2 cm x muscle deep over middle post and back of the skull, Bleeding present.

In his opinion Injury Nos. 1,2 and 4 were simple. However, Injury No. 3 was kept under observation and X-ray was advised C.A. skull. The informant was referred to eye Surgeon for expert opinion. In his opinion the injuries are caused by hard and blunt object and their duration was fresh.

5. The investigation of the case was entrusted to Sri Ram Milan Tiwari, S. I. Subsequently the investigation was done by Sri Vijai Singh Chaunan, P. 5 who after completing the investigation submitted charge-sheet against all the four accused appellants.

6. All the accused appellants have denied the allegations. They claimed their false implication due to enmity. Accused appellant Ram Kumar has claimed in his statement u/s 313, Cr. P.C. that then he was at Bombay in connection with the medical treatment of his father. Accused appellant Ram Murti claimed in his statement u/s 313, Cr.P.C: that he was not known to the prosecution witnesses.

The accused appellant Raj Kumar moved an application dated 16-5-88 before the Special Judge, Banda in which he had given a statement of his defence. He claimed in the application that he was employed in the Municipal Board from 1-10-84 to 28-2-86, that the informant Lal Bihari Agrawal Cashier and the Executive Officer of the Nagar Palika, Banda used to compel him to do their domestic work but he had declined to do so and for this reason the informant Lal Bihari Agrawal and the Executive Officer had started feeling enmity towards him, that due to it he had stopped working in the Nagar Palika, Atarra and due to it he was later on suspended, that after it he (the accused appellant) started work as a contractor in Nagar Palika, Atarra but Lal Bihari Agrawal, Cashier used to demand commission from him which he declined to give and due to it the informant Lal Bihari Agrawal started feeling enmity towards him and got him falsely implicated in the present case. It was also claimed by Raj Kumar accused appellant in this application that his father (Ram Bharose) was employee of the Nagar Palika, Atarra and on the date of occurrence his father had become a patient of cancer and for treatment of the same appellant (Raj Kumar) had taken his father to Tata Memorial Hospital, Bombay and got his treatment and operation done there, that after returning from Bombay he learnt that he has been falsely implicated by the informant Lal Bihari Agrawal in the present case. He claimed in the statement of defence that he was not at all present in the town Atarra at the time of occurrence. He also claimed in this statement of defence that there was dispute and due to strained relation between the informant and his father (father of Raj Kumar accused appellant) informant also fell in enmity with him for not doing domestic work and for not paying commission and for this reason he has been falsely implicated.

7. At the trial, the informant Lal Bihari Agrawal was examined by the prosecution as P.W. 3. The eye-witness Satish Chandra was examined as P.W. 1 eye-witness Rajendra Prasad Agarwal as P.W. 2 and eye-witness Ram Sanahi Patel was examined as P.W. 4. Rest of the evidence was ? formal.

8. The learned Sessions Judge believed the entire prosecution story and consequently convicted and sentenced the accused appellants as aforesaid.

9. In this case, it is clearly established by the evidence that the informant Lal Bihari Agrawal who was Store Keeper/Cashier of the Municipal Board, Atarra, district Banda on the date of occurrence on 4-10-1986 had taken payment of Rs. 22,770.22 p. from State Bank of India, Banda of the salary bill of the Municipal Board staff and was carrying with him the sum for the office. This part of the evidence was not challenged at any stage. It has also come in evidence that out of this sum he kept a sum of Rs. 10,270.22 p. in his pant pocket and the remaining amount of Rs. 12,500/- in his bag, that then he reached Atarra Bus Stand from where he proceeded by cycle to Municipal Board office, Atarra and that when he reached on the Rasta in front of Gauri Baba Marg near house of Natthu Ram, the money in the bag was looted by robbers who came out from behind a Tractor trolley standing on the Rasta and that in the process of the loot

