



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (FOR ENHANCEMENT) NO. 1316 of 2011**

**With
R/CRIMINAL APPEAL NO. 1066 of 2011**

**With
R/CRIMINAL APPEAL NO. 1071 of 2011**

**With
R/CRIMINAL APPEAL NO. 1092 of 2011**

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

STATE OF GUJARAT
Versus
VISHALKUMAR SOMCHANDRA SHAH & ORS.

Appearance:

In Cr.A.No.1316/2011

MR BHARGAV PANDYA, APP for the Appellant - State
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1
MR ASHISH M DAGLI(2203) for the Opponent(s)/Respondent(s) No. 5
MR G R MANAV(6064) for the Opponent(s)/Respondent(s) No. 2,4
MR PV PATADIYA(5924) for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 2,4,5

In Cr.No.1066/2011

MR JIGAR SALVI for the Appellant- Original Accused No.4

In Cr.No.1071/2011

MR JK PARMAR for the Appellant – Original Accused No.2

In Cr.No.1092/2011

MR ASHISH DAGLI for the Appellant – Original Accused No.5

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 17/02/2026

**ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. Since the facts of the case and issue involved in the captioned appeals, are identical and arise out of the same judgment, the appeals are taken up together and are being disposed of by this common judgment.

2. Before the Additional Sessions Judge, Nadiad at Kheda, five accused were being chargesheeted for the offences punishable under Sections 170, 419 and 395 read with Section 114 of the Indian Penal Code. After the chargesheet and during the trial, original accused no.1 – Vishal Somchandra Shah and original accused no.3 – Mehmud Pathan passed away. The trial of the case proceeded against original accused nos.2, 3 and 4 namely Mahendrapratap Rajput, Kehul Kantilal Shah and Lata @ Muskan Laxmandas Santvani.

3. Vide judgment and order of sentence dated 12.08.2011, passed in Sessions Case No.136 of 2010, the Additional Sessions Judge, Nadiad at Kheda convicted and sentenced all three accused for the offences punishable under Sections 170, 419, 395 read with Section 114 of the Indian Penal Code and sentenced in the manner stated hereinafter:

Accused	Conviction under Section	Punishment	Fine	In default of fine
Kehulkumar Kantilal Shah	S.395 of IPC	RI for 5 years	Rs.5,000/-	RI for 6 months
Kehulkumar Kantilal Shah	S.419 r/w 114 IPC	RI for 1 year	Rs.1,000/-	RI for 1 month
Kehulkumar Kantilal Shah	S.170 r/w 114 IPC	RI for 6 month	Rs.500/-	RI for 15 days
MahendrapratapVans hdharsinh Rajput	S.395 of IPC	RI for 5 years	Rs.5,000/-	RI for 6 month
MahendrapratapVans hdharsinh Rajput	S.419 r/w 114 IPC	RI for 1 year	Rs.1,000/-	RI for 1 month

Mahendrapratap Vans hdharsinh Rajput	S.170 r/w 114 IPC	RI for 6 month	Rs.500/-	RI for 15 days
Lataben@ Muskanben	S.395 IPC	RI for 5 years	Rs.5,000/-	RI for 6 month

All the sentences were ordered to run concurrently.

4. Hence, all three accused have individually by challenging the impugned judgment, filed appeals bearing Criminal Appeal No.1066 of 2011 (Kehul Kantilal Shah), Criminal Appeal No.1071 of 2011 (Mahendrapratap Rajput) and Criminal Appeal No.1092 of 2011 (Lata @ Muskan Santvani).

5. The State has preferred the enhancement appeal on the ground of inadequacy of the sentence imposed upon the accused-appellants (Criminal Appeal No.1316 of 2011).

6. Factual background:

6.1 The appellants-accused were prosecuted and tried for the offence punishable under Sections 170, 419 and 395 read with Section 114 of the Indian Penal Code.

6.2 The appellant-original accused no.5 – Lata @ Muskan requested the complainant Prakash Patel (PW.1) for giving her a lift on his motorbike as on 04.01.2010, the complainant by riding his motorbike, was on the way from Ahmedabad to Nadiad. The accused Lata being a pillion of the motorbike, requested the complainant to have intimate act



in a secluded place. The complainant (PW.1) drew the motorbike towards Hari Om Ashram, Nadiad and stopped the motorbike in the secluded place. The accused – A5 Lata @ Muskan, after came down from the bike, had gone for urination. Meanwhile, four accused namely Vishal Shah, Mahendra Rajput, Mehmudkhan Pathan and Kehul Shantilal Shah were alerted by the accused Lata and upon receiving a signal, they round up the PW.1 and the accused lady. They introduced themselves as police officials of Local Crime Branch, Kheda and asked certain questions to the complainant (PW.1) that why you coming here and what you are doing with the lady and further alleged that, you are forcing the lady to indulge in the sex. The complainant explained that, they are passing their time and come for a ride. The four accused, did not accept the explanation and by hurling abusive, the complainant was beaten up with the stick and was further threatened by the accused that, they will lodge the FIR and asked the complainant to take a seat in the Indica car.

6.3 In the Indica car, the accused demanded Rs.50,000/- for settlement. The complainant was not having sufficient amount with him and said that, he has only Rs.300 with him. The accused looted Rs.300/-, a copy of the licence and a mobile from the complainant. The complainant, thereafter, agreed to pay Rs.50,000/- at Ahmedabad. The accused and the complainant proceeded from the place to Ahmedabad for securing the amount. The accused Mehmudkhan Pathan (A3) was directed to come on the motorbike of the complainant.



