

GJSK010003342020



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	Year	Months	Days

**IN THE COURT OF THE SESSIONS JUDGE,
SABARKANTHA AT HIMMATNAGAR**

Sessions Case No. 25/2020

Exh. _____

The State

... Complainant

V e r s u s

1. Manoj @ Manohar Gopalji Soni
Age: About 43 years
Resident of: Mohannagar, Nathdwara
District: Rajsamand (Rajasthan)
2. Purushottam Ganeshlal Somani
Age: About 43 years
Resident of: Sukhadiyanagar, Nathdwara
District: Rajsamand (Rajasthan)
3. Imran Wahidkhan Qureshi
Age: About 35 years
Resident of: Najiyapur, Post: Shivgadh
Taluka: Raniganj, Dist: Pratapgadh (Uttar Pradesh)

4. Javed Ahmed Nasir Ahmed Qureshi
Age: About 21 years
Resident of: Balipur, Post: Puregosa Inn
Taluka: Raniganj, Dist: Pratapgadh (Uttar Pradesh)
5. Abdulmatinkhan @ Nadim Abdul Latifkhan (Musalman)
Age: About 28 years
Resident of: Mubarakpur, Taluka: Patti
Dist: Pratapgadh (Uttar Pradesh)
6. Gulshad Ahmed @ Babbu Abdul Rauf Qureshi
Age: About 27 years
Resident of: Tiwaripur, Taluka: Raniganj
Dist: Pratapgadh (Uttar Pradesh)
7. Mufidkhan Mammukhan Mev
Age: About 29 years
Resident of: 141, Vistar Yojna
Nimbaheda, Dist: Chittorgadh (Uttar Pradesh) ... Accused

Appearance:

Learned Additional Public Prosecutor for the State – Mr. N.R. Shah
Learned Advocate for the Accused Nos. 1 & 2 Mr. R.C. Zala
Learned Advocate for the Accused Nos. 3 & 7 Mr. M.N. Patel
Learned Advocate for the Accused No. 4 Mr. N.N. Pandya
Learned Advocate for the Accused No. 5 Mr. S.R. Kapadiya
Learned Advocate for the Accused No. 6 Mr. M.P. Thakur

J U D G M E N T

1. The accused have been charged with the offences under Sections 365, 395, 341, 342, 504, 506 (2), 328 and 412 of the Indian Penal Code registered with Himmatnagar 'A' Division Police Station at I-CR No. 132/2019.

2. The brief facts of the case of the prosecution are as under:

That on 13/12/2019, the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra were going with Truck No. MP-9-HF-5548 after filling cumin seeds, fennel seeds, sesame seeds and Isabgul and were going from Unja to Indore and when they reached in the sim of village Akodara towards Ranasan, the accused No. 3 Imran Wahidkhan Qureshi, accused No. 4 Javed Ahmed Nasir Ahmed Jainulabedin, accused No. 5 Abdulmatinkhan @ Nadim Abdul Latifkhan (Musalman) and Gulshad Ahmed @ Babbu Abdul Rauf Qureshi came in a white SX4 car bearing registration No. MH-4-FB-1114 behind the Truck of the complainant, obstructed the Truck of the complainant and halted the Truck and absconding accused Jaiyad Qureshi, accused Jabir Shaikh, accused Abdulmatinkhan @ Nadim and accused Gulshad Ahmed @ Babbu came into the Truck cabin and tied the hands and legs of the complainant and witness Rinku Indersingh and tied their eyes with a cloth and beat them and kidnapped them for some distance in the Truck and thereafter, put them in the SX4 car between the seats, abused them and threatened to kill them and made them drink some intoxicated drink and left them lying in the sim of village Kolikhad, Taluka Modasa and took the Truck along with the cumin seeds, fennel seeds, sesame seeds and Isabgul, weighing about 17,835 kilograms amounting to Rs. 27,67,832/-. That accused No. 1 Manoj @ Manohar Gopalji Soni, accused No. 2 Purushottam Ganeshlal Somani and accused No. 7 Mufidkhan Mammukhan Mev are charged with the offence that they made arrangements of the godown to store the said goods and a complaint of the complainant Ramu Lalsingh Jamra was registered vide I-CR No. 132/2019 at Himmatnagar 'A' Division Police Station.

3. After the offence was registered, the investigating officer investigated the matter, recorded the statement of all the connecting witnesses, collected the necessary muddamal, arrested the accused and produced the accused before the learned Chief Judicial Magistrate, Himmatnagar and the accused were sent to the judicial custody. That after the investigation was completed, the investigating officer filed a charge-sheet before the learned Chief Judicial Magistrate, Himmatnagar and since the case was exclusively triable by the Court of Sessions, Sabarkantha, the case was committed to the Sessions Court, Sabarkantha at Himmatnagar under Section 209 of the Code of Criminal Procedure.

4. That the matter came to be registered as Sessions Court No. 25/2020 and the accused were produced before this Court and after having confirmed that the accused had received the copies of the charge-sheet and necessary police papers free of cost under Section 207 of the Code of Criminal Procedure and after confirming that the accused Nos. 1, 4 and 7 wanted to defend the case by their private advocates and the accused Nos. 5 and 6 wanted a Legal Aid Advocate to defend their case, a Legal Aid Advocate was provided to the accused Nos. 5 and 6. That a charge at Exh. 29 was framed against the accused by my predecessor and the pleas of the accused have been recorded at Exh. 32 to 36 respectively, wherein all the accused have denied the allegations and the charge at Exh. 29 framed against them and wanted to face trial.

5. That the entire oral and documentary evidence of the prosecution was taken on record and a closing pursis was submitted by the learned Additional Public Prosecutor Mr. N.R. Shah at Exh. 156

and the further statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. That all the accused have admitted that the entire evidence of the prosecution has been recorded in their presence, but they have denied all the other evidences and have stated that a false panchnama has been prepared and they did not know anything about the alleged allegations made against them. That the evidence is false and the witnesses have falsely identified them and they have been falsely arrested for the offence. That the accused have refused to step into the witness box and have also refused to examine any witness and have mainly stated that they have been falsely implicated in the offence and there is no evidence against them, but a false charge-sheet has been filed against them and the investigating officer has falsely implicated them in an undetected case. That all the accused have stated that they are innocent and they do not know anything about the alleged offence.

6. I have heard learned Additional Public Prosecutor Mr. N.R. Shah for the prosecution, learned advocate Mr. R.C. Zala for the accused No. 1 and 2, learned advocate Mr. M.N. Patel for the accused No. 3 and 7, learned advocate Mr. K.D. Rathod for the accused No. 4, learned advocate Mr. S.R. Kapadiya for the accused No. 5 and learned advocate Mr. M.P. Thakur for the accused No. 6.

7. Learned Additional Public Prosecutor Mr. N.R. Shah has stated that the accused have been charged for the offences under Sections 365, 395, 341, 342, 504, 506 (2), 328 and 412 of the Indian Penal Code and the prosecution has examined 33 witnesses and has produced 51 documentary evidences to prove the case against the accused. That the complainant Ramu Lalsingh Jamra has been

examined as PW-16 at Exh. 67 and he has stated that while he and PW-12 Rinku Indersingh Jamra were going from Unja, they were halted in the sim of village Akodara and their hands and legs were tied and a cloth was put upon their face. That a tape was also put on their mouths and they were thrown at an unknown place. The complainant has produced the complaint at Exh. 68 and the complainant has identified muddamal article No. 5, which is the rope, which was tied on the hands of PW-12 Rinku Indersingh Jamra and the complainant has also identified the muddamal articles tape and cloth and also the papers of the Truck. That the prosecution has proved that the SIM card of accused Mufid was recovered from the accused No. 1 Manoj @ Manohar and the accused Abdulmatinkhan @ Nadim had informed accused Mufid to make arrangements to keep the muddamal and accordingly, the accused No. 1, 2 and 7 had made arrangements for the same. That the Truck loaded with cumin seeds, fennel seeds, sesame seeds and Isabgul was unloaded at Nathdwara and the accused have stayed at Nathdwara for two to three days. The prosecution has examined PW-24, who is the Manager of Hotel Gurukrupa in Nathdwara and he has produced the register of Hotel Gurukrupa, wherein it is proved that accused Mufid Mammukhan Mev stayed in the Hotel Gurukrupa in room No. 302 from 14/02/2019 at 7:00 p.m. to 15/12/2019 at 8:00 p.m. The prosecution has also examined PW-25 Sukhdevsingh Mukhtyarsingh Gill, who is the Manager of Hotel Swagat in Nathdwara and he has produced the register of Hotel Swagat at Exh. 94, wherein it is proved that the other accused including Imran Wahidkhan and five others stayed in room No. 210 from 15/12/2019 at 7:30 p.m. to 17/12/2019 at 11:00 p.m. That in fact,

the other accused had hired a trailer and were going towards Punjab to sell the goods and they were caught by the police and the Trailer was seized under Section 102 of the Code of Criminal Procedure. The prosecution has examined PW-21 Sohanram Mularam Tarad, who has confiscated the muddamal and PW-22 Siddharth Laxmipat Prajapat, who also found Truck No. RJ-14-GC-9165 and had confiscated the same under Section 102 of the Code of Criminal Procedure. The prosecution has produced the original papers of the Truck at Exh. 70, which have been confiscated by the police as per the say of the accused Mufid and the prosecution has examined PW-17 Babubhai Ishwarbhai Patel, who has stated that he is doing business in the name of Vishnu Trading Co. and he had put 45 bags of cumin seeds in Truck No. MP-9-HF-5548 to send to Indore. That this Truck had gone to collect other goods also and PW-18 Mukeshbhai Babulal Patel, PW-19 Sureshbhai Lilachand Patel and PW-20 Dipakbhai Jayantibhai Patel have also supported the case of the prosecution and they have stated that they have put their goods in the said Truck No. MP-9-HF-5548. That the prosecution has proved that the goods were sent from Unja and they had to be transported to Indore and on the way the accused had got together and obstructed the Truck and kidnapped the driver and PW-12 and had committed dacoity of the Truck with all the goods. That the prosecution has also examined PW-12 Rinku Indersingh Habda Jamra, who was the victim and he has also stated that some persons came and beat them and tied their hands and legs and face and threw them at an unknown place. That the Truck and the SX4 car have also been found by the investigating officer and all the accused have committed the offence in collusion with each other and from the oral

and documentary evidence, the prosecution has proved the case against the accused beyond reasonable doubt and hence, the accused must be found guilty and convicted for the offence.

8. I have heard learned advocate Mr. R.C. Zala for the accused No. 1 and 2 and he has stated that the prosecution has to prove their case beyond reasonable doubt, but there is no iota of evidence produced by the prosecution against the accused No. 1 and 2. That the accused No. 1 and 2 are businessmen and they are doing business and for that, they were in contact with accused Mufid for their goods and merely because they were in contact with accused Mufid, they have been involved in the offence. That they had no knowledge that the goods are brought after committing the dacoity and they are innocent businessmen, who have been falsely implicated in the offence. That PW-8 Sunil Pawankumar Jindal has, in his deposition at Exh. 57, identified the accused No. 1 and accused No. 2 during the examination in chief, but during the cross-examination, the witness has clearly stated that he has identified the accused No. 1 and 2 as he had seen them in the last adjournment in Court. That the witness has also stated that he has merely affixed his signature on the panchnama prepared by the police and he does not know anything about the same. That even PW-7 Vikas Vinodkumar Agrawal, who is the other panch of the panchnama produced at Exh. 56, has not supported the case of the prosecution and has been declared hostile and he has clearly stated that the goods were found in the Police Station. Moreover, the prosecution has not examined the owner of the godown and if the owner of the godown would have been examined, the true facts would have been brought on record and it could have been proved that the accused No.

