

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

CRIMINAL APPEAL NO.1276 OF 2023

Ramesh @ Bhaijan Mohan Patil
Versus
The State of Maharashtra

.....Appellant

.....Respondent

Mr. Aniket Vagal, Advocate a/w. Savvy Kolhekar, Juhi Kadu for the Appellant.
Ms. Kranti Hiwrale, APP for the Respondent-State.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 16th & 17th JANUARY, 2026

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1. The Appellant has challenged the judgment and order dated 30.4.2022 passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai in Sessions Case No.12/2011. There were in all nine accused in this case. During pendency of the trial, the original accused No.4 and the original accused No.9 passed away. Therefore, the trial was abated as far as they were concerned. The Appellant was the original accused No.2. The accused Nos.5 to 8 were acquitted from all the charges. The other three accused, including the present Appellant, were convicted. Those accused are as follows :

- (i) The accused No.1 – Harun Abdul Rashid Shaikh,
- (ii) The accused No.2 – the present Appellant.
- (iii) The accused No.3 – Santosh Harishchandra Bhoir.

2. The Appellant and the original accused Nos.1 & 3 were convicted for commission of offences punishable under Sections 396, 397 and 120-B of IPC. They were sentenced to suffer life imprisonment and to pay a fine of Rs.5,000/- each for the offences punishable under Sections 396 and 120-B of IPC and in default of payment of fine to suffer imprisonment for six months. No separate sentence was imposed for commission of the offence punishable under Section 397 of IPC. The learned Judge added that the life imprisonment would not be less than sixteen years. All the substantive sentences were directed to run concurrently. The accused were given set off under Section 428 of Cr.PC..

3. Heard Mr. Aniket Vagal, learned counsel for the Appellant and Ms. Kranti Hiwrale, learned APP for the Respondent-State.

4. The prosecution case, in brief is that Devilal Sevak and Raju Joshi were the two watchmen employed in a Jain temple at Borivali. In the night between 21.8.2010 to 22.8.2010 seven unknown persons entered the temple carrying iron rods and heavy

sticks. The watchmen were assaulted. The idols, chhatras and other articles were stolen. The injured watchmen were taken to the hospital. One of them i.e. Devilal Sevak succumbed to his injuries. The other watchman Raju Joshi was admitted to the hospital. His statement was recorded. He was informed by the Trustees that some idols, chhatras, bhavmandal, chavar were stolen from the temple worth more than Rs.4 Lakhs. Raju Joshi's statement was treated as FIR. C.R. No.I-212/2010 was lodged at MHB Colony Police Station. The investigation was carried out. The Appellant and the other accused were arrested on 4.9.2010. At different times, different articles were recovered at the instance of those accused. Some weapons were also recovered at their instance. The test identification parade was conducted on 23.10.2010. Some of the witnesses identified some of the accused separately. The recovered articles were shown to the trustees of the temple. They were identified. The idols were again placed in the temple. At the conclusion of the investigation, the charge-sheet was filed and the case was committed to the Court of Session.

5. During the trial, the prosecution examined 28 witnesses. The evidence against the Appellant was regarding

recovery of three idols and other articles. The prosecution witnesses consisted of different panchas, a Trustee of the temple, the medical officers and the investigating officers. The first informant Raju Joshi was not examined. The trial proceedings continued over a long period. The first informant was not available. Some of the panchas were also not available.

6. The defence of the Appellant and all other accused was of total denial. No specific defence was raised by any of the accused.

7. The learned Judge discarded the evidence of the test identification parade because the first informant was not examined in the trial. Therefore, according to the learned Judge there was no substantive evidence as far as identification of the accused was concerned. However, the learned Judge relied on the evidence of recovery of articles and identification of those articles by the trustee of the temple. Based on this evidence, the learned Judge convicted and sentenced the Appellant as mentioned earlier.

8. Though the prosecution has examined 28 witnesses; as far as the Appellant is concerned, only some of them are relevant and hence important. Therefore, we shall discuss their evidence. As

far as the other witnesses are concerned, since they are concerning the other accused, they are not relevant to decide the Appeal preferred by the present Appellant.