he was assaulted and injured, that he raised an alarm whereupon eye-witnesses Ram Sanehi Patel, P.W. 4, Satish Chandra, P.W. 1 and his own younger brother Rajendra Prasad Agrawal, P.W. 2 and others came to the spot and chased the culprits and then took him to the hospital. His testimony is corroborated by the F.I.R. promptly lodged by him at the Police Station at 3.45 P.M. which was one and half kilometer from the scene of the occurrence. His testimony finds corroboration from the testimony of Satish Chandra, P.W. 1, Rajendra Prasad Agrawal, P.W. 2 and Ram Sanehi Patel, P.W. 4. Satish Chandra, P.W. 1 testifies that Rs. 12,500/- was looted from the informant Lal Bihari Agarwal on 4th October, 1986 at the road in front of Gauri Baba Marg and when Lal Bihari Agrawal cried he had reached the spot. He no doubt stated that he had reached at the spot a little late and so he could not see whether the accused appellants had looted or not. In his cross-examination by the defence he stated that when he reached at the spot the accused had ran away and he did not seek anybody looting. Nevertheless his statement goes to corroborate the testimony of the informant who is the victim, on the factum of dacoity and the place where the loot had taken place. He had testified that he heard cries of the informant and reached the spot. Rajendra Prasad Agrawal, P.W. 2 another eye-witness of the occurrence testified that on 4-10-1986 at 3.00 P.M. he was going by cycle, that he saw that his brother Lal Bihari Agrawal was lying soiled in blood, that had reached at the spot when the loot was over and that he took the informant to the hospital. He further stated that when he reached at the spot the culprits had run away. In his cross-examination, his testimony of seeing the informant lying (on the ground) soiled in blood and his taking the informant to the hospital was not challenged. Ram Sanehi Patel, P.W. 4 testified that on 4-10-1986 at 3.00 P.M. he was going from the side of Gauri Baba Marg, that he heard the cries of Lal Bihari Agarwal and when he proceeded further he saw Lal Bihari Agarwal soiled with blood, that he saw that four persons were running away. He too was also not cross-examined by the defence on this part of his testimony. It may be that Satish Chandra, P. W. 1, Rajendra Prasad Agrawal, P.W. 2 and Ram Sanehi Patel, P.W. 4 were declared hostile by the prosecution and cross-examined with reference to their previous statements before the Investigating Officer on the question of nomination of the accused appellants. However the mere fact that they were declared hostile by the prosecution-does not efface their evidence from the record altogether. "The whole of the evidence so far as it affects both parties favourably or unfavourably must go to the jury for what it is worth" in the words of the Hon. Rankin, the learned Chief Justice of the Calcutta High Court in the Full Bench judgment in Profulla Kumar Sarkar and Others Vs. Emperor, . In Narayan Nathu Naik Vs. The State of Maharashtra, the Apex Court actually used the evidence of the prosecution witnesses who had partly resiled from their previous statements to the extent they supported the prosecution for corroborating the other witnesses. In the case of Sat Paul Vs. Delhi Administration, :-

From the above conspectus, it emerges Clear that even in a criminal prosecution

when a witness is cross-examined and contradicted with the leave of the Court by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.

10. In this case, this above-mentioned part of the evidence of these partly hostile witnesses can be safely relied upon particularly when it has not been challenged by the defence and there was nothing to suspect that the complainant Lal Bihari Agarwal cunningly coined the occurrence of alleged robbery and there was no basis to believe that about the alleged robbery he had come forward with false allegations that he was robbed. There is absolutely no cross-examination of the informant Lal Bihari Agarwal on the factum of robbery from him. There was no suggestion made to the informant Lal Bihari Agarwal in his cross-examination that actually he had digested the amount of Rs. 12,500/- and had cooked up a case of robbery. As a matter of fact, there was no scope for such a suggestion to the informant as he had received injuries in the occurrence. The medical evidence on record given about it by Dr. K. C. Gupta, P.W. 6 goes wholly unchallenged, Dr. Gupta had opined that the injuries of the informant Lal Bihari Agarwal could have been caused at 3.00 P.M. on 4th October, 1986. There was also no suggestion made to the informant in his cross-examination that the occurrence had taken place somewhere else at some other time in some other manner. It may also be mentioned here that the written F.I.R. promptly lodged by the informant in the case has supported his testimony about the factum of robbery at the date, time and place denied by him. As a matter of fact, the defence has not challenged the factum of robbery and the date, time and place thereof. It was a broad daylight robbery.

11. Thus it is established beyond every shadow of doubt that the informant Lal Bihari Agrawal, P.W. 3 was robbed of a sum of Rs. 12,500/- which he was carrying in a bag on his cycle at the place of occurrence at 3.00 P.M. on 4-10-86, by a set of robbers.