6.4 When the car reached at the crossroad of Bilodara Jail, the Local Crime Branch Police Officials were checking the vehicles. The accused threatened the complainant that, if the police ask anything to you, then you should not disclose anything. However, the complainant (PW.1), sought the help of the police officials and asked them that, please check the official designation of the persons sitting in the car as the accused impersonated LCB Police Officials. The police officials PW.2 – Vijaysinh Ratansinh, PW.2 – Yakubmiya Malek and others have cordoned the accused and upon inquiry, it was found that, they pretended themselves falsely to be police officials. The LCB, Kheda, arrested the accused under Section 41(D) of the Cr.P.C. on the ground of suspecting of having committed an offence. Thereafter, PW.1 had lodged an FIR with Nadiad Rural Police Station, which registered as C.R.No.I- 4 of 2010 under Sections 386, 419, 170 read with Section 114 of the Indian Penal Code. The accused officially came to be arrested by the I.O. During the investigation, the I.O. of the case seized and recovered Rs.300/-, a copy of licence and a mobile phone of the complainant from the accused, seized the Indica car allegedly used in the commission of the crime, also seized the mobile phones of the accused, recorded the statements of the witnesses more particularly, the police officials, who were posted for vehicle checking at the crossroad of Bilodara Jail, Nadiad and after due investigation, the chargesheet filed for the offences punishable under Sections 170, 419, 395 read with Section 114 of the Indian Penal Code.

As the case was exclusively triable by the Court of Sessions, it was committed to the Court of Sessions, Nadiad at Kheda. The Sessions

Court framed the charges against the appellants–accused, they did not admit the charge and claimed to be tried.

7. The prosecution, in order to prove the charge, adduced the following oral and documentary evidence, in support of its case.

Oral evidence-14

PW 1 – Exh.27	Prakash Keshavlal Patel, Complainant
PW 2 – Exh.32	Vijaysinh Ratansinh, Head Constable
PW 3 – Exh.37	Yakubmiyan Abdulmiya Malik
PW 4 – Exh.48	SabirhusseinMayudin Saiyyed, panch witness
PW 5 – Exh.49	RajnikbhaiBachubhai Malik, panch witness
PW 6 – Exh.53	RamsinghbhiDesaibhai Parmar, panch witness
PW 7 – Exh.55	MangubenAshabhai Rajput, panch witness
PW 8 – Exh.56	RamanbhaiOmabhai Dabhi, panch witness
PW 9 – Exh.58	BhagwanbhaiDayhabhai Chouhan, panch witness
PW 10 – Exh.59	Bismillahbanu Abdulmiya Saiyyed
PW 11 – Exh.60	RishitkumarRavindrabhai Bhatt
PW 12 – Exh.62	Dr. Krunalkumar Rajibhai Sharma
PW 13 – Exh.65	Raijibhai, PSO
PW 14 – Exh.66	Rajendrabhai Babubhai, IO

Documentary evidence - 5

Exh.28	Original Complaint
Exh.39	Panchnama of CrPC 41(1)d
Exh.54	Panchnama of state of body of accused

Exh.57	Panchnama of place of offence
Exh.64	Medical certificate of Complainant

8. After closure of the prosecution evidence, statements of the accused under Section 313 of the Cr.P.C., were recorded, to which, they stated that they have been falsely implicated in the offence and they are innocent and have not committed any offence.

9. Though opportunity was extended, no oral evidence being adduced by the appellants—accused.

Trial Court findings:

10. After hearing the parties and upon appreciation of material evidence, the accused held guilty for the offence punishable under Sections 170, 419 and 395 read with Section 114 of the Indian Penal Code and while convicting the accused, the Trial Court has mainly relied upon the evidence of victim (PW.1) and police officials, who were discharging their duty at the traffic point. The Trial Court has recorded that, accused nos.1 to 4 falsely pretended to be Local Crime Branch Police Officials and by doing so, put the complainant in fear and commits the extortion and robbed the cash amount as well as a copy of the licence and mobile phone from the complainant, whereby the accused have committed the offences, as referred above. The Trial Court has awarded a maximum punishment of five years for the offence punishable under Section 395 of the Indian Penal Code.



11. Evidence adduced by the prosecution:

(1) Prakashkumar Keshavlal Patel (PW.1) : This witness is the victim of the alleged incident and being a complainant of the case, has stated in his chief-examination that, on 04.01.2010, at about 10:30 a.m., he proceeded on his bike bearing Registration No.GJ-18-FN-6371 from his home Ahmedabad to Nadiad for business purpose and when he was 10 kilometers away from Nadiad, he saw one lady standing on the road and her hand was in standing position and while reaching near her, she had asked for lift on his bike and the lady was accused no.5. The accused no.5 sought a lift to reach at Nadiad and she was talking in Hindi language. The witness has further stated that, after giving her lift, she took her seat as a pillion of the bike, and thereafter, he proceeded towards Nadiad and before they could reach Nadiad, the lady accused no.5, in Hindi language told him that, *"today, I am totally free and I intend to keep intimate relations with you."* The witness – complainant agreed with the proposal and drew the bike towards Hari Om Ashram, Nadiad Road and stopped his bike near secluded place. The witness has further stated that, the lady accused, after getting down from the bike, directed him to wait for some time as she intends to go for urination. The lady, thereafter, went for washroom and meanwhile, he was standing at a secluded place. The witness has further stated that, the lady accused came thereafter before him and meanwhile, four persons in Indica car came over there. The witness has further stated that, four persons directly attacked him and asked him that from where are you coming? Who is this lady? Why you are standing here and for