1 and 2 are businessmen and they were using the godown for storing their goods. That even PW-11 Vivek Rakesh Mittal, who is the owner of the transport company, has clearly stated that he has no knowledge regarding the incident and he has not given any names of the accused to the police. That from the place of incident as stated by the prosecution till Nathdwara, there are a number of CCTV cameras on the road, but no recording from any CCTV camera have been brought on record. That there is no iota of evidence against the accused No. 1 and 2 and hence, the accused No. 1 and 2 must be acquitted for the said offence.

9. Learned advocate Mr. M.N. Patel for the accused No. 3 and 7 has stated that all the panch witnesses examined by the prosecution have turned hostile and have not supported the case of the prosecution. That even the complainant, who was a driver of the Truck, has stated that he does not know what were the goods filled in the Truck and merely the 'Bilty' was given to him. That even at the time of the incident, he did not know what were the goods filled up in the Truck and there is no iota of evidence that the accused No. 3 and 7 were involved in any manner in the offence. That the accused No. 3 and 7 are innocent and have not committed any offence and the prosecution has not produced any evidence to show the involvement of the accused in the crime. The learned advocate has further submitted that there are a lot of contradictions in the evidence produced by the prosecution and no test identification parade has been conducted during investigation. That the prosecution has merely produced the registers of Hotel Gurukrupa and Hotel Swagat, but there is no identification that the same accused had checked in to the hotel. Moreover, there is no

evidence regarding the ownership of the mobile phones and in fact, accused Mufidkhan Mammukhan was in custody in another jail and he has been wrongly involved by the investigating officer in the offence. That no videography or photography has been done by the investigating officer during the investigation and there is no evidence produced by the prosecution and hence, the accused must be acquitted for the said offence.

10. Learned advocate Mr. K.D. Rathod for the accused No. 4 has stated that PW-1 Jayantibhai Shankarbhai Patel, who has been examined at Exh. 38, has not supported the case of the prosecution and he has been declared hostile and has not stated that any muddamal was recovered from the accused No. 4. There is no iota of evidence to show that any vehicle was seized or any four wheel car was seized from the place of offence. That PW-2 Umedbhai Ratilal Suthar and PW-3 Takhsinh Sankalsinh Parmar have also turned hostile and all the panch witnesses examined by the prosecution have not supported the case of the prosecution. That no test identification parade of any of the accused has been conducted during the investigation and the complainant or PW-12 Rinku Indersingh Habda Jamra have not identified any accused in this case. That if the entire evidence of the prosecution is appreciated, there is no evidence against the accused and hence, the accused must be acquitted for the said offence.

11. Learned advocate Mr. S.R. Kapadiya for the accused No. 5 has stated that the prosecution has to prove their case beyond reasonable doubts and most of the prosecution witnesses examined by the prosecution have turned hostile and have not supported the case of the prosecution. That no test identification parade has been conducted by

the investigating officer for any of the accused and no witness has identified the accused. That even the deposition of the investigating officer suffers from a lot of contradictions and the prosecution has produced the registers of Hotel Swagat and Hotel Gurukrupa, but that do not prove that the accused had committed the crime or they were involved in the crime. That no photography or videography of any recovery has been done and there is no iota of evidence that any dacoity was committed by the accused regarding any muddamal as stated by the prosecution and as there is no evidence against the accused and hence, they must be acquitted for the offence.

12. Learned advocate Mr. M.P. Thakur for accused No. 6 has stated that accused No. 6 has falsely been implicated in the offence and the prosecution has tried to establish that the accused No. 6 had stayed in the hotel in Nathdwara, but the accused No. 6 has no role in the entire offence. That no test identification parade has been conducted during the investigation and no witness has identified the accused. That the accused No. 6 is innocent and has falsely been implicated in the offence and hence, the accused No. 6 must be acquitted for the said offence.

13. The prosecution has filed the following oral evidence in support of their case:

Sr. No.	Name of the witness	Exh. No.
PW-1	Jayantibhai Shankarbhai Patel	38
PW-2	Umedbhai Ratilal Suthar	43
PW-3	Takhatsinh Sankalsinh Parmar	47
PW-4	Ashishbhai Popatlal Damor	48
PW-5	Vinubhai Kubabhai Vankar	51

PW-6	Rajeshbhai Pratapbhai Chauhan	54
PW-7	Vikasbhai Vinodkumar Agrawal	55
PW-8	Sunil Pawankumar Jindal	57
PW-9	Kanaiyalal Anandram Sindhi	58
PW-10	Salimbhai Mohmadbhai Memon	60
PW-11	Vivek Rakesh Mittal	61
PW-12	Rinku Indersingh Jamra (Jaat)	62
PW-13	Sunilbhai Dahyabhai Khant	63
PW-14	Rajeshkumar Pratapsinh Chauhan	64
PW-15	Anirudhsinh Fatesinh Chauhan	65
PW-16	Ramu Lalsingh Jamra	67
PW-17	Babubhai Ishwarbhai Patel	69
PW-18	Mukeshbhai Babulal Patel	71
PW-19	Sureshbhai Lilachand Patel	75
PW 20	Dipakbhai Jayantibhai Patel	77
PW-21	Sohanram Mularam Tarad	81
PW-22	Siddharth Laxmipat Prajapat	84
PW-23	Kamarali Jamalbhai Dhundha	85
PW-24	Mahesh Nathulalji Meghwal	91
PW-25	Sukhdevsingh Mukhtyarsingh Gill	93
PW-26	Bhavik Arvind Joshi	99
PW-27	Hosanaben Benedictbhai Dund	119
PW-28	Sukhdevsinh Dashrathji Chavda	124
PW-29	Ashwinsinh Jivansinh Chavda	128
PW-30	Kadir Ibrahimbhai Diwan	132
PW-31	Yasinkhan Yusufkhan Pathan	134
PW-32	Yogendrasinh Jashwantsinh Rathod	141
PW-33	Janaksinh Popatsinh Rao	155

14. The prosecution has filed the following documentary evidence in support of their case:

Sr. No.	Description of the document	Exhibit
1	Panchnama of the place of occurrence	39
2	Panchnama of the muddamal articles	40
3	Signature slip of panch	41
4	Panchnama of place of offence	42
5	Discovery panchnama	44
6	Signature slip of panch	45
7	Panchnama of muddamal article i.e. vehicle No. MH-04-FB-1114	46
8	Panchnama of the place of occurrence	52
9	Signature slip of panch	53
10	Panchnama of the place of occurrence	56
11	Panchnama of the muddamal articles	59
12	Complaint	68
13	Original Bills of Archana Roadways Fleet Owners & Transport Contractor	70 & 72
14	Original bills of Mittal Transport Corporation	76 & 78
15	Seizure memo of Trailer Tata No. 4018 RJ-14-GC-9165 having 550 sacks (Katte) of Cumin Seeds (Jira)	82
16	Seizure memo of offending vehicle Maruti Car No. MH-04-FB-1114	83
17	A letter to Mamlatdar, at Himmatnagar through In-charge Police Inspector, "A" Division Police Station, Himmatnagar	86
18	A letter to In-charge Police Inspector, 'A' Division Police Station, Himmatnagar through Mamlatdar, at Himmatnagar	87
19	A map of place of occurrence	88
20	Copy of register of Hotel Gurukrupa	92
21	Copy of register of Hotel Swagat	94
22	Copy of Adar card of Imran Wahidkhan and copy	95

	of driving license of Gulshad Ahmad	
23	Copy of CAF of Mobile No. 7054656603 of accused No. 6 Gulshad Ahmad @ Babbu Abdul Rauf Qureshi	100
24	Call details of Mobile No. 7054656603 of accused No. 6 Gulshad Ahmad @ Babbu Abdul Rauf Qureshi	101
25	Copy of CAF of Mobile No. 7304096703 of accused No. 4 Javed Ahmad Nasir Ahmed Jenu Laabdeen Qureshi	102
26	Call details of Mobile No. 7304096703 of accused No. 4 Javed Ahmad Nasir Ahmed Jenulabdin Qureshi	103
27	Copy of CAF of Mobile No. 7304779146 of accused No. 5 Abdul Matin alias Nadeem Abdul Latifkhan	104
28	Copy of ID proof of Mobile No. 7304779146 of accused No. 5 Abdul Matin alias Nadeem Abdul Latifkhan	104
29	Call details of Mobile No. 7304779146 of accused No. 5 Abdul Matin @ Nadeem Abdul Latifkhan	105
30	Copy of CAF of Mobile No. 7742662005 of Accused No. 1 Manoj @Manohar Gopalji Hiralal Soni	106
31	Call details of Mobile No. 7742662005 of accused Manoj @ Manohar Gopalji Hiralalji Soni	107
32	Copy of CAF of Mobile No. 8009185120 of accused No. 6 Gulshah Ahmad alias Babbu S/o Abdul Raif Qureshi	108
33	Copy ID proof of Mobile No. 8009185120 of accused No. 6 Gulshad Ahmad @ Babbu Abdul Raif Qureshi	108
34	Call details of Mobile No. 8009185120 of accused No. 6 Gulshad Ahmad alias Babbu Abdul Rauf Qureshi	109
35	Copy of CAF of Mobile No. 9893366688 of	110

	accused No. 3 Imran Wahidkhan Qureshi	
36	Copy of phone details of Mobile No. 9893366688 of accused No. 3 Imran Wahidkhan Qureshi	111
37	A certificate under Section 65B(2)(a) to 65B(2)(d) of Evidence Act	112
38	A certificate in regards to certified copy of CDR and CAF issued by the Airtel Nodal Officer	113
39	A copy of station dairy	120
40	Suchipatra	125
41	Site inspection report	126
42	Telephone Wardhi	127
43	Panchnama of the accused	133
44	Forwarding letter to send Muddamal article for investigation to FSL Ahemdabad	142
45	Yadi to investigation and analysis of muddamal article	143, 144, 145
46	Investigation report	146
47	Yadi to investigation and analysis of muddamal article	147, 148
48	Yadi to receive	148
49	A letter to provide the call details records (SDR) (CDR) of mobile numbers of accused	149
50	Call details of accused Imran	150
51	Authority certificate	151

15. From the above evidences and submissions of the learned Additional Public Prosecutor and the learned advocates for the accused, the following issues arise for consideration in this case:

ISSUES

- (1) Whether the prosecution proves beyond reasonable doubts that on 13/12/2019, while the complainant Ramu Lalsinh Jamra and

PW-12 Rinku Indersingh Habda Jamra were going with Truck No. MP-9-HF-5548 from Unja to Indore with cumin seeds, fennel seeds, sesame seeds and Isabgul and when they reached in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs, the accused No. 3, 4, 5 and 6 obstructed their Truck with an SX4 car, came into the Truck and tied the hands and legs of the complainant and witness Rinku Indersingh Habda Jamra, tied their eyes with a cloth and physically assaulted them and kidnapped them with the intention of causing them to be secretly and wrongfully confined and have committed an offence under Section 365 of the Indian Penal Code ?