12. Now I come to the question whether the prosecution has succeeded in connecting the accused-appellants.Yogendra Kumar, Ram Murti, Raj Kumar and Maan Singh with the robbery. On this point, there is the sworn testimony of Lal Bihari Agarwal, victim and informant, P.W. 3 that all these four accused appellants came out from behind the trolley of a Tractor at the spot and

assaulted him, caught hold of the handle of the cycle, felled him down and assaulted him and snatched his bag containing a sum of Rupees 12,500/-. He has also testified that in this process Yogendra Kumar accused appellant had fired twice though he missed each shot. He also testified that he raised an alarm whereupon witnesses came to the spot. Even though eye-witnesses Satish Chandra, P.W. 1, Rajendra Prasad Agarwal, P.W. 2 and Ram Sanehi Patel, P.W. 4 turned hostile" on the question of nomination of the accused appellants in the occurrences, they testified that they reached at the scene of occurrence at the alarm and call of the victim and informant Lal Bihari Agrawal, P.W. 3. Satish Chandra, P.W. 1 claimed that the accused persons had run away when he reached the spot. Rajendra Prasad Agarwal, P.W. 2 also stated likewise. Ram Sanehi Patel, P.W. 4 went a little further and testified that he saw four persons running from the scene of occurrence though he claimed that he could not identify these persons. In his cross-examination by the State, Satish Chandra, P.W. 1, admitted that he had told the Investigating Officer the name of Yogendra Kumar, accused appellant as being one of the robbers on his arrest though he denied having given the names of the other accused-appellants to the Investigating Officer in his statement to him and claimed that their names had been told to him by the Investigating Officer himself. It is significant that in his statement he stated that Yogendra Kumar accused appellant had been arrested one hour after the robbery. The prosecution suggestion to this witness was that the accused persons being dangerous criminals he had colluded with them and turned hostile. Rajendra Prasad Agrawal, P.W. 2 was suggested by the prosecution that he was not naming the accused appellants out of their fear. They, of course, made the denial of these respective suggestions. Ram Sanehi Patel, P.W. 4, in his cross-examination denied having given the statement u/s 161, Cr. PC. to the Investigating Officer nominating the accused appellants and denied colluding with the accused appellants and for that reason suppressing the truth. Even then he stated that he learnt at the police station that these accused had committed the dacoity. In the cross-examination by the learned defence counsel he stated :-

MAI HAZIR ADALAT MULZIMAN KO NAHI PAHCHANTA HUE.

Notwithstanding the fact that these three witnesses are hostile on the point of nomination of the accused-appellants, their evidence in the trial gives substantial corroboration to the testimony of the victim informant Lal Bihari Agrawal, P.W. 3. Much argument has been advanced about the circumstances that even Rajendra Prasad Agarwal, P.W. 2, who was real brother of the victim informant had turned hostile. It was claimed that it belies the nomination of the accused appellants by the victim informant in this case. Far from it, it is not a case where the victim and informant named his near relations and friends as eye-witnesses in the occurrence and it turned out, that those witnesses were not present at the spot and could not be present at the spot. The defence did not claim at any time that Rajendra Prasad Agarwal, P.W. 2 was nowhere near the scene of occurrence at all. In this case the prosecution has advanced a plausible explanation for the

public witnesses stopping short of nominating the accused appellants and under the circumstances no adverse inference could be drawn against the prosecution from the reluctance of those public witnesses to nominate the accused appellants as the culprits. The only result of their abstention to nominate the accused appellants in this case is that the prosecution is left to prove the participation of the accused appellants in the occurrence by the evidence. In the ordinary course, the victim cannot fail to notice the identity of the robbers in a broad daylight occurrence that took place on a road where the victim was in the open and the culprits were close at hand. The injuries found on his body were those which could be inflicted only when the culprits were near at hand. Further more, he could be robbed of this money by the robbers only by coming near him. So it cannot be doubted that the victim informant had the fullest opportunity of seeing and identifying the culprits. So the circumstance that he named the accused appellants in the F.I.R. promptly lodged by him at the police station in his own handwriting carried great corroborative value for his testimony and nothing revolves on the circumstance that the public witnesses of the occurrence aforesaid which included his brother also did not support this part of his testimony nominating the accused appellants as culprits in the robbery.