what purpose, you are coming over here? After this questionery, one person took out a stick from the car and started assaulting him and the person, who has been beaten up, is sitting in the Court today (Kehul Kantilal Shah-A4). The witness has further stated in his chief-examination that, the accused themselves introduced as Crime Branch Police Officials and one of the accused introduced himself as a Police Inspector of the Crime Branch. It is further stated by the witness that, the accused threatened him that, they will register the case and direct him to sit in the car. The witness has further stated that, he along with the lady accused, took their seats in the rear side of the car. The witness has further stated that, the accused Mahendrapratap Rajput took his bike. The witness has further stated that, the car was driven by Kehul Kantilal Shah. It is stated that, he was intercepted in the car by the accused and was asked to give whatever he is having with him. The witness has further stated that, at the relevant time, he was carrying Rs.300/- with him, a driving licence and a mobile phone. The witness has further stated that, the accused took away the cash amount and mobile as well as licence and further demanded Rs.50,000/- as a part of settlement, and further threatened that be ready for the consequences. The witness has further stated that, at relevant time, he was in trauma and fear.

The witness has further stated that, when the car was passing near the cross-road at Nadiad, the police officials of S.R.P. Group doing vehicle checking and upon seeing the police, the accused threatened him that, if anything asked by the police, then you should reply that we are friends and are going for a ride. The witness has further stated that, the



car was stopped by the police and at that time, he managed to escape from the clutches of the accused and informed the police about the atrocities and acts of the accused. The witness has further stated that, he along with the five accused, had been restrained by the police and taken to the LCB Office, Kheda, and thereafter, he was permitted to lodge an FIR with Nadiad Rural Police Station, where he has lodged the FIR, which is produced by him at Exh.28. The witness has further stated that, the police has referred him to the Civil Hospital, Nadiad for medical examination where he took treatment for the injuries caused by the accused. The witness has identified all the accused in the Court.

In the cross-examination, the witness has stated that, he does not know the road directions of Hari Om Ashram. The witness has stated in cross that, he did not have given a history of the case before the doctor, nor disclosed his mobile number or license number in the complaint and the denomination of the currency notes. He has further stated that, at the board of Village: Varsova, except the presence of the accused Muskan, whether any other persons were present or not that he does not know. The witness has further stated in the cross that, upon the request of accused Muskan, he agreed to give her lift on his bike. The witness has stated in cross that, the accused Muskan has not suggested the particular place where they will have to stay. The witness has denied to the suggestion that, he is interested in Muskan and that is why, he took her forcefully at the place of incident. The witness has denied to the suggestion that, in order to save his image and credentials, the false complaint has been filed against the accused.



(2) Vijaysinh Ratansinh (PW.2), Yakubmiya Malek (PW.3), Rishitkumar Bhatt (PW.11): All these witnesses are police officials of the Local Crime Branch, Kheda at Nadiad and at that time i.e. on 04.01.2010, they were busy with the official work of vehicle checking. The witnesses, in their deposition, have supported to the case of prosecution. The witnesses have stated in their chief-examination that, when they were on watch, they cordoned the Indica car, wherein five persons were found inside the car. Out of five, one was lady. They further stated that, out of five, one person namely Prakash Patel told them to inquire about the designation of the accused to the effect that whether they are really associated with the Crime Branch or not. They have further stated that, one person also coming riding on the bike and he was also restrained along with the passengers of the Indica car. The accused Vishal Somchandra Shah was found on the driving seat and from his possession, Rs.300/- and other things were being recovered and the witness Prakashbhai identified the accused as well as his amount of Rs.300/- allegedly extorted by the accused. All the witnesses have stated that, after intercepting the accused and the car, they were unable to show the papers of the car and also failed to explain about possession of the stick, as a result, by invoking Section 41(D) Cr.P.C., the things were seized and accused came to be arrested. the witnesses have stated that, the complainant-victim apprised them about the entire incident and act of robbery as well as demand of Rs.50,000/- by the accused. The witnesses have stated that, the complainant-victim thereafter, sent to Nadiad Rural Police Station for filing of complaint. The witnesses during the recording of the



deposition, identified the accused as well as seized muddamal articles. In the cross-examination, the defence has tried to prove that, the accused have been falsely implicated under the guise of vehicle checking and at relevant time, they were not present for vehicle checking, but on the aspect of incident and caught the accused red handed, their evidence is not shaken in the cross-examination, and therefore, we deem it fit not to refer the entire cross-examination.

(3) Dr. Krunalkumar Sharma (PW.12): This witness being a Medical Officer of Civil Hospital, Nadiad, had examined the PW.1 – Prakash Patel. The witness has stated that, on 05.01.2010 in the night hours, the witness Prakash Patel brought before him with Police Yadi and in the history, he has stated that, on 04.01.2010, he was beaten up with the lathi near Hari Om Ashram. The witness has further stated that, the patient was having pain on the right leg and upon his examination, there was an injury on right leg in the nature of bruise (10X8 c.m.) and tenderness over the left forearm. The witness has produced the certificate of examination at Exh.64.

