

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***INTERIM APPLICATION NO.3362 OF 2023
IN
CRIMINAL APPEAL NO.1059 OF 2023
WITH
CRIMINAL APPEAL NO.1059 OF 2023***

Nikhil Maruti Sawant Applicant

Versus

The State of Maharashtra Respondent

***WITH
INTERIM APPLICATION NO.3080 OF 2023
IN
CRIMINAL APPEAL NO.1002 OF 2023
WITH
CRIMINAL APPEAL NO.1002 OF 2023***

Rajendrasingh Nawalkishorsingh Rajawat Applicant

Versus

The State of Maharashtra Respondent

***WITH
CRIMINAL APPEAL NO.786 OF 2023***

Prashant Prabhakar Shelar Appellant

Versus

The State of Maharashtra Respondent

.....

Mr.Pandit Kasar, Advocate for the Applicant in IA 3362 of 2023.

Mr.Vipin Bidkar, Advocate for the Applicant in IA 3080 of 2023.

Mrs.M.M. Deshmukh, APP for Respondent-State, in IA 3080 of 2023.

Mr.S.V. Gavand, APP for Respondent - State in IA 3362 of 2023.

.....

***CORAM : BHARATI DANGRE &
MANJUSA DESHPANDE, JJ.***

DATED : 13th NOVEMBER, 2024.

P.C. :

1. Two Applications before us are filed by the two Appellants who are convicted by the judgment and order passed by the Sessions Judge, Ratnagiri in Sessions Case No.15 of 2014, being tried as accused no.1 Rajendrasingh Nawalkishorsingh Rajawat and accused no.4 Nikhil Maruti Sawant, respectively.

The two alongwith four others faced the charge under Section 402, 449, 452 read with 34, 395, 396 and 397 of the Indian Penal Code ('IPC', for short). In addition, the accused nos.1 and 6 were charged with offence punishable under Section 25(1)(1-B) (a) of the Arms Act, 1959.

The Applications are filed for suspension of sentence and for their release on bail, while their Appeals are pending as they stand convicted for the offence punishable under Sections 395, 396 and 397 read with 34 of the IPC, and are sentenced to suffer imprisonment for life. In addition, they are also convicted for the offence punishable under Section 449 read with 34 of the IPC, and sentenced to suffer rigorous imprisonment for 7 years alongwith the fine. There is also a conviction imposed

under Section 452 read with 34 of the IPC, for which they are sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/-.

As far as the accused no.1 Rajendrasingh Nawalkishorsingh Rajawat, is concerned he is also convicted under the provisions of Arms Act, and sentenced to suffer simple imprisonment for three years and to pay fine of Rs.5000/-.

Another accused who stand convicted is accused no.6 Prashant Prabhakar Shelar, who is convicted under Sections 449 and 452 read with 34 of IPC. The other accused who were tried alongwith the present Appellants stand acquitted of the charge.

2. Being aggrieved by the acquittal of the three accused person, the State has also preferred an Appeal which is numbered as ALS (ST) 22060 of 2023, which is also listed on Board.

3. The prosecution has alleged that six youths aged about 25 years, conspired to commit dacoity at Central Bank of India, Branch at village Jakadevi, Taluka and District-Ranagiri ('the Bank' for short), and in pursuance of their intention, 2 to 3 days of the actual incident of robbery, they arrived in Ratnagiri district by a car and forged the number plate of the car. They stayed at a lodge and visited the branch on 27.11.2013 when they did recce and accused no.5 also accompanied them.

The act desired was committed on 28.11.2013 when the branch office start functioning 09:15 a.m. and the Bank officers

and the staff members were busy in discharging their duties. At around 01:30 p.m., 5 of the accused i.e. accused nos. 1 to 4 and 6 entered in the Bank, and it is the case of the prosecution that two of them were in possession of country made pistols, and they fired through the pistols at the Bank employee Shri Suresh Gurav, who sustained a bullet injury in his abdomen. The remaining persons collected cash from the cashier's counter and insisted for handing over the keys. One of them fired at one Mr.Chavan, who sustained bleeding injury and succumbed to death. The accused no.1 is alleged to have pointed out the pistol at the informant and brought her out of the cabin and after search of the keys, safe vault was opened. All the while the other accused persons continued intimidating to customers and the informant was forced to open the vault.