13. As we have noted earlier, the categorical nomination of the accused appellants as robbers who participated in the robbery, by the victim and informant Lal Bihari Agarwal, P.W. 3 in his testimony was of great value. Learned counsel for the accused-appellants has relied on the admission extracted from him on behalf of Yogendra Kumar and Ram Murti accused appellants that he did not know Yogendra Kumar and Ram Murti accused appellants from before the occurrence and that he had named the accused persons in the F.I.R. because their names were told to him by the persons present at the spot and claimed that since the accused appellants were not put up for test identification no conviction could be founded on the nomination made by him in his examination in Chief. In my view, in the circumstances of this case his testimony nominating these accused appellants cannot be thrown overboard on the ground that the accused appellants had not been put up for test identification by him during investigation. It is significant that even though he stated that he did not know these two accused appellants from before the occurrence, he categorically stated that he has seen all these four accused appellants in the occurrence. Further in this cross-examination made on a subsequent date he has categorically reaffirmed on oath the nomination of the four accused appellants made earlier by him in his examination-in-chief on the earlier date. The statement extracted from him was that he had named the accused persons in the F.I.R. because their names were told to him by the persons present at the spot. But even this statement could not help the accused-appellants, rather this statement amounts to circumstantial evidence admissible u/s 6 of the Indian Evidence Act as part of the *res gestae*.

14. I may refer here to the Supreme Court authority *Dharamvir and Another Vs. The State of Madhya Pradesh*, . In that case also the defence of the accused appellants was denial simpliciter. According to them, they had been falsely

involved in the case. The victim Karar Ahmad had deposed at the trial that he was assaulted by the two appellants at the spot as a result of which he lost his molar tooth. The names of the two appellants were mentioned in the F.I.R. by Karar Ahmad as those who had been responsible for assaulting him. A similar situation arose there as in the present case. The facts and the view of the Apex Court may best be stated in the words of the Apex Court itself (para 6):-

The fact that Karar Ahmad stated at one place in the course of his deposition that he did not know the appellants and stated at another place that he knew them for about two or three years, would not go to show that Karar Ahmad's evidence about the actual assault on him by the two appellants is not worthy of credence. The question, which has also been adverted to during arguments, of holding an identification parade in which Karar Ahmad might have been called upon to identify the appellants would have arisen only if the names of the appellants had not been mentioned in the first information report.

In that case, the Apex Court has also observed that they see no particular reason as to why Karar Ahmad should falsely involve the two appellants for the assault which was made on him at Nagada Railway Station.

15. In the present case also there is no ground seen for false implication of all or any of the accused appellants. The first point noted above is that the three public witnesses Satish Chandra, P.W. 1, Rajendra Prasad Agarwal, P.W. 2 and Ram Sanehi Patel, P.W. 4 were not even suggested in their cross-examination that they had any enmity with all or any of the accused appellants nor was there any such enmity between these witnesses and all or any of the accused appellants suggested even to the victim and informant Lal Bihari Agrawal, P.W. 3, what to say of eliciting it from them, nor were any circumstances placed on record to render false implication of any of the accused appellants in the case at their instance probable. So the possibility of false implication of all or any of the accused appellants by the victim informant Lal Bihari Agrawal at the trial at the instance of these public witnesses Satish Chandra, P.W. 1, Rajendra Prasad Agarwal, P.W. 2 and Ram Sanehi Patel, P.W. 4 was totally ruled out. If they have named the accused appellants to the victim informant Lal Bihari Agrawal at the spot then it must be only because they had seen and identified these accused appellants participating in the robbery. Their seeing and identifying the accused appellants cannot be ruled out or improbabilised just because at the trial they chose to say what they have said to avoid the nomination of the accused appellants. It is daily occurrence in the Courts that the witnesses of fact turn hostile due to a variety of reasons. In the present case it was not said by any of these three semi-hostile witnesses that they had seen the culprits at the spot but none of the present accused appellants was among them. Had they done so the Court may be faced with a situation to choose between the nomination of the accused appellants by the victim and informant Lal Bihari Agrawal P.W. 3 and their exclusion by these semi hostile witnesses. But that is not the case here. None of the three semi hostile witnesses have stated anything to exclude or

improbabilise the participation of all or any of these accused appellants in the occurrence nor do they say anything that may tend to show falsely, implication of all or any of them by the victim and informant Lal Bihari Agrawal. It was also not elicited from any of them in their cross-examination that there was any enmity between the victim and informant Lal Bihari Agrawal, P.W. 3 on the one hand and any of the accused appellants on the other hand. It is also to be noted that there was nothing elucidated from Satish Chandra, P.W. 1, Rajendra Prasad Agrawal, P.W. 2 and Ram Sanahi Patel, P.W. 4 in their cross-examination to suggest much less show that the victim and informant Lal Bihari Agarwal did not know all or any of the accused appellant from before. Ram Sanahi Patel, P.W. 4 has stated at the trial that he does not recognise the accused appellants present in Court but it becomes immaterial when he had not nominated any of them as having been seen by him running but had claimed only that four persons were running and he could not identify as to who they were.