(4) Rajendrabhai B. Desai (PW.14): This witness being an Investigating Officer of the case, has stated that, on 04.01.2010, the investigation after registration of the offence, was entrusted to him and meanwhile, he received the case papers of 41(1)(d) Cr.P.C. along with the accused and the articles from the LCB Office. The witness has further stated that, after preliminary inquiry of the accused, he arrested them on 04.01.2010 and recorded the statement of police officials of LCB Office, and thereafter, drew the panchnama of scene of offence



and seized and recovered the mobile phones and cash amount as well as the stick allegedly used in the crime. In the cross-examination, he has stated that, the mobile phone (article no.10) has not been produced before the Court. The I.O. has also stated that, during the investigation, he did not have seized the bike of the complainant. The I.O., in his cross-examination state that, on the issue of ownership of the car, he did not have investigated the case on this line. The I.O. has denied in the cross-examination that, he has falsely arrested the accused and despite of insufficient evidence against them, he has filed chargesheet.

Submissions:

12. We have heard Mr.Ashish Dagli, Mr.J.K. Parmar, Mr.Jigar Salvi, learned counsels appearing for the appellants – accused and Mr.Bhargav Pandya, learned Additional Public Prosecutor for the State.

13. Mr. Ashish Dagli, learned counsel, while assailing the impugned judgment and order of sentence, made the following submissions :

- (i) That the learned trial Court grossly erred while convicting the accused No. 5 Lata @ Muskan without appreciating the evidence in right prospective. The accused Lata has been convicted only under Section 395 of the Indian Penal Code and sentenced to undergo RI for a period of 5 years. According to prosecution case, she was given a lift by the complainant PW-1, and thereafter, the parties chosen to spend their free time at the



secluded place in the area of Nadiad Town. The co-accused came at the secluded place where the accused and the complainant and posing themselves as policed officials, threatened the complainant and looted his Rs.300/- as well as mobile and driving license and under the guise of settlement, the accused demanded Rs.50,000/-. So far as accused no.5 is concerned, there is no evidence to establish her association with the co-accused prior to the incident and it was the complainant, who had chosen the secluded place. The accused no. 5 had not suggested the place of leisure and it was admitted by PW-1 that, he himself chosen the place nearby Hariom Ashram, Nadiad. It is not the case of the prosecution that, at the instance of accused no. 5, the co-accused pretended themselves to be police officials and robbed the complainant. In such circumstances, the accused was not in any manner associated with the co-accused nor played any role as a part of common object nor had acted in furtherance in common intention of co-accused, and therefore, the conviction qua accused no.5 under Section 395 is not sustainable in law as the ingredients of offence of robbery or dacoity are not attracted and satisfied and in that view of the matter, when the charge is not proved beyond reasonable doubt by adducing acceptable and cogent evidence, the judgment of conviction and order of sentence may be set aside and accused no.5 be acquitted from all charges.

14. Mr.Jigar Salvi and Mr. J.K. Parmar, learned counsel appearing for and on behalf of appellant - accused No. 2 Mahendra Rajput and



appellant - accused no. 4 – Kehul Kantilal Shah, have made the following submissions:

- (i) That the charge against the appellants – accused have not been proved and established by leading cogent and acceptable evidence and it is the one of fundamental criminal jurisprudence that the accused is presumed to be innocent unless proved guilty. In the facts of the present case, the entire prosecution case hinges upon the sole testimony of PW-1, complainant Prakash Patel. The complainant is not the resident of Nadiad Town and is not related to the appellants accused, and therefore, it is an admitted fact that prior to the incident, the appellants accused were not known to each other, and therefore, merely identification of the accused in the Court by the complainant is not sufficient to establish the identity of the accused in the crime. The I.O. failed to hold T.I. parade for the purpose of identification of the appellants and on this count, the sole evidence of PW-1 cannot be relied to establish the involvement of the accused in the crime.
- (ii) That the sole testimony of PW-1 does not inspire confidence and trustworthy in view of the material contradictions found in his deposition and his conduct throughout the incident, it appears that the witnesses telling lie and with a view to come out with relation with accused no.5, he deposed against the appellants so as to falsely involved them into crime and thus, in absence of any independent witness, though available, but purposely they were not examined by the prosecution which creates a doubt in



the prosecution story.

- (iii) That the investigation has not been done in fair and transparent manner and without proper investigation, the chargesheet came to be filed. The prosecution failed to produce the proceedings undertaken by the LCB Police, Kheda under Section 41(1)(d) of the Cr.P.C., as it is necessary to examine the said papers and also necessary for the defence of the accused. According to prosecution case, the police officials of LCB Kheda, were on duty for checking of the vehicles and the information of suspected activities of the persons, who were travelling in the Indica Car. None of the police official witness have produced the facts of the information received or any other papers showing that the appellants along with the complainant and lady accused no.5 were detained and stopped at the cross-road of the Nadiad Town for the verification of the information as well as vehicle checking. In such circumstances, the testimonies of the police officials cannot be relied upon to establish the involvement of the appellants in the alleged crime.
- (iv) That there is a delay in lodging the FIR and possibility of concoction and embellishment cannot be ruled out as, as per the prosecution case, the FIR came to be registered in the midnight i.e. 12-30 and the offence alleged occurred in the noon hours between 1=00 to 3-00. In such circumstances, despite of opportunity to lodge FIR at the earlier in point of time, the same has not been filed in a reasonable time, for which, there is no explanation put-forth by the prosecution.