- (2) Whether the prosecution proves beyond reasonable doubts that the accused, on 13/12/2019, caused wrongful hurt and wrongfully restrained the complainant and PW-12 Rinku Indersingh Habda Jamra and carried away Truck No. MP-9-HF-5548 along with the cumin seeds, fennel seeds, sesame seeds and Isabgul weighing about 17,835 Kgs* amounting to Rs. 2767832/- and have committed dacoity and an offence under Section 395 of the Indian Penal Code ?
- (3) Whether the prosecution proves beyond reasonable doubts that the accused No. 3, 4, 5 and 6 wrongfully restrained and wrongfully confined the complainant Ramu Lalsinh Jamra and PW-12 Rinku Indersingh Habda Jamra and thus, committed an offence under Sections 341 and 342 of the Indian Penal Code ?
- (4) Whether the prosecution proves beyond reasonable doubts that the accused No. 3, 4, 5 and 6 administered a stupefying or intoxicating

drug to the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra while they were being abducted on 13/12/2019 in their Truck No. MP-9-HF-5548 in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs and the complainant and PW-12 Rinku Indersingh Habda Jamra became unconscious and thereafter, left them lying in the sim of village Kolikhad, Taluka Modasa and have committed an offence under Section 328 of the Indian Penal Code ?

- (5) Whether the prosecution proves beyond reasonable doubts that the accused No. 3, 4, 5 and 6, on 13/12/2019, in Truck No. MP-9-HF-5548, in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs intentionally insulted and thereby gave provocation to the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra intending or knowing it to be likely that such provocation would cause them to break the public peace and have thus committed an offence under Section 504 of the Indian Penal Code ?
- (6) Whether the prosecution proves beyond reasonable doubts that the accused No. 3, 4, 5 and 6, on 13/12/2019, in Truck No. MP-9-HF-5548, in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs, gave criminal intimidation and threat to cause death and grievous hurt to complainant Ramu Lalsinh Jamra and PW-12 Rinku Indersingh Habda Jamra and have thus committed an offence under Section 506 (2) of the Indian Penal Code ?
- (7) Whether the prosecution proves beyond reasonable doubt that the accused No. 1, 2 and 7 dishonestly received and retained

cumin seeds, fennel seeds, sesame seeds and Isabgul from the accused No. 3, 4, 5 and 6 knowing that the property has been transferred by the commission of dacoity and have thus committed an offence under Section 412 of the Indian Penal Code ?

(8) What order ?

16. My answers on the following issues are as under:

ANSWERS

- (1) In the negative.
- (2) In the negative.
- (3) In the negative.
- (4) In the negative.
- (5) In the negative.
- (6) In the negative.
- (7) In the negative.
- (8) As per final order.

REASONS

Issue Nos. 1 to 7:

17. All the issues are inter-connected and for avoiding repetition and for the sake of convenience, the issues are discussed together.

18. It is settled law that the prosecution has to prove the case against the accused beyond reasonable doubts and the prosecution has to lead oral and documentary evidence in such a manner that each evidence forms an uninterrupted chain in such a way that each link of evidence connects the other evidence in such a manner that a continuous chain of evidence is formed and the Court can come to a

conclusion that it is only the accused who has committed the offence. To prove the case against the accused, the prosecution has examined 33 witnesses and has produced 51 documentary evidence and it is necessary that each of the evidence produced by the prosecution is minutely appreciated.

19. The prosecution has examined the PW-1 Jayantibhai Shankarbhai Patel at Exh. 38 and PW-3 Takhatsinh Sankalsinh Parmar at Exh. 47. Both these witnesses are the panch witnesses of the panchnama of the place of offence produced at Exh. 39 and both the witnesses have stated on oath that the police had called them to the Police Station and they had affixed their signatures on the panchnama produced at Exh. 39, which is the panchnama of the place of offence. That besides affixing their signatures, they do not know the contents of the panchnama and have merely identified their signatures on the panchnama produced at Exh. 39. The witnesses have not supported the case of the prosecution and had been declared hostile and have been cross-examined by the learned APP, but nothing to support the case of the prosecution has come on record. The witnesses are also the panch witnesses of the panchnama produced at Exh. 40, which is the arrest panchnama of accused No. 3 Imran Wahidkhan Qureshi and accused No. 4 Javed Ahmed Nasir Ahmed Qureshi and during the panchnama, the police have seized muddamal article No. 7, 8, 9 and 10, which are two cell phones, Aadhar card and driving licence and by the panchnama produced at Exh. 42, accused No. 3 Imran Wahidkhan Qureshi and accused No. 4 Javed Ahmed Nasir Ahmed Qureshi voluntarily showed the police and the panch witnesses the place of offence where the crime was committed. Both the panch witnesses

have merely identified their signatures on the panchnamas produced at Exh. 40 and 42 and the panch slips produced at Exh. 41 and have clearly stated that they do not know anything about the panchnamas and have not gone with the police or accused at any place.

19.1 On appreciating the evidence of PW-1 Jayantibhai Shankarbhai Patel and PW-3 Takhatsinh Sankalsinh Parmar, nothing to support the case of the prosecution has come on record and the evidence of these witnesses cannot be relied upon to bring home the charge against the accused.

20. The prosecution has examined PW-2 Umedbhai Ratilal Suthar at Exh. 43 and PW-4 Ashishbhai Popatlal Damor at Exh. 48. Both the witnesses are the panch witnesses of the panchnama produced at Exh. 44, wherein accused No. 7 Mufidkhan Mammukhan voluntarily showed the police Truck No. MP-09-HF-5548 and the same was seized by the police in the presence of the panch witnesses and the panchnama produced at Exh. 46, wherein the police seized Maruti Suzuki SX4 registration No. MH-04-FB-1114 from the Nathdwara Police Station compound in the presence of the witnesses, but both the witnesses have stated on oath that they had merely affixed their signatures on the panchnamas produced at Exh. 44 and 46 and the panch slip produced at Exh. 45. The witnesses have not supported the case of the prosecution and have been declared hostile and have been cross-examined at length by the learned APP, but nothing to support the case of the prosecution has come on record and during the cross-examination, the witnesses have clearly stated that they have merely affixed their signatures on papers, which were already written and they have not gone anywhere with the police or any accused.

20.1 On appreciating the evidence of PW-2 Umedbhai Ratilal Suthar and PW-4 Ashishbhai Popatlal Damor, nothing to support the case of the prosecution has come on record and the evidence of these witnesses cannot be relied upon to bring home the charge against the accused.

21. The prosecution has examined PW-5 Vinubhai Kubabhai Vankar at Exh. 51 and PW-6 Rajeshbhai Pratapbhai Chauhan at Exh. 54. The witnesses are the panch witnesses of the panchnama produced at Exh. 52, which is the panchnama of the place where the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra were left lying and the place was shown by the complainant and PW-12. The panch witnesses have stated on oath that they have merely affixed their signatures on the panchnama and the panch slip and the police have not seized any articles in their presence. Both the witnesses have merely identified their signatures on the panchnama produced at Exh. 52 and the six panch slips produced at Exh. 53, which are the panch slips of the muddamal articles seat covers, stretchable thread, cello tape, water bottle and a cello tape as also the cloth, which was used to stuff into the mouth of the victims, but the panch witnesses have clearly stated that no such articles have been seized by the police in their presence and they have never seen such articles earlier. The witnesses have not supported the case of the prosecution and have been declared hostile and have been cross-examined at length by the learned APP, wherein the witnesses have not supported the case of the prosecution and during the cross-examination by the learned advocate for the accused, both the witnesses have stated that they merely affixed their signatures on papers, which were already written and had thereafter left the place.

21.1 On appreciating the evidence of PW-5 Vinubhai Kubabhai Vankar and PW-6 Rajeshbhai Pratapbhai Chauhan, nothing to support the case of the prosecution has come on record and the evidence of these witnesses cannot be relied upon to bring home the charge against the accused.

22. The prosecution has examined PW-7 Vikasbhai Vinodkumar Agrawal at Exh. 55 and PW-8 Sunil Pawankumar Jindal at Exh. 57. Both the witnesses are the panch witnesses of the panchnama produced at Exh. 56, which is the panchnama, by which the goods were recovered from the house of Chhotu Yadav and the custody of the accused No. 1 and 2. PW-7 Vikasbhai Vinodkumar Agrawal has stated on oath that on 20/12/2019, he was at Nathdwara and the police called him and he went to the Police Station and saw some goods, but he does not remember what were the goods. The witness has identified his signature on the panchnama produced at Exh. 56 and he has stated that he is doing the business of transport and has an office in the name of Agrawal Transport and owns three Trucks, out of which, one is Truck No. MP-9-HF-5548. That Ramu Lalsingh Jamra was the driver of the Truck and he had taken cumin seeds and other goods and was going from Unja to Indore and at that time, the vehicle was stolen and he got a phone call from Modasa Police Station. That his driver had told him that some persons had stopped the Truck and got into the Truck and made the driver and cleaner get down on the road and took the Truck and went away. That there were goods of around Rs. 40 lakhs in the Truck and the driver had filed a complaint of theft. That he had gone to Modasa Police Station and the police had asked him about the Truck. The witness has not supported the case of the prosecution

and has been declared hostile and during the cross-examination by the learned APP, the witness has denied that the accused No. 1 and 2 had kept the goods in Nathdwara in the house of Chhotu Yadav and the accused No. 1 and 2 had shown the place and muddamal amounting to Rs. 1,37,855/- was recovered from the house of Chhotu Yadav in his presence. The witness has been cross-examined by the learned advocate for the accused No. 7, wherein the witness has stated that he does not know where the goods that were in the Police Station had come from and when he went to the Police Station, the papers were ready and the police merely asked him his vehicle number and wrote the number in the papers.

22.1 PW-8 Sunil Pawankumar Jindal has stated on oath that in 2019, he was in Nathdwara and the police had called him to be a panch and at that time, Vivek and Vikas were also present. That the police had found the Truck, which was stolen and the goods and the procedure was done and the police had taken his signature. The witness has identified his signature on the panchnama produced at Exh. 56. The witness has stated that the accused No. 1 Manoj @ Manohar Gopalji Soni and accused No. 2 Purushottam Ganeshlal Somani were also present and the witness has identified the accused Nos. 1 and 2 before the Court and the goods that were stolen were like cumin seeds. The witness has been cross-examined by the learned advocate for the accused Nos. 1 and 2, wherein he has stated that he had merely affixed his signature on a paper, which was already ready and he had seen the accused on the previous adjournment and hence, has identified them.

22.2 On appreciating the evidence of PW-7, it appears that the witness has not supported the case of the prosecution and has clearly

stated that he does not know where the goods that were in the Police Station had come from.

22.3 PW-8 Sunil Pawankumar Jindal has identified the accused No. 1 and accused no. 2 and has stated that they were present, but during cross-examination, the witness has clearly stated that he has identified the accused Nos. 1 and 2 as he had seen them on the last adjournment, hence, even though PW-8 Sunil Pawankumar Jindal has supported the case of the prosecution to some extent, his deposition cannot be relied upon to bring home the charge against the accused.

23. The prosecution has examined PW-9 Kanaiyalal Anandram Sindhi at Exh. 58 and PW-10 Salimbhai Mohmadbhai Memon at Exh. 60. Both the witnesses are the panch witnesses of the panchnama produced at Exh. 59, which is the panchnama by which the Surpaliya police had seized Trailer No. RJ-14-GC-9165 in which melon seeds, cumin seeds, sesame seeds and Isabgul amounting to Rs. 23,79,300/- were seized under Section 102 of the Code of Criminal Procedure and the said Trailer was brought to the Himmatnagar police headquarters and were seized by the police for this offence. Both the witnesses have stated on oath that on 09/01/2020, they were called to the Himmatnagar 'A' Division Police Station and they affixed their signatures on the panchnama produced at Exh. 59. The witnesses have not supported the case of the prosecution and have been declared hostile and during cross-examination, no evidence has come on record to prove that Trailer No. RJ-14-GC-9165, in which 550 bags of cumin seeds, melon seeds, sesame seeds and Isabgul amounting to Rs. 23,79,300/- were seized by the police. The witnesses have not been cross-examined by the learned advocate for the accused and on

appreciation of the evidence of these witnesses, there is nothing to support the case of the prosecution and bring home the charge against the accused.