Thereafter, on collecting the cash in a bag, all the accused persons fled by pulling down the shutter of the Bank from outside. In this incident they robbed cash amount of Rs.6,88,134/-.

4. This case of the prosecution is proved through the eye witnesses who were present in the Bank and this include the informant Smt.Alka Kavishwar (P.W.3), Smt.Pratibha Shinde (P.W.9), working as cashier, Mr.Amit Kokare (P.W.13), a customer who was present in the bank and Mr.Mahadev Gotad (P.W.34), on whom the fire arm was open.

Eye witnesses had given the detailed narration of the incident and P.W.3, the informant, the branch manager, has categorically deposed that when the accused persons entered the Bank with the fire arm and she got up from her seat, and

saw a person approaching to her cabin alongwith a pistol. By pointing the pistol at her head, she was asked to proceed towards the vault and directed to open the same with the keys.

According to her version, one of them made all the staff to stand in one line at a corner by pointing out the gun, whereas the other asked Chavan to handover the keys, and when he refused, then they asked her to give the keys. When she accompanied one of the accused alongwith the keys, they pulled out the cash and kept it in the bag. When she came outside, she noticed Santosh Chavan who had sustained blood injury and he had fallen down.

In his examination in chief she has specifically referred to the test identification parade that had been conducted and how she identified the accused person. She has categorically deposed that she identified a person sitting in the third row from right side and his name was disclosed as Prathamesh Santosh Sawant, who was identified by her to be the person who had come to the bank day prior to the incident. She also identified Rajendra Singh Rajavat as the accused who was had brandished the pistol at her head, and made her move to the chamber so that the vault could be opened.

She also identified Nikhil Maruti Sawant as a person who was present at the time of incident. Similarly, the other eye witnesses were also subjected to test identification and they have identified both the accused persons.

5. Based on the said narration of the eye witnesses and the other supporting evidence corroborating the FIR, disclosure statements of the accused and recoveries made pursuant thereto alongwith the ballistic evidence as well as the evidence

of the CCTV footage, the learned Judge appreciated the same and arrived at the conclusion that the accused no.1 Rajendrasingh Rajawat, accused no.4 Nikhil Sawant and accused no.6 Prashant Shelar alongwith two dacoites committed dacoity in Jakadevi Bank by use of fire arm and in the course of which they injured a bank employee, whereas one was found to be dead.

In the conclusion the Judge had conferred that there is no clear evidence as to which of the five persons had taken a shot at deceased Chavan as it is not captured in the CCTV Footage, but the fact remains that in the incident which was captured in the CCTV Footage, Chavan seen to have sustained injuries and succumbed to the same thereby establishing that one of the person present had shot at Chavan.

The learned Judge himself had an opportunity to inspect the CCTV Footage and clearly recorded that it reveal the presence of five persons committing dacoity by using the fire arm and robbing the cash and also causing injury to one of the employee, and, intimating the employees and the visitors in the Bank.

The learned Judge has also recorded a conclusion that the visuals in the CCTV Footage alongwith version of the eye witnesses establish the identity of accused nos.1, 4 and 6 amongst the five persons who entered in the Bank. In the wake of the evidence conclusively establishing the role that the three accused persons including the two applicants before us, it was concluded that they indulged into an act of dacoity, and therefore, a finding of conviction under Section 395 read with 452 of IPC has been rendered.

6. On the previous date of hearing, the learned counsel for the Applicant had placed reliance upon the decision of the Apex Court in the case of ***Manmeet Singh Alias Goldie vs State of Punjab***¹, to canvas the preposition that when the prosecution has failed to prove participation of five or more persons in the commission of offence or establish their identity and when four co-accused were acquitted for lack of evidence about their identification and participation in commission of the alleged offence, the Appellant was held entitled to an acquittal.