(v) That, the necessary ingredients of offence of robbery punishable under Section 395 are not attracted and established, as to establish the offence of robbery the prosecution is to prove all the elements required to prove the theft under Section 379; or the elements of extortion as the extortion is robbery, if the offender at the time of committing the extortion put in fear the victim of instant death and/or instant hurt or instant wrongful restraint induces or compel the victim to delivery of the things extorted. In the present case, the victim was not put in fear of death, nor received visible injury or wrongfully restrained her so as to extort the amount, and therefore, legally, the conviction under Section 397 of IPC is not attracted and conviction thereunder, cannot be sustained.

15. In such circumstances referred above, the counsels appearing for and on behalf of appellants – accused, prayed that, there being merits in the appeals and same may be allowed and further prayed that, the judgment of conviction and order of sentence, be set aside and the appellants may be acquitted from all charges.

16. On the other hand, Mr.J. K. Shah, learned Additional Public Prosecutor for the State vehemently opposed the appeals and contended that, the Trial Court has not committed any error while holding the appellants accused guilty for the offence. He further submitted that there is no reason for the victim PW-1 to implicate the accused falsely in the serious charge of robbery. The presence of the victim PW-1 being injured witness at the place of offence, cannot be



doubted and on the aspect of incident, his evidence is convincing and, as such there is no material contradictions on the aspect of incident found in his evidence. The evidence adduced by the prosecution proves that, the accused with pre-plan, picked-up the victim with the aid of lady accused and under the guise of sexual favour, the victim was lured and taken to secluded place and as a pre-plan, the accused nos.1 to 4 came into Indica car and posing themselves as a Crime Branch Police Officials and attacked on the victim with the weapon stick and threatened that he will be booked under the sexual offences and as a part of settlement, they demanded Rs.50,000/- but somehow, at relevant time, the victim was having Rs.300/- in his pocket and same amount being robbed along with driving licence and cell phone of the complainant and for the remaining amount of Rs.50,000/- the accused along with victim were coming from Nadiad to Ahmedabad and their car was stopped by the Nadiad Police, as a part of checking drive and during their interrogation, the police officials revealed the offence of impersonation and robbery allegedly committed by the accused. In such circumstances, the victim's evidence on the aspect of act of the accused is consistent and trustworthy. His evidence corroborated by the police officials of Kheda and medical evidence. There is nothing on record that at the secluded place the people of the vicinity had come to witness the incident. In such circumstances, the testimony of victim is wholly reliable and his evidence as a ring of truth and the Trial Court has rightly relied upon his testimony and for placing reliance on his evidence, has recorded sufficient and cogent reasons. The accused were five in numbers, and at relevant time, they robbed the victim. In



such circumstances, the necessary ingredients of Sections 395 & 397 have been established by the prosecution by adducing acceptable and cogent evidence.

17. In such circumstances referred to above, the learned APP Mr. J. K. Shah, prayed that, there being no merits in the appeals filed by the accused and same may be dismissed.

18. So far as enhancement appeal against the insufficient sentence awarded by the Trial Court is concerned, it was submitted that, the offence is serious one and affecting society at large and Trial Court, while imposing the sentence, has not taken into consideration this aspect and discretion for awarding the sentence has not been properly exercised and in that view of the matter, by allowing the enhancement appeal, the maximum sentence, as prescribed for the offence punishable under Section 395 be awarded.

19. On the other hand, learned counsels appearing for the appellants, opposing the enhancement appeal, contended that, the sentence imposed is too harsh and considering the background status of the appellants, the Trial Court failed to assign special reasons for not having extended the benefit of probation, as provided under Section 361 of the Cr.P.C., and under the provisions of the Probation of Offender Act, 1958 and on the same ground, the sentence of 5 years is not sustainable and the appellants accused may be ordered to be released on probation on good conduct and in that view of the matter, they contended that, the enhancement appeal has no merits and same deserves to be dismissed.



ANALYSIS AND FINDINGS :

20. In the present case, out of five accused, the accused A3 Mehudkhan Pathan and accused A1 Vishal Shah are no more as during the pendency of the proceedings, they passed away. The accused no.5 Lata @ Muskan has been convicted for the offence of Section 395 Indian Penal Code only. The accused nos.2 and 4 viz. Mahendra Rajput and Kehul Kantilal Shah have been held guilty for the offence punishable under Sections 170, 419, and 395 of the Indian Penal Code.

21. We have considered the submissions made at the bar and examined carefully the entire case records. The prosecution case mainly hinges upon the testimony of PW:1 Prakash Patel, who is the victim and three police constables i.e. PW:2 Vijaysinh Ratansinh, PW:3 Yakubmiya Malek and PW:11 Rishit Bhatt.