24. The prosecution has examined PW-11 Vivek Rakesh Mittal at Exh. 61 and the witness has stated on oath that he is doing the business of transport in the name of Mittal Transport Corporation and has an office at Unja and is working as a commission agent. That in December 2019, he had loaded cumin seeds, fennel seeds, Isabgul and melon seeds in Truck No. MP-09-HF-5548 of Vikas Agrawal and the goods had to be sent to Indore, which were costing around Rs. 27 to 28 lakhs. That he had given an advance of Rs. 14,000/- to the drivers Rinku and Ramu and the Modasa police had telephoned Vikas Agrawal, but as he did not know Gujarati, he told the witness to speak to Modasa Police Station, where he was informed that drivers Rinku and Ramu were found on Dhansura Modasa road near village Kolikhad and they had informed the police about the dacoity of the Truck. That he had gone to Modasa Police Station and went with the drivers to file the complaint at Himmatnagar 'A' Division Police Station. That the goods belonged to Prahladbhai Natwarbhai Patel, Vishnu Trading Co., Mukesh Corporation, Haresh Traders, Kanubhai Parshottamlal & Co., Rohit Traders, Sureshbhai Rameshbhai Patel etc. and after two three days, some goods were found at Nathdwara. That he had gone to Nathdwara with the police officers and some goods were found from accused No. 1 and accused No. 2. The witness has identified both the accused before the Court. The witness has been cross-examined by the learned advocate for the accused Nos. 1 and 2, wherein he stated that in his statement before the police, he has not

stated the names of the accused Nos. 1 and 2. During the cross-examination by the learned advocate for the accused No. 4, the witness has stated that the goods were not of his ownership and during the cross-examination by the learned advocate for the accused No. 7, he has stated that in his police statement, he has not stated that he had gone to Nathdwara with the LCB police and had found some goods from two to three places from the accused No. 1 and accused No. 2. That he had not seen any bandage on Rinku and Ramu and the goods as stated by him are purchased and sold by every trader. That the Truck belonged to his friend Vikas and the Truck was not insured along with the goods.

24.1 On appreciation of the evidence of this witness, it is proved that cumin seeds, fennel seeds, sesame seeds, Isabgul and melon seeds were loaded into Truck No. MP-09-HF-5548, in which the complainant Ramu Lalsingh and PW-12 Rinku Indersingh Jamra were the drivers and they had left from Unja for Indore. That in the examination in chief, the witness has identified the accused Nos. 1 and 2 before the Court, but in the statement before the police, the witness has not identified them and hence, there appears to be some exaggeration in the deposition of the witness. That moreover, during cross-examination, the witness has stated that the brand of goods stated by him are bought and sold by every trader and whether the goods recovered were exactly the same goods that were loaded into Truck No. MP-09-HF-5548 is not proved beyond reasonable doubts from the deposition of this witness, hence, the deposition of this witness cannot be entirely relied upon to connect the accused in the crime.

25. The prosecution has examined PW-12 Rinku Indersingh Jamra (Jaat) at Exh. 62 and the witness has stated that he was working in Agrawal Carrier, Indore and driving Truck No. MP-09-HF-5548. That he had brought the Truck to Unja and the second driver was Rama with him. That they were going from Unja to Indore and cumin seeds were loaded in the Truck, which were weighing around 20 tons. That while they were going from Himmatnagar to Modasa, four people came in front of the Truck and stopped them and six people came into the Truck, out of which, two persons caught him and two persons caught Rama and tied their legs and put a strap on their mouth and stuffed a cloth in Ramu's mouth and tied his hands and feet. That they drove the Truck and were telling Bablu to tie the hands tightly. That they were taken down from the Truck and were put in a car and were made to drink some water and he does not know what happened thereafter. That when his eyes opened in the morning, he found that they were thrown in the jungle and one person came and called others and they took the Mobile and called Vinod Sheth at Indore. That as they were made to drink something, they were drowsy and the police came and brought them to the Police Station, where his owner came. That the accused had beaten them in the Truck cabin and took the Truck and their Mobile phones and the 15,000/- rupees cash, which was with them, along with the consignment note and the papers. The witness has identified the muddamal article Nos. 7 and 9 cell phones and muddamal article No. 11 papers, as the same articles that belonged to them. The witness has stated that he cannot identify the people who came into his vehicle as it was night and they had put a strap over his eyes. That he and Ramu had filed the complaint and the police had

recorded the statement. That those persons were using abusive language in Hindi, which was like a language of Rajasthan. The witness has been cross-examined by the learned advocate for the accused No. 7, wherein he has stated that there is no mark made on the Mobile. Besides this, nothing to support the case of the accused has come on record during the cross-examination.

25.1 On appreciating the evidence of this witness, who is the victim of the kidnapping, the witness has narrated and supported the case of the prosecution chronologically and the witness is the eye witness to the incident and has seen the four to six persons who had come into the Truck, who had obstructed the Truck and thereafter had come into the cabin of the Truck, but it is pertinent to note that the witness has not described the physical appearance or clothes of any of the accused. The witness has clearly stated that he cannot identify any of the accused and even though the witness has supported the case of the prosecution, it is proved that while the witness was going along with his companion driver Ramu Lalsingh Jamra, they were obstructed and tied up and beaten and thrown at an unknown place, but there is no evidence to prove that the accused were involved in the offence, hence, the evidence of this witness cannot be entirely relied upon to bring home the charge against the accused.

26. The prosecution has examined PW-13 Sunilbhai Dahyabhai Khant at Exh. 63. The witness has stated on oath that on 13/12/2019, he was going to his field situated on Modasa Shinol road and while he was going to answer nature's call, he found two persons lying with their hands and feet tied up and a strap on their mouth and he called Anirudhsinh, Bharatbhai and Sanjaybhai from the village. That

Anirudhsinh informed the police and the witness went away to his house. That he learned that a vehicle filled with cumin seeds was stolen from the toll and he does not know as to whether these two persons were the owner of the vehicle. That the police has not recorded his statement, but the police had telephoned him and called him, but he could not appear before the police. The witness has not been cross-examined by the learned advocate for the accused.

26.1 On appreciating the evidence of this witness, who is the witness, who has found the complainant and PW-12 Rinku Indersingh Jamra tied in the field. It is proved that on 13/12/2019, the witness found two persons lying in the field with their hands and legs tied up and a strap on the mouths, but the witness has not identified as to whether the persons found were the complainant and the victim PW-12 Rinku Indersingh Jamra. Moreover, there is no evidence as to whether the persons who were found in the field were abandoned by the accused and that the accused were involved in the offence.

27. The prosecution has examined PW-14 Rajeshkumar Pratapsinh Chauhan at Exh. 64 and PW-15 Anirudhsinh Fatesinh Chauhan at Exh. 65. Both these witnesses as per the case of the prosecution are witnesses who found the complainant and PW-12 Rinku Indersingh Jamra lying in the field with their hands and feet tied and cello tape on their mouths and these persons informed the police and untied both the victims, but both the witnesses have stated that they had not gone to the place of the incident and have not seen the persons tied up. That the police have not recorded their statement and as the witnesses have not supported the case of the prosecution, they have been declared hostile and during the cross-examination of the learned APP, the

witnesses have denied that they saw the victims with their hands and feet tied and they called the police and the victims had narrated about the incident in their presence. The witnesses have not been cross-examined by the learned advocates for the accused.

27.1 On appreciation of the evidence of these witnesses, nothing to support the case of the prosecution has come on record and there is no evidence to show that the accused were involved in abducting the complainant Ramu Lalsingh and PW-12 Rinku Indersingh Jamra and had thrown them in the field in the sim of village Kolikhad, Taluka Modasa and hence, the evidence of these witnesses cannot be relied upon to bring home the charge against the accused.

28. The prosecution has examined PW-16 Ramu Lalsingh Jamra at Exh. 67 and this witness is the complainant of the complaint filed at Exh. 68. The witness has stated that in 2020, he was working as a driver in Mittal Transport and the other driver was Rinku with him. That he was going from Unja to Indore with Truck No. 5548, which was loaded with cumin seeds and when he went around 8 kilometers away from Himmatnagar, a car came and signaled them to stop with their hands. So he stopped the Truck and four persons came from both sides into the Truck and overpowered him and tied his hands and feet and stuffed a cloth in his mouth and put a tape over it. That they took the seat cover and put it over his head and closed his eyes and while one person was tying his hands, the other person said “Bablu, tie the hands tightly”. That they also tied Rinku’s hands and legs and they beat them. That they drove the vehicle for some distance and then stopped the vehicle and put them in the car, where they were given some medicine to drink and they were unconscious and thrown in the

jungle. That when they regained consciousness in the morning, a shepherd came and untied Rinku and he called the Sarpanch and the police and they were brought to Himmatnagar and they told their owner about the theft of the vehicle. That the persons who came in the car were speaking Hindi and Marathi and his licence, Oppo mobile and Rs. 5,000/- as also Rinku's mobile, licence and Rs. 7,000/- were taken from them. That the goods were worth Rs. 25 to 30 lakhs and the papers of the goods were also in the vehicle, which were taken away. That he cannot recognize the persons who came in the car, but has identified muddamal article No. 5, the rope used to tie Rinku's hand, muddamal article Nos. 2 and 3, the tape and cloth used on his face and muddamal article No. 11, the papers, which were in the Truck. The witness has also identified the water bottle as muddamal article No. 6 and has stated that he had filed the complaint, which is produced at Exh. 68. The witness has been cross-examined by the learned advocate for the accused No. 3, wherein he has stated that he is aged 21 years and has narrated all the facts of the incident to the police. That during the cross-examination by the learned advocate for the accused No. 4, the witness has stated that in the complaint, he has not stated that his vehicle was signaled to stop with the hands. That moreover, in the complaint, he has not stated that his face was covered with the seat cover. That besides this, no other fact to help the case of the accused has come on record.

28.1 On appreciating the evidence of PW-16 Ramu Lalsingh Jamra, the witness has entirely supported the case of the prosecution and has narrated the facts of the complaint produced at Exh. 68 as the incident had occurred. During the oral evidence of the witness, who is also the

victim, the witness has not identified any of the accused and has clearly stated that he is not able to identify the persons who came with the car. As per the case of the prosecution, the incident had occurred at night and the head lights of the Truck would be on and the accused came in a Maruti Suzuki SX4 car in front of the Truck and obstructed the Truck and the witness who was driving the Truck was forced to stop. That the witness would have seen the number plate and the persons who got down from the car in the head lights of the Truck and thereafter, when the accused came into the Truck, the witness would have seen them, but it is pertinent to note that even in the complaint produced at Exh. 68, the witness has not described the physical features, the clothes or any other noticeable form of any of the accused. That from the evidence of this witness, it is proved that the incident had taken place, but there is nothing to connect the accused Nos. 3, 4, 5 and 6 to be involved in the offence.

29. The prosecution has examined PW-17 Babubhai Ishwarbhai Patel at Exh. 69 and the witness has stated that he is doing the business of cumin seeds and fennel seeds in the name of Vishnu Trading Co., Unja. That he had loaded 45 bags of cumin seeds in vehicle No. 5548 of Mittal Transport Co. and the goods were to be sent to Indore, which were costing around Rs. 2 lakhs to Rs. 2.5 lakhs. That the bill and consignment note were given to Mittal Transport and as the goods did not reach to the person to whom it was sent, he contacted Mittal Transport and found that the goods were stolen. The witness has produced the invoice and the consignment note at Exh. 70.