16. Lal Bihari Agrawal, victim and informant, P. W. 3 was cross-examined on behalf of Raj Kumar accused appellant and therein it was elicited from him that Ram Bharosey Bajpai is the Head Clerk in Nagar Palika, Atarra. It is not disputed that Raj Kumar accused appellant is son of Ram Bharosey Bajpai. Lal Bisari Agrawal, P.W. 3 was suggested in his cross-examination on behalf of Raj Kumar accused appellant that he was implicated due to enmity but nothing further was suggested. We have noted earlier, the allegations made in the application moved by him before the learned Sessions Judge at the trial against the informant and victim Lal Bihari Agrawal, P.W. 3 and the executive Officer of the Municipal Board, Atarra. But none of the facts alleged therein were suggested to him (Lal bihari Agrawal, victim and informant P.W. 3) in his cross-examination. The allegations in the said application may be treated as a statement of defence of Raj Kumar accused appellant. But it did not amount to anything further. The victim and informant Lal Bihari Agrawal, P.W. 3 was, under no obligation to say something on the point alleged in the said application which were not supported by any affidavit or by any document. The fact that he was not suggested in his cross-examination any facts alleged in this application only showed that there was no substance in these allegations. It is significant that even the alibi of this accused appellant was not suggested to the victim and informant Lal Bihari Agrawal, P.W. 3 in his cross-examination on behalf of this accused appellant. As a matter of fact he was not even suggested that his (accused-appellant Raj Kumar's) father was hospitalised for treatment of Cancer in a Bombay hospital what to say of suggesting that he was present in that hospital on the date of occurrence by the side of the bed of his father looking after him so that he could not have been present and could not have participated in the robbery that took place in Atarra, district Banda in U.P. far away from Bombay.

17. Raj Kumar accused appellant in his statement u/s 313, Cr.P.C. stated that the witnesses given evidence due to enmity and that he has been prosecuted due to enmity but did not specify any particular enmity with any witness examined by the prosecution at the trial or with the victim and informant Lal Bihari Agrawal,

P.W. 3. In reply to the question as to whether he has anything further to say, his reply was that he was not at the spot and that he was getting his father treated at Bombay. He did not say anything further. He did not even specify the hospital where his father was being treated. In support of his defence he could have filed a large number of documents but none was filed except a certificate dated 29th October, 1986, paper No. 56-Ka purporting to be from the Tata Memorial Hospital, Bombay certifying that Ram Bharose Bajpai a patient of breast cancer was seen in hospital on 16th September, 1986 and then he was admitted in the hospital on 30-9-86 and was operated upon on 17-10-86 and that he was being discharged on 30-10-86. This document was not proved at the trial by any of the modes available under the Indian Evidence Act. The certificate is not a public document which may be admitted in evidence without proof. As noted earlier, the accused did not even say in his statement u/s 313, Cr.P.C. as to from which date to which date he remained in the hospital by the bed side of his father. He did not also say that he was the only person to look after his father. So it cannot be said that the accused appellant has succeeded in excluding his presence and participation in the robbery in the present case. The burden was on this accused appellant to establish his plea of alibi and he has totally failed to discharge it.

18. I may mention here that Raj Kumar accused appellant being son of the Head Clerk of Nagar Palika, Atarra, district Banda where the victim informant Lal Bihari Agrawal P.W. 3 was the Store Keeper/Cashier must be known to accused appellant from before in the ordinary course. Raj Kumar accused appellant did not claim at any stage that he was not known to victim informant Lal Bihari Agrawal, P.W. 3 from before.

19. Man Singh accused appellant did not claim that he was not know to Lal Bihari Agrawal, victim informant, P.W. 3 from before. So there could be no difficulty on his identification by Lal Bihari Agrawal, P.W. 3 in the broad daylight occurrence.

20. In the cross-examination, Lal Bihari Agrawal victim and informant, P.W. 3 on behalf of Mann Singh, accused appellant it was suggested that he has been falsely implicated at the asking of the enemies of Mann Singh. However, no suggestion was made to the witness as to who were those enemies. Anyone can say that he has been falsely implicated due to enmity. Positive evidence that was led by the prosecution before the Court cannot be thrown away by the Court simply at the asking of the defence. It is significant that it was not suggested to the victim informant Lal Bihari Agrawal, P.W. 3 that he had any contact or association with any such enemies of Maan Singh accused appellant. So the plea of false implication taken by this accused has no legs to stand.