22. On perusal of the testimony of PW:1, it appears that he is in the business of hardware, doing business at Ahmedabad and due to business purpose, he having contact with the business entity in the Nadiad Town. The distance between Ahmedabad and Nadiad Town is 56 k.m. and in that view of the matter, it was quite possible for the complainant PW:1 to visit Nadiad Town by riding on his bike, and therefore, the story which he had narrated about taking visit at Nadiad Town on his bike, is natural and acceptable and nothing wrong on his part to travel on the two wheeler so that after completion of his work, he could return to the Ahmedabad in a reasonable time. According to the prosecution case and version of the PW:1 on 04.01.2010, he had



proceeded from Ahmedabad to Nadiad on his bike bearing No.GJ-1-FN-6371 and while reaching near Varsola Bus-stand which is 10 k.m. away from Nadiad, accused no.5 by giving signal, stopped the PW:1 and sought a life on his bike as she intends to travel to Nadiad. The complainant PW:1, in his deposition, has categorically stated that before they could reach at Nadiad, the lady accused no.5, desirous to have sex with him in a secluded place and complainant latterly came into trap of the proposal made by the accused. The place near Hariom Ashram at Nadiad being selected and near the secluded place, they entered into bushes and stand there. The co-accused nos.1 to 4 came there in Indica Car and assumed character of Local Crime Branch Police Official and under the colour of such office, they beaten up the complainant and looted cash amount from him and putting in fear, compelled the PW:1 to pay extortion amount of Rs.50,000/- and to enable him to pay the amount, the accused along with PW:1 proceeded from the place of occurrence to the Ahmedabad for the payment. Unfortunately, Indica-Car was restrained by the Local Crime Branch Police Official, Nadiad because they were deputed for vehicle checking on the basis of information. In these background facts, we have no doubt about the factual aspect of the incident narrated by PW:1 against the accused. His evidence is truthful. He does not have any agenda for falsely implicate the accused herein and his evidence has been corroborated by his complaint and during the cross examination, his version on the aspect of incident and involvement of the accused has not shaken. The Nadiad Police Official PWs:2, 3 and 11 have categorically in their testimonies stated that the PW:1 was



illegally restrained in the car for the purpose of extortion amount and the accused pretended to be Local Crime Branch Official which they do not have any official post and despite of this, after beating the PW:1, they on the way to Ahmedabad for extortion amount allegedly to be paid by the PW:1. In such circumstances, the entire story as stated by the victim PW:1 has been corroborated by the independent police official, who had caught the accused red-handed. It is relevant to note that at the time of incident, no one present except PW:1 lady accused and place was secluded place and therefore, the question for examination of independent witnesses on the part of the prosecution does not arise. Therefore, in our opinion, the testimony of the PW:1 and Police Official are clear, cogent and creditworthy and there are no any inconsistency and improbability in the story of incident and there are no material contradictions or improvements found in their evidence and therefore, the presence of PW:1 at both places are found natural and there is a ring of truth in his evidence before he being a victim has truthfully narrated the entire evidence and the suffering at the hands of the accused. The presence of the victim with the accused no.5 was natural because both have agreed to enter into the intimate relationship at the secluded place, so in the facts of this case, it is possible to believe his presence at the place and in absence of any inherent lacuna in his evidence, we have no doubt in our mind about his reliability and truthfulness on the aspect of incident and involvement of the accused in the crime, and therefore, the witness PW:1 is wholly reliable and his evidence corroborated by his FIR and other police official as referred above and therefore, involvement of the accused in the crime, as stated



by PW:1 is proved and established.

23. Now the question is whether the Trial Court was justified in convicting accused no.5 Lata @ Muskan (appellant accused of Criminal Appeal No.1092 of 2011) for the offence punishable under Section 395 of Indian Penal Code.

24. We have carefully examined the oral as well as documentary evidence. The accused Lata was travelled with PW:1 on his bike and caught by the other accused at the secluded place near Hariom Ashram, Nadiad. The PW:1 in his testimony has stated that the accused Lata did not have proposed the place of incident. The prosecution has not collected the CDR to prove that the accused Lata called the co-accused at the place. Therefore, in order to prove the common intention, the role whatever assigned to accused Lata, the evidence on record is insufficient to draw the inference that the accused Lata with a view to extort the amount from PW:1 had acted on behalf of the co-accused and she was the instrumental in luring PW:1. In such circumstances, though the presence of accused Lata was throughout with PW:1 but whether there is sufficient evidence to hold vicariously liable as joint liability with the co-accused or not. As discussed, there is nothing brought on record by the prosecution to establish that she was in any manner associated with the co-accused for the purpose of robbery. In such circumstances, the evidence on record to create a doubt of her involvement in commission of the offence of robbery, as a result, the charge against the accused no.5 has not been proved beyond reasonable doubt by acceptable and convincing evidence.

25. Now, question arises for our consideration as to whether the Trial Court was justified in convicting the accused no.2 Mahendrasinh Rajput appellant and accused no.4 Kehul Shantilal Shah appellant for the offence punishable under Sections 170, 419, 395, read with Section 114 of the Indian Penal Code ?

26. The prosecution case is that the accused pretended themselves to be a Police Official of Local Crime Branch and threatened the PW:1 that he had forced the accused no.5 for sexual favour and after beating him, took him into the car and looted Rs.300/- and under the pretext of settlement, attempted to extort Rs.50,000/-, for which, the victim agreed to pay at Ahmedabad because at the relevant time, he was not having a sufficient amount with him. Admittedly, the accused were not the police officials and despite of this, with an intention to create atmosphere, they hold the weapon of the police, wore the dress of the police official of Local Branch, whereby they personated and/or pretended that they hold the office of local crime branch. Section 170 of Indian Penal Code reads as follows:

“170 Personating a public servant-whoever pretends to hold any particular office as public servant knowing that he does not hold such office or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

27. Thus, the essential ingredients of an offence under this section

are that the accused must have pretended to hold any particular office as a public servant or he must have falsely personated any person holding such a particular office as a public servant.