30. The prosecution has examined PW-18 Mukeshbhai Babulal Patel at Exh. 71 and the witness has stated that he is doing the business

of cumin seeds and fennel seeds at Unja in the name of Mukesh Corporation and on 12/12/2019, he loaded 130 kilos of sesame seeds and 50 bags of cumin seeds costing around Rs. 6 lakhs to Rs. 7 lakhs in Truck No. MP-09-HF-5548 of Mittal Transport. The witness has produced the consignment note and invoice at Exh. 72. That on the next day, Mittal Transport informed him that the vehicle was stolen and some five persons came in a white car and overpowered the drivers and stole the car.

31. The prosecution has examined PW-19 Sureshbhai Lilachand Patel at Exh. 75. The witness has stated that he is doing the business of cumin seeds and fennel seeds in the name of M/s Sureshbhai Rameshbhai Patel and on 12/12/2019, the workers of Mittal Transport came with Truck No. HF-5548 and he loaded 55 bags and 36 of cumin seeds costing around Rs. 3.5 lakhs to Rs. 4 lakhs, which was to be sent to Indore. That the next morning, he received a phone call from the transport informing that the vehicle was stolen and near Himmatnagar, five persons came with the four wheel car, overpowered the driver and threw the driver in the jungle and took the goods and went away. That he does not know who these five persons were. The witness has produced the consignment note and invoice at Exh. 76.

32. The prosecution has examined PW-20 Dipakbhai Jayantibhai Patel at Exh. 77 and the witness has stated that he is doing the business of cumin seeds and fennel seeds in the name of Prahladbhai Natwarlal & Co. and the workers of Mittal Transport had come with Truck No. HF-5548 to his factory on 12/12/2019. That he had loaded 123 bags weighing about 7 tons of cumin seeds into the Truck and these goods had to be sent to Badnagar. That he had given the bill to Mittal

Transport and the next morning, he got a phone call from the transport informing him that the vehicle was stolen. The witness has produced the consignment notes and invoices at Exh. 78.

32.1 On appreciating the evidence of PW-17 Babubhai Ishwarbhai Patel, PW-18 Mukeshbhai Babulal Patel, PW-19 Sureshbhai Lilachand Patel and PW-20 Dipakbhai Jayantibhai Patel, it is proved that these witnesses who are doing the business of cumin seeds and fennel seeds at Unja, had loaded cumin seeds and fennel seeds into Truck No. MP-09-HF-5548 on 12/12/2019 and the documentary evidence is produced at Exhs. 70, 72, 76 and 78 prove that the goods were loaded into the Truck. That the witnesses have stated that on the next morning, they were informed that the Truck along with the goods has been stolen. The witnesses have been cross-examined by the learned advocate for the accused, but nothing to help the case of the accused has come on record and from the evidence of these witnesses, it is proved that cumin seeds and fennel seeds and other goods were loaded into Truck No. MP-09-HF-5548 on 12/12/2019.

33. The prosecution has examined PW-21 Sohanram Mularam Tarad at Exh. 81. The witness is working as a Constable in SP Office, Nagore and he has stated on oath that from March 2019 to May 2020, he was working as a Constable in Surpaliya Police Station and on 25/09/2020, a Truck loaded with oil tins was stolen in Surpaliya Police Station area and one accused Abdulmatim @ Nadim was arrested from Nathdwara. That during investigation, it was found that a Truck filled with cumin seeds was stolen from near Himmatnagar and sold in Nathdwara and the other accused had stayed in Nathdwara. That Gulshad Ahmed @ Babu, Javed Ahmed and Imran were found near

Day by-pass hotel and during their investigation, it was found that the goods were loaded into Trailer No. RJ-14-GC-9165 to be sent from Nathdwara to Punjab and Haryana and the Trailer was found on the Jadelī by-pass road. That they seized the Trailer under Section 102 of the Code of Criminal Procedure and found 430 bags of cumin seeds, 93 bags of sesame seeds and 25 bags of melon seeds and the seizure memo is produced at Exh. 82. That Maruti Suzuki SX4 registration No. MH-04-FB-1114 was also seized and the seizure memo is produced at Exh. 83. The witness has identified accused No. 5 Abdulmatim @ Nadim Abdullakhan and accused No. 6 Gulshad Ahmed @ Babu Abdul Rauf Qureshi before the Court. The witness has been cross-examined by the learned advocate for the accused No. 4, wherein he has stated that the Gujarat police has not recorded his statement and the facts stated about accused No. 5 Abdulmatim @ Nadim Abdullakhan are stated about the time that he was in police custody. During the cross-examination by the learned advocate for the accused No. 7, the witness has stated that he has not investigated the offence registered at CR No. 82/2019 and has denied that he has falsely involved the accused in this offence.

33.1 On appreciation of the evidence of this witness, it transpires that the witness has arrested accused No. 5 Abdulmatim @ Nadim for another offence and has seized Trailer No. RJ-14-GC-9165 and Maruti Suzuki SX4 No. MH-04-FB-1114 under Section 102 of the Code of Criminal Procedure. That there is no evidence to prove that the 432 bags of cumin seeds, 93 bags of sesame seeds and 25 bags of melon seeds were the same goods that were loaded into Truck No. MP-09-HF-5548 and there is no evidence to link Trailer No. RJ-14-GC-9165

with this offence, hence, the evidence of this witness cannot be entirely relied upon to prove the involvement of the accused in this offence.

34. The prosecution has examined PW-22 Siddharth Laxmipat Prajapat at Exh. 84. The witness has stated on oath that from 10/02/2019 to 31/07/2020, he was working in Surpaliya Police Station and had arrested Abdulmatim @ Nadim for the offence registered with Surpaliya Police Station at CR No. 82/2019. That during investigation, the accused had stated that he and other co-accused had stolen a Truck loaded with cumin seeds from Gujarat and Gulshad, Imran and Javed were found from Day by-pass Hotel, Nagore. That it was found that Truck No. RJ-14-GC-9165 was found abandoned and it was seized under Section 102 of the Code of Criminal Procedure, which was loaded with 432 bags of cumin seeds, 93 bags of sesame seeds and 25 bags of melon seeds and the Maruti SX4 car was also seized under Section 102 of the Code of Criminal Procedure. The witness has identified accused No. 3, 5 and 6 before the Court. The witness has been cross-examined by the learned advocate for the accused, wherein he has stated that the Gujarat police had not recorded the statement and he has not investigated the offence registered at CR No. 82/2019. That the accused were not wanted for the offence registered at CR No. 82/2019 and accused No. 5 Abdulmatim @ Nadim was in their police custody. From the evidence of this witness, it is proved that Truck No. RJ-14-9164 and Maruti SX4 No. MH-04-FB-1114 were seized by the Surpaliya Police Station under Section 102 of the Code of Criminal Procedure and Truck No. RJ-14-GC-9165 also contained 432 bags of cumin seeds, 93 bags of sesame seeds and 25 bags of melon seeds, but

there is no evidence to prove that these goods were the same goods, which were loaded into Truck No. MP-09-HF-5548 from Unja and there is no evidence that the vehicle as well as the goods were seized from the custody of the accused, hence, the evidence of this witness cannot be entirely relied upon to bring home the charge against the accused.

35. The prosecution has examined PW-23 Kamarali Jamalbhai Dhundha at Exh. 85 and the witness has stated that on 05/03/2019, he was working as Circle Officer, Berna and he had received a Yadi to prepare a map on 26/12/2019, which is produced at Exh. 86. That as per the panchnama, he visited the place of offence and prepared the map produced at Exh. 87 and sent it to the Mamlatdar. The witness has been cross-examined by the learned advocate for the accused, wherein he has stated that he has prepared the map on the basis of the panchnama of the police. That the police has not recorded his statement and after receipt of the Yadi and preparation of the map, he has not spoken to the Police.

35.1 On appreciating the evidence of this witness, it is proved that the place of offence, which is on the Himmatnagar Ranasan road between the fields of Amratbhai Punjabhai, as per the map and the panchnama of the place of offence produced at Exh. 39, is as stated by the witness.

36. The prosecution has examined PW-24 Mahesh Nathulalji Meghwal at Exh. 91. The witness has stated on oath that he is working as a Manager in Gurukrupa Hotel in Nathdwara and from 14/12/2019 to 15/12/2019, three persons had stayed in his hotel. That as per the

register at Sr. No. 126, Mufidkhan Mamukhan residing at Nimbahera, District Chittorgadh, checked in to the hotel on 14/12/2019 at 7:00 p.m. and left the hotel on 15/12/2019 at 8:00 p.m. That he had taken the identity card and made the necessary entry in the register and has produced the copy of the page of the register at Exh. 92. That he could not identify the person who had stayed in the hotel in the Court. The witness has been cross-examined by the learned advocate for the accused No. 7, wherein he has stated that in his statement before the police, he has not stated that the identity card was taken by the police. That moreover, no details of payments have been mentioned in the register and there is no evidence produced to show that he was working as a Manager in the hotel. That the person who stayed in the hotel has shown the purpose of his visit to purchase marble.

36.1 On appreciating the evidence of this witness, from the document produced at Exh. 92, which is the copy of the register maintained in Hotel Gurukrupa, it appears that one Mufidkhan Mammukhan, resident of Nimbahera, District Chittorgadh, had checked in to the hotel on 14/12/2019 at 7:00 p.m. and checked out on 15/12/2019 at 8:00 p.m. That there is no evidence to show that the witness was in fact the Manager of Gurukrupa Hotel and from the document produced at Exh. 92, it is proved that the person who had checked in to the hotel was in fact the accused No. 7 Mufidkhan Mammukhan.

37. The prosecution has examined PW-25 Sukhdevsingh Mukhtyarsingh Gill at Exh. 93. The witness has stated on oath that Hotel Swagat is situated in Nathdwara and he is working as a Manager and on 15/12/2019, Imrankhan checked in to the hotel and they were taken away by the Nagore police on 17/12/2019 at 11:00 a.m. The

witness has produced the copy of the register where the entry has been made at Exh. 94 and the witness has also produced the copy of the identity proof at Exh. 95. The witness has not identified the person who had stayed in Hotel Swagat between 15/12/2019 and 17/12/2019. The witness has been cross-examined by the learned advocate for the accused No. 7, who has stated that his signature is not affixed in the register produced at Exh. 94 and there is an overwriting in the date and time of departure in the entry of Imrankhan Wahidkhan. That the Nagore police has not recorded the statement and no panchnama of his hotel has been done by the police. That the Nagore police had arrested those persons from outside and brought them to the hotel.

37.1 On appreciation of the evidence of this witness and the documents produced by the witness, it is proved that Imrankhan Wahidkhan had checked in to the hotel with five others on 15/12/2019 at 7:30 p.m. and they had given their identity proofs, which are produced at Exh. 95. The witness has not identified any of the accused as the persons who had stayed in the hotel between 15/12/2019 to 17/12/2019. Moreover, in the column of purpose of visit, it is written as 'marble' and from the evidence of this witness and the documents produced at Exh. 94 and 95, it can be concluded that the accused No. 3 Imran Wahidkhan Qureshi, the accused No. 4 Javed Ahmed Nasir Ahmed Qureshi and the accused No. 6 Gulshad Ahmed @ Babbu Abdul Rauf Qureshi had in fact stayed in the hotel.