On careful reading of the pronouncement from the Hon'ble Apex Court in ***Manmeet Singh Alias Goldie vs State of Punjab (Supra)***, which has laid down a proposition of law, that in absence of a finding about the involvement of five or more persons, an accused cannot be convicted for such an offence. However, a clarification is offered in regard to a case where there might be five or more persons, and the factor of their presence is either not disputed or not clearly established, as a result thereof, the Court was not be able to record a finding as to the identity, resulting in their acquittal. The pertinent observations in paragraph 32 read with paragraph 33 make it amply clear that once it is established that five or more persons have participated in the offence of decoity under Section 391, merely because one or more of them are acquitted, on account of lack of evidence, definitely it would not result in acquittal of the others.

Mrs.Deshmukh, representing the State has clearly pointed out the distinguishing factor in case of ***Manmeet Singh Alias Goldie vs State of Punjab (Supra)***, being that the four accused

1 2015 (7) SCC 787

persons being acquitted, their acquittal was never challenged by the State, and the second aspect being that Manmeet Singh, the appellant never faced charge under Section 302 simplicitor, and therefore, he could not have been convicted under Section 302 of IPC separately.

In the absence of four other persons being found to have been acquitted with no challenge raised there to.

7. The observations in the case of ***Manmeet Singh Alias Goldie vs State of Punjab (Supra)***, is peculiar to the facts that were placed before the Court and the preposition laid down is to the effect that, if the finding about involvement of five or more persons is not recorded, and in a case where the evidence of the eye witness did not unimpeachably prove that the appellant was assailant, who fired the pistol at the deceased.

8. In unequivocal terms, the learned Judge in the impugned judgment has referred to the presence of five persons on the spot, which is based on the evidence of eye witnesses as well as the C.C.T.V. Footage, which has been conclusively established, and even the learned Judge himself had watched the CCTV Footage. Once the prosecution has established the presence of five or more persons, merely because three persons have been acquitted, is not a ground for the appellants to seek their acquittal.

9. As the Apex Court, in the case of Omprakash Sahni Vs. Jayprakash Choudhari and Anr. (Criminal Appeal Nos.1331 and 1332 of 2023), has reiterated the parameters of exercise of power under Section 389 of the Code of Criminal Procedure,

which permit the suspension of sentence and release the appellant on bail, while Appeal is pending, and in particular, it is observed that while exercising the said power, the Court should see as to whether the case presented by the prosecution and accepted by the trial Court, can be said to be a case in which, ultimately the convict stands a fair chance of acquittal, and if the answer to the above question is affirmative, as a necessary corollary, it will have to be said that, if ultimately the convict appears to be entitled to have an acquittal at the hands of the Court, he should not be kept behind the bars for pretty long time, till conclusion of the Appeal, which usually takes very long time. However, while undertaking the exercise to ascertain whether the convict has fair chance of acquittal, what is to be looked into is something relevant to put into other words, something which is very apparent or gross on the face of record, on the basis of which the Court has arrived at *prima facie* satisfaction that the conviction may not be sustainable.

A word of caution is also added by the Lordships of the Apex Court by stating that the Appellate Court should not re-appreciate the evidence at the stage Section 389 of the Code of Criminal Procedure and try to pick up few lacuna or loopholes here or there in the case of the prosecution, as such approach would not be a correct approach.

10. Applying the law laid down to the above effect to the facts of the present case, since we are satisfied to the findings rendered by the learned Sessions Judge, Ratnagiri in Sessions Case No.15 of 2014 in the impugned judgment and since already the Appeal is admitted, we are not inclined to allow the

application, requesting for release of the appellant/accused no.1 Rajendrasingh Nawalkishorsingh Rajawat and appellant /accused no.4 Nikhil Maruti Sawant, in Interim Application No.3362 of 2023 and Interim Application No.3080 of 2023, while their Appeal is pending for hearing.

Hence, Application Nos.3362 of 2023 and 3080 of 2023 , are dismissed.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)