28. In the present case, the evidence of PW:1 proves and establishes that at the relevant time, the accused nos.1 to 4 were not holding any public office and impersonated themselves to be police official and robbed the complainant whereby they did and overact in exercising the authority of the assumed public servant. In such circumstances, the essential ingredients of Section 170 are attracted and having regard to the nature of evidence, the all ingredients are satisfied and the prosecution succeeds in proving the charge under Section 170 read with Section 114 of the Indian Penal Code against the accused appellants.

29. So far as charge under Section 419 of the Indian Penal Code is concerned, which provides for punishment for the act of cheating by personation. In order to prove the charge, the prosecution is obliged to prove that the accused cheated someone and he did so by impersonation. The term personation is defined in Section 416 of Indian Penal Code. The charging section is Section 419 of the Indian Penal Code. To bring home an offence under Section 416 of the Indian Penal Code, the elements of Section 416 are to be proved. This, apart to bring home a charge under Section 419 of the Indian Penal Code, the person said to be deceived must be shown to have been cheated by personation. The offences under Section 170 of the Indian Penal Code and Section 419 Indian Penal Code overlap each other. Cheating by



personation (Section 419) is an offence of general character, under which a person may pretend to be anyone other than what he really is. But cheating by pretending to be a public servant (170) is a specific offence, where one pretends to be a public servant and has all the ingredients of cheating by personation under Section 419. In such circumstances, having regard to the facts and circumstances of the present case, once the charge under Section 170 of the Indian Penal Code is established against the accused, then for the similar charge, there is no need to convict the accused under Section 419 of the Indian Penal Code. In such circumstances, the charge under Section 419 so far as the role attributed to the present applicants are concerned, in view of their conviction under Section 170, we deem it fit to acquit the accused appellants under Section 419 of the Indian Penal Code.

30. Now let us examine the charge under Section 395 of the Indian Penal Code. The Trial Court convicted the accused under Section 395 which provides a punishment for dacoity. Dacoity has already been defined under Section 391 of the Indian Penal Code, which says that when five or more persons conjointly commit or persons conjointly committee or attempting to commit robbery, and the 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. In the facts of the case, as discussed in the preceding para of the judgment, the charge under Section 395 qua accused no.5 Lata @ Muskan has not been believed and she has been acquitted of all the charges. In such circumstances, the offence under Section 395 can be committed only if the number of persons in the robbery is not less than



five, and therefore, so far as the appellants are concerned, they cannot be held guilty for the offence of dacoity because number of accused is less than five.

31. In such circumstances, the accused appellants have been acquitted from the charge under Section 395 read with Section 114 of the Indian Penal Code. However, so far as robbery is concerned, there is sufficient evidence led by the evidence to prove the charge of robbery. In the present case, there is no allegation of theft, and therefore, considering the peculiar facts of the present case, the case of the accused would fall under Section 390 which says that when the extortion is robbery. It is proved and established that the accused pretended to be police official of Local Crime Branch. The armed with police lathi and taking it from the Indica car, they beaten up the PW:1 and the medical evidence also supports to the effect that the PW:1 was having received simple injuries over his leg. The accused did not stop there, but under the fear of hurt, and filing a false FIR, asked the complainant to give them whatever in his pocket, whereby they robbed Rs.300/-, a driving licence and the mobile phone. The accused were not police officials and that facts being proved by real police officials of Kheda, who had stopped the car while checking drive of the vehicle. In the Indica car, it is further proved and established that to settle the matter, they attempted to extort Rs.50,000/- from the PW:1 and under the fear of hurt and defamation, the PW:1 agreed to pay Rs.50,000/- which he had to manage from Ahmedabad and that is why, the accused along with PW:1 were travelling in the Indica car, but fortunately and unfortunately, they caught by the real LCB police and on this aspect,



we do not find any contradictions and improvements in the deposition of PW:1. In such circumstances, at the time of committing the extortion, PW:1 was put in fear and restraining wrongfully compelled him to pay Rs.300/- as well as Rs.50,000/-.

32. We have carefully examined Section 390 of the Indian Penal Code which says that in all robbery, there is either theft or extortion. Extortion is robbery, if the offender at the time of committing extortion, put in fear of instant hurt and wrongfully restrained the victim and therefore, the act of robbing Rs.300/- and an attempt to commit extortion of Rs.50,000/- would certainly fall under the definition of robbery and in our opinion, the appellants accused were found in the possession of Rs.300/-, a driving licence and mobile phone of PW:1 soon after the incident of robbery and therefore, though the charge against the accused under Section 395 is not proved, but charge of robbery was already there and considering the number of accused, the charge under Section 392 which provides a punishment of robbery has been proved and established by the prosecution beyond all reasonable doubt.