38. The prosecution has examined PW-26 Bhavik Arvindbhai Joshi at Exh. 99 and the witness is the Nodal Officer of Bharati Airtel. The witness has stated on oath that PI Y.J. Rathod of Himmatnagar 'A' Division Police Station had requested for the CDR and customer

application form of certain Mobile numbers and he had submitted the details by a letter and certificate and the witness has produced the following documents:

Sr. No.	Exh.	Mobile No.	Description of Document	Name of the registered owner
1	100	7054656603	Customer Application Form	Mohmad Momin Abdul
2	101	7054656603	CDR	Mohmad Momin Abdul
3	102	7304096703	Customer Application Form	Mehrauddin Sahiuddin
4	103	7304096703	CDR	Mehrauddin Sahiuddin
5	104	7304779146	Customer Application Form	Mohmad Amin Shakil Ahmed Shaikh
6	105	7304779146	CDR	Mohmad Amin Shakil Ahmed Shaikh
7	106	7742992005	Customer Application Form	Manoj Gopal Soni
8	107	7742992005	CDR	Manoj Gopal Soni
9	108	8009185120	Customer Application Form	Salmabegum Gulshad
10	109	8009185120	CDR	Salmabegum Gulshad
11	110	9893366688	Customer Application Form	Imran Wahidkhan
12	111	9893366688	CDR	Imran Wahidkhan

38.1. The witness has also produced the certificate under Section 65B(4)(c) of the Indian Evidence Act at Exh. 112 and the forwarding letter, by which the documents were sent to Mr. Y.J. Rathod, Police Inspector, Himmatnagar 'A' Division Police Station at Exh. 113. The witness has been cross-examined by the learned advocate for the accused, wherein he has stated that an authorized dealer can issue a SIM card and the dealer has to verify the identity proof. That a re-verification is also done by the company before the SIM card is issued and the certificate produced at Exh. 112 has not been sent by the

concerned control department of the server of the company. That the witness has not received the police Yadi and the range and radiation of every tower is different. That the tower range depends on the area and in the city area, the range would be 3 to 5 kilometers and in open spaces, the range would be more than 5 kilometers also. That the customer application forms produced by the witness are not of the accused No. 2 Purushottambhai Ganeshlal Somani, accused No. 4 Javed Ahmed Nasir Ahmed, accused No. 5 Abdul Latifkhan or accused No. 6 Gulshad Ahmed Abdul Rauf Qureshi. That the customer application forms have not been filled up in his presence and they do not bear his signature and no data regarding the SIM cards have been filled up by the witness in the computer.

38.2 On appreciation of the evidence of this witness, the witness has produced the customer application forms and CDRs of various Mobile phones as requested by the investigating officer and it is proved that Mobile number 7742992005 was in the name of the accused No. 1 Manoj Gopalji Soni and Mobile number 9893366688 was in the name of the accused No. 4 Imran Wahidkhan Qureshi. Besides this, there is no evidence regarding the details of the Mobile phone of the other accused and there is no evidence to show that all the accused were in contact with each other before or after the incident and hence, the evidence of the witness cannot be entirely relied upon to bring home the charge against the accused.

39. The prosecution has examined PW-27 Hosanaben Benedictbhai Dund at Exh. 119 and the witness has stated that on 13/12/2019, she was in charge PSO at Himmatnagar 'A' Division Police Station and in charge Police Inspector S.D. Chavda gave her a complaint, which was

registered in his presence to be registered and the same was registered as I-CR No. 132/2019 and was entered in the station diary at Entry No. 16. The witness has produced the copy of the station diary at Exh. 120. During the cross-examination, the witness has stated that she has only entered the complaint and has not done any other procedure.

39.1 On appreciating the evidence of this witness and the document produced at Exh. 120, it is proved that the complaint of the complainant Ramu Lalsingh was registered at Himmatnagar 'A' Division Police Station I-CR No. 132/2019 on 13/12/2019 at 18:30 hrs.

40. The prosecution has examined PW-28 Sukhdevsinh Dashrathsingh Chavda at Exh. 124 and the witness has stated that on 13/12/2019, he was working as PSI Himmatnagar 'A' Division Police Station and the complainant Ramu Lalsingh Habda Jamra and witness Rinku came with PI Modasa Town and narrated the facts of the complaint, which was noted and the signature of the complainant was taken. The witness has identified the complaint at Exh. 68 and has stated that the report produced at Exh. 125 was prepared and he took over the investigation after the offence was registered by the PSO. That he sent the complainant and the witness Rinku for treatment to Civil Hospital, Himmatnagar and recorded the statement of the complainant and went to the place of offence and drew up the panchnama, which is produced at Exh. 39. That the Scientific Officer, Mobile Investigation Van was called to do a local inspection of the place of offence and the report produced at Exh. 126 was submitted by the Scientific Officer, Mobile Investigation Van, Himmatnagar. That the dog squad was also called and a yadi was written to the

Mamlatdar, Himmatnagar for drawing up a map of the place of offence. That four accused were arrested by the Surpaliya Police Station and they were arrested in this offence by the panchnama produced at Exh. 40. That accused No. 5 and 6 were arrested for the offence registered at Surpaliya Police Station CR No. 82/2019 and their custody was brought from Nagore jail and the accused No. 7 was in custody in Daloda Police Station, District Mandsaur, Madhya Pradesh, for the offence registered at CR No. 158/2019 and his custody was brought from the Mandsaur jail and he was arrested in this offence. That Maruti Suzuki SX4 registration No. MH-04-FB-1114 was seized by the Surpaliya police and the same was seized in this offence by the panchnama produced at Exh. 46. That the statements of the connected witnesses were recorded and during investigation, some of the muddamal was found and seized. The witness has identified the accused before the Court. The witness has been cross-examined by the learned advocate for the accused, wherein he has stated that no test identification parade of the accused has been done and during investigation, no evidence regarding the mobile of the accused was found. That the CCTV footage of the places where the Truck had passed by has not been collected and the complainant or the witness has not given any physical description of the build of any of the accused in the complaint or their statement. That the complainant had narrated all the facts in Hindi language, but the complaint is not noted in Hindi language. That the accused No. 5 was arrested in an offence in Rajasthan and no test identification parade of the accused No. 5 has been conducted.

40.1 On appreciation of the evidence of this witness, who is the investigating officer of the offence, it has come on record that there are CCTV cameras on the road by which the Truck had travelled, but no CCTV footage has been taken during investigation. Moreover, the complainant or the witness has not described the physical features of any of the accused and no test identification parade has been conducted for any of the accused during investigation so that the complainant or the witness could identify the accused.

41. The prosecution has examined PW-29 Ashwinsinh Jivansinh Chavda at Exh. 128 and the witness has stated that on 23/12/2019, he was working as PSI Himmatnagar 'A' Division Police Station and the accused No. 3 Imran Wahidkhan Qureshi and accused No. 2 Purushottam Ganeshlal Somani were arrested in this offence and the panchnama produced at Exh. 42 was drawn up in the presence of the panch witnesses. That the Surpaliya Police Station had seized Trailer No. RJ-14-VC-9615 in which 402 bags of cumin seeds, 93 bags of sesame seeds, 30 bags of fennel seeds and 20 bags of melon seeds were loaded and muddamal worth Rs. 23,79,300/- was seized during investigation. During cross-examination by the learned advocate for the accused, the witness has stated that no videography or photography has been done during the panchnama and in the panchnama, the description of the surrounding area is not mentioned.

41.1 On appreciation of the evidence of this witness, it is proved that muddamal of 550 bags in all of cumin seeds, fennel seeds, watermelon seeds, sesame seeds and Isabgul amounting to Rs. 23,79,300/- was recovered from Trailer No. RJ-14-VC-9615, which was seized by the Surpaliya Police Station and taken by this witness as muddamal of this

offence, but it is not proved that this was the same muddamal, which was loaded into Truck No. MP-09-HF-5548 and was stolen by the accused and hence, from the evidence of this witness, nothing has come on record to connect the accused with the offence.

42. The prosecution has examined PW-30 Qadir Ibrahimbhai Diwan at Exh. 132 and PW-31 Yasinkhan Yusufkhan Pathan at Exh. 134. The witnesses are the panch witnesses of the panchnama produced at Exh. 133, which is the panchnama of the body of accused No. 5 Abdulmatim @ Nadim Abdul Latifkhan and accused No. 6 Dilshad Ahmed @ Babu Abdul Rauf Qureshi. Both the witnesses have stated that they had merely affixed their signature on the panchnama produced at Exh. 133 and there was no person present in the Police Station at that time. Both the panch witnesses have been declared hostile as they have not supported the case of the prosecution and have been cross-examined by the learned APP, but nothing to support the case of the prosecution has come on record and hence, the panchnama produced at Exh. 133 is not proved by the evidence of these independent witnesses.

43. The prosecution has examined PW-32 Yogendrasinh Jashwantsinh Rathod at Exh. 141 and the witness has stated that he was working as PI Himmatnagar 'A' Division Police Station and had taken over the investigation of the offence from PSI S.D. Chavda. That he had recorded the statements of the connected witnesses and by the documents produced at Exh. 142 and Exh. 151, had sent the muddamal to Forensic Science Laboratory, Ahmedabad and the muddamal was received by the Forensic Science Laboratory, Ahmedabad in a sealed manner and the receipt produced at Exh. 143

was received from Forensic Science Laboratory, Ahmedabad. That by the letter of Forensic Science Laboratory, Ahmedabad at Exh. 144, the muddamal was analyzed and the analysis reports at Exhs. 144 to 148 were received. That the witness had requested for CDR of certain Mobile numbers from Bharati Airtel and the letters are produced at Exh. 149 and the CDR produced at Exh. 150 was received. That the witness found sufficient evidence against all the accused and the charge-sheet was filed before the concerned Court. The witness has been cross-examined by the learned advocate for the accused, wherein the witness has admitted that he has not gone out of Gujarat for investigation of the case and he cannot say from whose custody the muddamal Truck in which the muddamal cumin seeds, fennel seeds, Isabgul, melon seeds and sesame seeds was found.

43.1 On appreciating the evidence of this witness, as per the case of the prosecution, a dacoity was committed and Truck No. MP-09-HF-5548 loaded with cumin seeds, sesame seeds, fennel seeds, melon seeds and Isabgul was taken to Nathdwara and some of the muddamal was found in Trailer No. RJ-14-VC-9615 by Surpaliya Police Station and the accused were also arrested from different places in Rajasthan, but the witness has clearly stated that he has not gone out of Gujarat for investigation. Moreover, the witness being the investigating officer, has stated that he could not say in whose custody was the muddamal Truck in which the muddamal cumin seeds, fennel seeds, Isabgul, melon seeds and sesame seeds was found. That in the entire evidence of the witness, there is no evidence to connect the accused with the offence and even in the Forensic Science Laboratory reports, it shows that the cello tape contained human hair, but there is no evidence to

prove that this hair belonged to the complainant or the victim, hence, the evidence of the witness cannot be relied upon to bring home the charge against the accused.

44. The prosecution has examined PW-33 Janaksinh Popatsinh Rao at Exh. 155 and the witness has stated that in 2019, he was working as a PSI in LCB Police Station, Himmatnagar and by the panchnama produced at Exh. 56, he had handed over accused No. 1 Manoj @ Manohar Gopalji Soni and accused No. 2 Purushottam Ganeshlal Somani and the muddamal 25 bags worth Rs. 1,37,855/-, which was brought from the Nathdwara Police Station and handed over to Himmatnagar 'A' Division Police Station for the offence registered as I-CR No. 132/2019. The witness has identified the accused before the Court. During cross-examination, the witness has admitted that no videography or photography has been done during the panchnama at Exh. 56 and the statement of the owner of the godown Shrinathji Sharma was not recorded. That no document regarding the ownership of the godown was taken and no statements of any persons around the godown was recorded during investigation.