21. The investigating Officer, Vijai Singh Chauhan, P.W. 5, was suggested on behalf of the accused appellants, other than Yogendra Kumar, in his cross-examination that F.I.R. and other papers were scribed after consultation and that he recorded the statement of witnesses in the case diary on his own and that the accused appellants were implicated in this case falsely. He has refuted the suggestion. He has also refuted the suggestion on behalf of Maan Singh accused

appellant that he has been falsely implicated in this case. It is significant that it has not been suggested to the Investigating Officer on behalf of any of the accused appellants that he had the enmity with all or any of them. That being so there was no occasion for the police to go out of its way and getting all or any of the accused appellants, falsely implicated in this case at the hands of the victim informant Lal Bihari Agrawal, P.W. 3. In a case like this, the entire career of the victim and informant Lal Bihari Agrawal, P.W. 3 as Store Keeper/Cashier of the Nagar Palika, Atarra, district Banda was at stake. So he was least likely to implicate any one falsely in the case. Because if at any stage any such false implication was exposed and it came out that the implication of all or any of the accused was falsely made by him the result of it would obviously be disastrous for him. For this reason also the nomination of the accused appellants by the victim and informant Lal Bihari Agrawal, P.W. 3 has itself great intrinsic value and the nomination on the F.I.R. promptly lodged by him at the Police Station is of great corroborative value for his testimony given at the trial against them.

22. It may also be mentioned here that in his cross-examination it was extracted from Lal Bihari Agrawal, victim informant P.W. 3 on behalf of Raj Kumar and Mann Singh accused appellants that he did not know them from before the occurrence. However in their statements u/s 313, Cr.P.C. they did not make any such claim at all. It was only Ram Murti accused appellant who claimed in his statement u/s 313, Cr.P.C. that the witnesses did not know him from before. So nothing revolves on the said statement extracted from the victim informant Lal Bihari Agrawal, P.W. 3.

23. Ram Murti accused appellant claimed in his statement u/s 313, Cr.P.C. that these witness gave evidence against him due to enmity but no specification of any enmity was made. So this plea has no substance. Then in reply to the question as to whether he has to say anything further, he stated that the witnesses did not know him from before :-

GAWAHAN HAME PAHCHANTE NAHI THE

This might be in line with the admission extended from the victim and informant Lal Bihari Agrawal, P.W. 3 in his cross-examination but the point of importance is that Yogendra Kumar the other accused-appellant in respect of which the victim and informant Lal Bihari Agrawal has stated in his cross-examination that he did not know him from before, himself did not claim anywhere in his statement u/s 313, Cr.P.C. that all or any of the prosecution witnesses did not know him from before. All that he stated u/s 313, Cr.P.C. was that the witnesses have given false evidence against him and that he had been implicated out of enmity. He had not specified any enmity with all or any of the prosecution witnesses.

24. It may be mentioned here that while Ram Murti accused-appellant claimed that the witnesses did not know him from before, there was a categorical statement of Satish Chandra, P.W. I that he knew all the four accused-appellants front before the date of occurrence and he was not suggested in his cross-

examination that in fact he did not know this accused-appellant from before: This, therefore, belies his claim that the witnesses did not know him from before.

25. To sum up, from the above discussion of the various aspects of this case, it comes out that the prosecution has proved its case against all the four accused-appellants beyond every shadow or doubt and it is immaterial that no recovery of the looted amount had been made from any of the accused-appellants.

26. So the conviction of the accused-appellants is fit to be sustained and so also their sentences. There is no scope for any lenient view on the point of sentence in a case like this.

27. For the reasons stated above, the appeal is dismissed. The conviction of Yogendra Kumar, Ram Murti, Raj Kumar and Maan Singh accused-appellants for the offence u/s 394, I.P.C. is maintained and their sentence of rigorous imprisonment for a period of four years each is also maintained. They are on bail from this Court. Their bail bonds are cancelled. They shall be taken into custody forthwith and sent to the District Jail concerned to serve out their sentences according to law.

28. Let a copy of this judgment be sent to the learned Sessions Judge/Special Judge concerned at once for immediate compliance. The compliance report shall be submitted to this Court by the Sessions Judge concerned within 15 days from today.

29. List this appeal for orders before this Bench on 12-8-1999 along with the compliance report of the learned Addl. Sessions Judge concerned.