33. The defence has raised the issue of identification of parade and contended that the PW:1 was unknown to the accused and in absence of T.I. Parade, on the basis of dock identification, the identity of the accused cannot be believed. It is settled position of law that a TIP under Section 9 is not substantive evidence in criminal prosecution, but only corroborative evidence. The purpose of holding TIP, during the stage of investigation, is firstly to ensure that the investigating agency



is proceedings in the right direction where the accused is unknown and secondly, to serve as a corroborative piece of evidence, when the witness identifies the accused during the trial. In other words, the evidence of identification merely corroborates and strengthens the oral testimony in Court which alone is the primary and substantive evidence as to identify. In the instant case, the incident occurred in broad day light. The accused appellants and PW:1 remained together for about 2 to 3 hours, as after the incident, the accused wants a cash amount of Rs.50,000/- and at the end, PW:1 agreed to pay for which, they proceeded towards the Ahmedabad from place of occurrence. Thus, there was sufficient time to recognize the face of the accused by PW:1 as he was also beaten up by the accused appellants. Therefore, even in absence of evidence of T.I. Parade, the dock identification of the accused by PW:1 does inspire confidence proving the complicity the accused in the crime and the same corroborated by the evidence of LCB police official, who had caught handed the appellants accused. In such circumstances, the issue of identification of the accused has no merits and is without substance.

34. The defence has raised the plea of false implication. We do not find any substance on this issue, because victim being a sufferer why he should spare the real assailants and falsely mention the name of another person, and therefore, the plea of false implication does not have any merits and cannot be accepted.

35. So far as presence of PW:1 at the place as well as his reliability of the testimony is concerned, we have assigned sufficient reasons in



the preceding para of this judgment on this aspect, and therefore, on this ground also, defence is failed.

36. In view of the reasons and discussions made hereinabove, we fully satisfied that the charge under Section 170 of the Indian Penal Code and Section 392 of the Indian Penal Code against the appellants accused Mahendrasinh Rajput (A2) and Kehul Kantilal Shah (A4) have been proved and established by acceptable, cogent and sufficient evidence and they are the author of the crime.

37. It is the one of the alternative arguments is that in any case, the appellants accused instead of sending jail, by taking lenient view and considering the first offence of the offender, they may be released on probation of good conduct, as provided under Section 360 of the Indian Penal Code or under the Probation of Offender Act, 1958.

38. Against this, on the part of sentence, learned Additional Public Prosecutor has opposed strongly and contended that the offence proved is serious one and affecting society at large, and therefore, discretion may not be exercised.

39. We have heard at length learned counsel for the respective parties on the sentence part. The charge against the appellants accused is proved under Section 170 of the Indian Penal Code which punishes the person with imprisonment of either discretion for a term which may extend to two years or with fine or with both. So far as charge of robbery is concerned, the charging Section 392 which punishes a



person with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to 14 years.

40. We may refer to Section 4 of the Probation of Offender Act which provides the power of Court to release offenders on probation of good conduct. The section says that when the accused is found guilty of having committed an offence not punishment with death or imprisonment for life and the Court by which the accused is found guilty is the opinion that, having regard to the circumstances of the case, including the nature of offence, and the character of the offender, it expedient to release him on probation of good conduct, then notwithstanding anything contained in any other law for the time being in force, the Court may instead of sentencing him, at once to any punishment direct that he be released on his entering into a bond, with or without surety, to appear and receive sentence when called upon during such period and before making any order, the Court shall take into account consideration the report of the probation officer concerned.

41. The another provision of the probation, we can find from Section 360 Cr.P.C. which enables the Court, under certain circumstances, to release the accused, who has been convicted, on probation of good conduct. Both the provisions i.e. under Section 4 of the Probation of Offender Act, 1958 and Section 360 of Cr.P.C. are intended to enable the Court to deal leniently with the first offences and to carry out the

object of reformation and the Court is obliged to look into the both the provisions while dealing with the conviction. The Supreme Court, time and again, has clarified that Section 360 shall not apply to trial of cases in the areas where the Probation of Offender Act, 1958 has been applicable.

42. In light of the statutory provisions, and considering the nature of offence, its impact on the society and the circumstances in which offence was having committed we do not agree to release the accused on probation on good conduct. The accused posed themselves as police official of local branch and robbed Rs.300/- and executed the offence of robbery, as discussed hereinabove and now-a-days, such kind of offences are increasing because the people at large earns easy money by adopting such type of short-cuts, and therefore, considering the seriousness of the offence and to set the example of the society, justice would be met if the sentence of five years imposed by the Trial Court for the offence under Section 395 would reduce to the sentence of two years for the offence under Section 392 of the Indian Penal Code, and accordingly, the accused appellants have been sentenced to undergo two years for the offence punishable under Section 392 of the Indian Penal Code. The sentence imposed for the offence Section 170 which is of six months, does not require any modification or interference. The fine amount as imposed remains unaltered. It is clarified that whatever sentence undergone is given set off and sentences are ordered to be run concurrently.

43. For the reasons aforementioned, with the aforesaid directions



and observations, the appeals filed by appellants accused Mahendra Rajput (A2) and Kehul Kantial Shah (A4) i.e. **Criminal Appeal No.1071 of 2011** and **Criminal Appeal No.1066 of 2011**, are **partly allowed**. They are on bail. Their bail bonds stand cancelled. They are directed to surrender within **six weeks** before the jail authority to serve the remaining sentence.

44. **Criminal Appeal No.1092 of 2011** filed by the A5 Lata @ Muskan is **allowed**. She is on bail. The bail bonds stand cancelled and surety is discharged.

45. **Criminal Appeal No.1316 of 2011** filed by the State for enhancement stands **dismissed**.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Rakesh/