44.1 On appreciation of the evidence of this witness, it is proved that goods worth Rs. 1,37,855/- were seized from one godown in Nathdwara, but the witness has not recorded the statement of the owner of the godown or any persons surrounding the godown. Moreover, there is no evidence to prove that the muddamal, which was recovered from the said godown was the same muddamal of this offence and whether any of the accused had any role in placing the muddamal at the godown and that the accused were in any manner connected with this muddamal.

45. On appreciating the entire evidence of the prosecution, as per the complaint produced at Exh. 68, the complainant PW-16 Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Jamra were going in Truck No. MP-09-HF-5548 from Unja to Indore after loading fennel seeds, sesame seeds, cumin seeds, Isabgul and melon seeds and about 8 kilometers away from Himmatnagar, some persons came with a white four wheel car, overtook their Truck and obstructed the Truck and as the complainant halted the Truck, four people came into the cabin and overpowered the complainant and PW-12 Rinku Indersingh and tied their hands and legs and mouth and drove the Truck for a certain distance and thereafter, took them down from the Truck and made them sit in the white car and made them drink some stupefying or intoxicating liquid and both the victims were unconscious and they were thrown at an unknown place, where they were found the next morning. The complainant PW-16 Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Jamra have fully supported the complaint produced at Exh. 68, but have not stated anything before the Court regarding the description of the physical appearance or any identification of any of the accused. That both the victims have not identified and stated the number or make of the car in which the accused came and obstructed their Truck. As per the case of the prosecution, the incident has occurred on 13/12/2019 between 00:30 hrs to 7:00 hrs in the sim of village Akodara towards Ranasan and while driving the Truck, the head lights of the Truck would be on. That as per the say of the victims, the accused came with their car in front of the Truck, but the victims have not stated the registration number or make of the car. During investigation, Maruti Suzuki SX4 registration No. MH-04-FB-

1114 was seized by the seizure memo at Exh. 83 by PW-21 Sohanram Mularam Tarad, but no document to prove that this vehicle was involved in obstructing the Truck at the time of the incident has been produced on record. Moreover, the prosecution has not produced the copy of the RC Book or any document to show that this vehicle belonged to any of the accused persons. There is no iota of evidence as to who was driving the said car at the time of the incident and the victims have not described the physical appearance or clothes worn by any of the accused at the time of the incident.

45.1 As per the case of the prosecution, PW-16 the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Jamra were found in the sim of village Kolikhad and they were found by PW-13 Sunilbhai Dahyabhai Khant, PW-14 Rajeshkumar Pratapsinh Chauhan and PW-15 Anirudhsinh Fatesinh Chauhan with their hands and legs tied and their mouths shut with cloth and a tape. PW-13 Sunilbhai Dahyabhai Khant has supported the case of the prosecution, but PW-14 Rajeshkumar Pratapsinh Chauhan and PW-15 Anirudhsinh Fatesinh Chauhan have not supported the case of the prosecution and even if it is proved that the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Jamra were found with their hands and feet tied in the sim of village Kolikhad, there is no evidence to prove that they were left lying there by the present accused.

45.2 The prosecution has produced the oral evidence of PW-17 Babubhai Ishwarbhai Patel, PW-18 Mukeshbhai Babulal Patel, PW-19 Sureshbhai Lilachand Patel and PW-20 Dipakbhai Jayantibhai Patel, who have all deposed on oath that they had loaded their goods of

cumin seeds, fennel seeds, sesame seeds, melon seeds and Isubgul into Truck No. MP-09-HF-5548. The witnesses have produced the invoices and consignment notes at Exhs. 70, 72, 76 and 78, which shows that the consignment was loaded on 12/12/2019 from Unja, but the documents do not state the number of the vehicle in which the consignments were loaded. Besides the oral evidence of the witnesses that the consignment was loaded in Truck No. MP-09-HF-5548, there is no documentary evidence to prove that these goods were actually loaded in the said vehicle. PW-20 Dipakbhai Jayantibhai Patel has during the cross-examination stated that he was not present when the goods were loaded into the Truck and hence, in the absence of documentary evidence, it is not proved beyond reasonable doubts that the goods were in fact loaded in Truck No. MP-09-HF-5548.

45.3 It is the case of the prosecution that after the dacoity, the accused Nos. 3 to 6 had taken the Truck to Nathdwara and the accused Nos. 1, 2 and 7 had made arrangements to store and sell the said goods and the goods were recovered by PW-21 Sohanram Mularam Tarad and PW-22 Siddharth Laxmipat Prajapat. On appreciating the evidence of PW-21 and PW-22, it appears that both the witnesses are police officials working in Surpaliya Police Station and they had arrested the accused No. 5 Abdulmatim @ Nadim Abdullakhan for another offence and during the investigation of that offence, which was registered at Surpaliya Police Station CR No. 82/2019, they found the accused Nos. 3, 4 and 6 and some goods in Trailer No. RJ-14-GC-9165. That they seized the Trailer No. RJ-14-GC-9165, which was lying in an abandoned condition and it was seized along with the goods under Section 102 of the Code of Criminal Procedure. That the goods that

were seized from Trailer No. RJ-14-GC-9165 were 432 bags of cumin seeds, 93 bags of sesame seeds and 25 bags of melon seeds, but there is no evidence to prove that these were the same goods that were loaded into Truck No. MP-09-HF-5548. Admittedly, the accused No. 5 was in police custody for the offence registered with Surpaliya Police Station CR No. 82/2019 and during the investigation of that case, the said Trailer No. RJ-14-GC-9165 was found. There is no evidence to prove that the goods that were loaded into Truck No. MP-09-HF-5548 were transferred at a particular place into Trailer No. RJ-14-GC-9165. During the cross-examination of the investigating officer PW-32 Yogendrasinh Jashwantsinh, it has come on record that these goods are available in the open market and there is no evidence to show that they are the same goods, which were stolen by dacoity by the accused. Moreover, it is pertinent to note that the investigating officer has admitted that he has not gone out of Gujarat State to investigate the offence.

45.4 It is the case of the prosecution that the accused Nos. 3, 4, 5 and 7 were found from Hotel Swagat in Nathdwara and accused No. 7 had stayed in Hotel Gurukrupa at Nathdwara. The prosecution has examined PW-24 Mahesh Nathulalji Meghwal at Exh. 91 and he has produced the copy of his register at Exh. 92 and PW-25 Sukhdevsinh Mukhtiyarsingh Gill at Exh. 93 and he has produced the copy of the register at Exh. 94. On perusal of the documents produced at Exh. 92 and 94, it transpires that the accused No. 7 Mufidkhan Mammukhan Mev and the accused No. 3 Imrankhan Wahidkhan had checked in to Hotel Gurukrupa and Hotel Swagat on the dates mentioned in the register, but there is no evidence to show that they were in Nathdwara

in connection with the dacoity and kidnapping. It is pertinent to note that no stolen goods were found from the custody of the accused and merely because the accused had checked in to Gurukrupa Hotel and Swagat Hotel in Nathdwara, it cannot be proved that the accused were in Nathdwara in connection with the crime.

45.5 It is the case of the prosecution that the accused were in contact with each other and the prosecution has examined the Nodal Officer of Bharati Airtel and PW-26 Bhavik Arvindbhai Joshi at Exh. 99. The witness has produced the customer application forms and CDRs of six Mobile numbers, out of which, Mobile No. 7742992005 is in the name of the accused No. 1 Manoj Gopalji Soni and Mobile No. 9893366688 is in the name of the accused No. 3 Imran Wahidkhan Qureshi. There is no evidence to show that the other four numbers belonged to the accused persons and it is the defence of the accused Nos. 1 and 2 that they are businessmen and trading in goods and merely by production of the CDR, it cannot be concluded that the accused No. 1 had made arrangements to store the stolen goods. The prosecution has not pointed out the exact dates and times when the accused were in contact with each other and that they were in possession of the cell phone numbers of which the CDRs are produced.

45.6 During investigation, the investigating officer has sent the cello tape, the cloth, the bottle for analysis and as per the analysis report of Forensic Science Laboratory, Ahmedabad at Exh. 145, no stupefying or intoxicating substance was found in the clothes or the bottle. Moreover, as per the analysis report of the Biology department at Exh. 148, human hair was found on the cello tapes, but there is no evidence to show that the human hair found on the cello tapes were of the

complainant Ramu Lalsingh Jamra or PW-12 Rinku Indersingh Habda Jamra and hence, it is not proved that the same cello tapes were used to tape the mouths of the complainant and PW-12 Rinku Indersingh Habda Jamra.

45.7 It is the case of the prosecution that the accused Nos. 3 to 6 had obstructed the Truck of the complainant in the sim of village Akodara towards Ranasan with Maruti Suzuki SX4 car No. MH-04-FB-1114. The incident has occurred between 00:30 hrs to 7:00 hrs on 13/12/2019 and in the middle of the night, the head lights of the Truck were on, but the complainant or the eye witness has not mentioned the number or make of the car that had intercepted them. The investigating officer has seized Maruti Suzuki SX4 No. MH-04-FB-1114, which was seized by PW-21 Sohanram Mularam Tarad, who was a Constable of Surpaliya Police Station, under Section 102 of the Code of Criminal Procedure and the seizure memo is produced at Exh. 83. That thereafter, the said car was seized by the investigating officer by the panchnama produced at Exh. 46 in this offence, but there is no iota of evidence produced on record by the prosecution to prove the registered owner of this car. There is no evidence as to who was driving the car at the time of the offence and how the car came to be lying in an abandoned condition in Nathdwara.

46. The accused have been charged with the offence under Section 365 of the Indian Penal Code, which reads as under:

"365. Kidnapping or abducting with intent secretly and wrongfully to confine person. – Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine".

46.1 To prove the offence under Section 365, the prosecution has to prove that the accused kidnapped or abducted the victim with an intent to cause that person to be secretly and wrongfully confined and there must be evidence on record that the accused persons had by force compelled or taken the victims to some place. As discussed above, the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra, who were the victims of the kidnapping, have deposed that they were abducted and wrongfully confined and abandoned in the jungle in the sim of village Kolikhad, but both the victims have not identified the accused persons in any manner. The victims have not described the accused even though they had seen the accused for some time, when the accused as per the case of the prosecution, came into the cabin of the Truck and overpowered the victims. Admittedly, no test identification parade has been conducted during investigation and the victims have not identified the accused before the Court, hence, there is no evidence on record to prove beyond reasonable doubts that the accused were the persons, who had kidnapped or abducted the complainant and PWE-12 Rinku Indersingh Jamra while they were going in Truck No. MP-09-HF-5548 in the sim of village Akodara towards Ranasan and their Truck was loaded with cumin seeds, fennel seeds, melon seeds, sesame seeds and Isubgul worth Rs. 27,67,832/-. Moreover, there are no circumstances in the entire evidence by which this Court could arrive at a conclusion that it was only the accused who had kidnapped or abducted the victims and left them lying in the sim of village Kolikhad.

47. The accused have been charged with the offence under Section 395 of the Indian Penal Code, which reads as follows:

"395. Punishment for dacoity. – *Whoever commits dacoity shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine".*

47.1 The definition of dacoity is given in Section 391 of the Indian Penal Code, which reads as under:

"391. Dacoity. – *When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".*

47.2 To prove the offence of dacoity, the prosecution has to prove that the accused persons carried away property by putting the victims in fear of instant death, instant hurt or of instant wrongful restraint and have taken away the thing from that person. In the entire evidence, as per the case of the prosecution, the accused obstructed Truck No. MP-09-HF-5548 while it was going in the sim of village Akodara towards Ranasan and it was loaded with cumin seeds, fennel seeds, sesame seeds, melon seeds and Isubgul amounting to Rs. 27,67,832/- and the accused put the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra in fear of death or hurt and wrongfully restrained them and abducted them for a certain distance and made them drink some stupefying or intoxicating drink, as a result of which, both the victims were unconscious and thereafter, threw them in a field in the sim of village Kolikhad. On appreciating the entire evidence of the prosecution, there is no direct or circumstantial evidence to show that the accused were at the place of offence and they wrongfully restrained, threatened, kidnapped and abducted the victims and made

them drink some stupefying or intoxicating substance. It is pertinent to note that as per the case of the prosecution, the bottle from which the victims were made to drink some stupefying or intoxicating drink in the Maruti Suzuki SX4 was found in the field from where the victims were found with their hands and legs tied and the mouths taped and the said bottle was sent for analysis to FSL Ahmedabad and as per the Forensic Science Laboratory report at Exh. 145, no chemical or any toxic substance was found from the bottle.

48. The accused have been charged with the offence under Sections 341 and 342 of the Indian Penal Code, which read as under:

"341. Punishment for wrongful restraint. – Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both".

"342. Punishment for wrongful confinement. – Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both".

48.1 To prove the offence of wrongful restraint and wrongful confinement, the prosecution has to prove that the accused voluntarily obstructed the victims so as to prevent the victims from proceeding in the direction in which the victims have a right to proceed and prevented the victims from proceeding beyond their limits and thus, have wrongfully restrained and wrongfully confined the victims. On appreciating the evidence of the prosecution, it is the say of the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra that they were wrongfully restrained and wrongfully

confined and thereafter were thrown with their hands and legs tied and their mouths taped in a field in village Kolikhad from where they were found in the next morning. If the deposition of PW-13 Sunil Dahyabhai Khant is appreciated, it appears that he found two persons with their hands and legs tied and the mouths taped, but the witness has not identified these persons to be the complainant or PW-12 and there is nothing on record to show that they were found in the field. PW-14 Rajeshkumar Pratapsinh Chauhan and PW-15 Anirudhsinh Fatesinh Chauhan, who, as per the case of the prosecution, had found the victims in the field, have not supported the case of the prosecution and there is nothing on record to show that it was only the accused persons who had wrongfully restrained and wrongfully confined the victims from proceeding in their direction and beyond their limits.

49. The accused have been charged with the offence under Sections 504 and 506 (2) of the Indian Penal Code, which reads as under:

"504. Intentional insult with intent to provoke breach of the peace. – Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

"506 (2). Punishment – Imprisonment for 7 years, or fine, or both – Non-cognizable – Bailable – Triable by Magistrate of the first class – Non-compoundable".

49.1 To prove the offence under Section 504 and 506 (2), the prosecution has to prove that the accused intentionally insulted and provoked the victims with the intention that such provocation would

cause the victims to break the public peace or to commit any other offence and that the accused had threatened the victims to cause their death or grievous hurt. In the entire evidence, the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Jamra have not stated that the accused had intentionally used abusive words or that they were threatened with death or causing grievous hurt and which of the accused in fact used any abusive words or any threats to cause their deaths.

50. The accused have been charged with the offence under Section 328 of the Indian Penal Code, which reads as under:

"328. Causing hurt by means of poison, etc., with intent to commit an offence. – Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine".

50.1 To prove the offence under Section 328, the prosecution has to prove that the accused had administered some stupefying or intoxicating drug to the victim with the intent to cause hurt or with the intent to commit or to facilitate the commission of an offence and knowing it to be likely that the victim will be caused hurt. As per the case of the prosecution, the accused had administered some stupefying or intoxicating drink to the victims while they were abducted and taken in the white four wheel car and that caused the victims to sleep and they do not know what happened thereafter till the next morning,

when they found themselves lying with their hands and feet tied and their mouths taped in a field in village Kolikhad. As per the case of the prosecution, the bottle from which the victims were made to drink the stupefying or intoxicating drink was found in the field where the victims were found and the said bottles were sent for analysis to the Forensic Science Laboratory, Ahmedabad, but as per the analysis report of FSL Ahmedabad produced at Exh. 145, no toxic chemical was found from the bottles and there is no iota of evidence on record to prove what intoxicating or stupefying substance was administered in the drink to the victims. It is pertinent to note that as per the say of the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda, they were administered the stupefying or intoxicating drink while they were made to sit between the seats in the white car and thereafter, their mouths were taped and their hands and legs were tied and even though they would be unable to drink from any bottle, the said bottles were found near them and no explanation regarding these bottles has come on record by the prosecution.

51. The accused have been charged with the offence under Section 412 of the Indian Penal Code, which reads as under:

"412. Dishonestly receiving property stolen in the commission of a dacoity. – Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine".

51.1 To prove the offence under Section 412 of the Indian Penal Code, the prosecution has to prove that the accused received or retained stolen property knowing that the property has been transferred by the commission of dacoity or knowing that the property belongs to a gang of dacoits and is stolen property. From the entire evidence of the prosecution on record, there is no iota of evidence to show that the property which was recovered from Trailer No. RJ-14-GC-9165 was in fact the same goods that were loaded into Truck No. MP-09-HF-5548. As per the case of the prosecution, Trailer No. RJ-14-GC-9165 was found abandoned and was seized by PW-21 Sohanram Mularam Tarad, the Constable of Surpaliya Police Station under Section 102 of the Code of Criminal Procedure and the said goods were seized by PW-29 Ashwinsinh Jivansinh Chavda, PSI, Himmatnagar 'A' Division Police Station in this offence. Moreover, as per the case of the prosecution, some of the muddamal was found from the godown of Shrinathji Sharma from where goods worth Rs. 1,37,855/- were recovered. In the entire evidence, there is no iota of evidence to show that these goods were in fact the same goods that were taken in dacoity by the accused and placed in this godown by any of the accused persons and during the cross-examination of PW-33 Janaksinh Popatsinh Rao who is the investigating officer who has seized the muddamal from the godown of Shrinathji Sharma, it has come on record that the statement of Shrinathji Sharma, the owner of the godown, has not been recorded during investigation, hence, there is no iota of evidence to show that the accused had placed the goods in the said godown.

52. As discussed above, from the entire evidence, the prosecution has not proved beyond reasonable doubts that on 13/12/2019, while

the complainant Ramu Lalsingh and PW-12 Rinku Indersingh Habda Jamra were going with Truck No. MP-9-HF-5548 from Unja to Indore with cumin seeds, fennel seeds, sesame seeds and Isubgul and when they reached in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs, the accused No. 3, 4, 5 and 6 obstructed their Truck with an SX4 car, came into the Truck and tied the hands and legs of the complainant and witness Rinku Indersingh Jamra, tied their eyes with a cloth and physically assaulted them and kidnapped them with the intention of causing them to be secretly and wrongfully confined and have thus committed an offence under Section 365 of the Indian Penal Code and hence, I answer issue No. 1 in the negative.

53. From the entire evidence, the prosecution has not proved beyond reasonable doubt that the accused, on 13/12/2019, caused wrongful hurt and wrongfully restrained the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra and forcibly carried away Truck No. MP-9-HF-5548 along with the cumin seeds, fennel seeds, sesame seeds and Isubgul weighing about 17,835 Kgs amounting to Rs. 2767832/- and have thus committed dacoity and an offence under Section 395 of the Indian Penal Code and hence, I decide issue No. 2 in the negative.

54. The prosecution has not proved beyond reasonable doubts that the accused Nos. 3, 4, 5 and 6 wrongfully restrained and wrongfully confined the complainant Ramu Lalsingh and PW-12 Rinku Indersingh Habda Jamra and have thus committed an offence under Sections 341 and 342 of the Indian Penal Code and hence, I decide issue No. 3 in the negative.

55. From the evidence of the prosecution, it is not proved beyond reasonable doubts that the accused Nos. 3, 4, 5 and 6 administered a stupefying or intoxicating drug to the complainant Ramu Lalsingh Jamra and PW-12 Rinku Indersingh Habda Jamra while they were being abducted on 13/12/2019 in their Truck No. MP-9-HF-5548 in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs and the complainant and PW-12 Rinku Indersingh Habda Jamra became unconscious and thereafter, left them lying in the sim of village Kolikhad, Taluka Modasa and thus, have committed an offence under Section 328 of the Indian Penal Code and hence, I decide issue No. 4 in the negative.

56. In the entire evidence of the prosecution, there is no evidence to prove beyond reasonable doubts that the accused Nos. 3, 4, 5 and 6, on 13/12/2019, in Truck No. MP-9-HF-5548, in the sim of village Akodara towards Ranasan between 00:30 hrs and 7:00 hrs intentionally insulted and thereby gave provocation to the complainant Ramu Lalsingh and PW-12 Rinku Indersingh Habda Jamra intending or knowing it to be likely that such provocation would cause them to break the public peace and threatened to cause death and grievous hurt to them and have thus committed an offence under Section 504 and 506 (2) of the Indian Penal Code and hence, I decide issue No. 5 and 6 in the negative.

57. The prosecution has not proved beyond reasonable doubts that the accused Nos. 1, 2 and 7 dishonestly received and retained cumin seeds, fennel seeds, sesame seeds and Isubgul from the accused Nos. 3, 4, 5 and 6 knowing that the property has been transferred by the

commission of dacoity and have thus committed an offence under Section 412 of the Indian Penal Code and hence, I answer issue No. 7 in the negative.

Issue No. 8:

58. In view of the above discussion, I pass the following final order:

ORDER

The accused (1) Manoj @ Manohar Gopalji Soni, (2) Purushottam Ganeshlal Somani, (3) Imran Wahidkhan Qureshi, (4) Javed Ahmed Nasir Ahmed Qureshi, (5) Abdulmatinkhan @ Nadim Abdul Latifkhan (Musalman), (6) Gulshad Ahmed @ Babbu Abdul Rauf Qureshi and (7) Mufidkhan Mammukhan Mev, are given the benefit of doubt and acquitted for the offences under Sections 365, 395, 341, 342, 328, 504, 506 (2) and 412 of the Indian Penal Code.

Muddamal article Nos. 1, 2, 3, 4, 5, 6 and 11 be destroyed after the appeal period or to be disposed of as per the order of the appellate Court.

Muddamal article Nos. 7, 8, 9 and 10 to be returned to the owner after due verification or to be disposed of as per the order of the appellate Court.

Muddamal vehicle Trailer No. RJ-14-GC-9165 and Maruti Suzuki SX4 car No. MH-04-FB-1114 to be returned to the registered owner after due verification or to be disposed of as per the order of the appellate Court.

The interim order qua muddamal goods i.e. cumin seeds, sesame seeds, melon seeds, fennel seeds and Isubgul and Truck No. MP-HF-

5548 is made absolute or to be disposed of as per the order of the appellate Court.

All the accused to furnish bail of Rs. 5,000/- (Rupees five thousand only) with solvent surety of the like amount as per the provisions of Section 437-A of the Code of Criminal Procedure.

Since the accused Nos. 3, 4, 5, 6 and 7 are in judicial custody, Yadi be issued to the concerned jail for their release and the accused shall be released only if they are not required in custody in any other offence.

A copy of the judgment be sent to the District Magistrate, Sabarkantha at Himmatnagar as per Section 365 of the Code of Criminal Procedure.

Signed and pronounced in the open Court today on this 26th day of August, 2022.

Date: 26/08/2022
Place: Himmatnagar

[Susan Valentine Pinto]
Sessions Judge
Sabarkantha at Himmatnagar
Unique ID: GJ00416

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