9. Though the prosecution has not examined the first informant Raju Joshi, the surviving watchman; his FIR is brought on record through the evidence of PW-16 PSI Arjun Girve. He deposed that while he was on duty, at about 3.00 a.m. after midnight he received information about dacoity at the Jain Temple situated at Aadinath Nagar, near Bhagwati Hospital, Borivali (West). He came to know that one of the watchmen had died on the spot because of the assault and the other watchman was admitted in Ward No.6 of Bhagwati Hospital. He then took entry in the station diary and went to Bhagwati Hospital. He made inquiry with the injured Raju and recorded his statement. He returned back to the police station and registered C.R. No.212/2010 at MHB Colony Police Station under Sections 396 and 397 of IPC against six unknown persons. He stated that copy of the FIR and the statement of Raju had his signature. The contents were correct. It was marked at Exhibit-117. Exhibit-117 shows that the FIR was lodged at about 5.30 a.m. on 22.8.2010. The information was

received at the police station at 3.20 a.m. on 22.8.2010. The statement given by Raju Joshi, which is treated as FIR, describes the incident. It bears the signature of PW-16 PSI Arjun Girve as well as signature of the said Raju Joshi. The FIR describes the incident in detail. It also gives the description of the offenders. More importantly it mentions that when the Chairman of the Trust Shri Anil Shah had met the first informant, at that time, he had informed that those offenders had stolen the silver and panchadhatu idols, two silver tej chakras with gold coating, a few silver chhatras and chaure worth more than Rs.4 Lakhs. This description of the articles is important. Though the first informant is not examined, the FIR is on record, which shows the description of the stolen property. This is important in the context of the case because this description was mentioned in the FIR immediately on 22.8.2010 at the stage of registration of the offence.

PW-16 thereafter conducted the spot panchnama and seizure of clothes panchnama in respect of clothes of the first informant. He recorded the statement of the temple trustee Anil Shah (PW-1) and other witnesses. This witness was not cross-examined by the defence.

10. PW-1 Anil Shah is an important witness in this case. He was the Chairman of the Chandraprabhu Nandeshwar Dwip, Digamber Jain Mandir, Adinath Nagar, Borivali (West), Mumbai where the dacoity had taken place. Hasmukh Patel and Natubhai Patel were the priests. Manik Jain and Mahendra Shah were the members of the trust. He further deposed that there were four watchmen working in the temple. Devilal Sevak and Raju Joshi were on the night duty. The temple door was locked at 9.00 p.m. in the night. He deposed that in the night at about 3.00 a.m., Natubhai informed him telephonically that seven persons had entered the temple. They had assaulted both the watchmen with steel rods and bamboo sticks and had stolen silver and panchdhatu articles as well as some other articles from the temple. PW-1 rushed to the temple. He informed about the incident to Mahendra Shah. Two injured watchmen were shifted to the hospital by the police. He saw that the locks of two doors were broken. He then ascertained which articles were stolen from the temple. He had given description of all the stolen articles to the police. According to him, five panchadhatu idols, sixteen silver chhatras (umbrellas), two Tejchakkra (Bhavmandal), one silver idol, four silver chavar,

worth more than Rs.4 Lakhs were stolen from the temple. He then went to Bhagwati hospital. Devilal Sevak had succumbed to his injuries. The first informant Raju Joshi was in a serious condition. Raju described the incident to him. Raju told him that the persons who had entered the temple had tied them and had beaten them with steel rods and bamboo sticks causing injuries on head, ear, face and other parts. PW-1's statement was recorded by the police.

On 7.9.2010, he was called to the police station. The stolen articles recovered during the investigation by the police were shown to him. He identified all the articles. At that time, the silver idols were not recovered. The seized articles were subsequently returned to the temple authority.

He further added that the idol was subsequently reinstalled in the temple. After receiving the articles, Manik Jain executed the bond. Raju Joshi had lodged the FIR.

In the cross-examination he stated that he was working as a Trustee and the President of the said temple since 2005. The property, where the temple was constructed, was owned by him. There are some rooms in the temple. The priest was staying in one room and the other rooms were available for the *saints* visiting the

temple. The watchmen were staying in their separate accommodation which was around 100 meter away from the temple. One of the priests informed him about the incident. He reached there at about 3.30 a.m.. On the same day, his statement was recorded. He did not have personal knowledge who had donated the idols. He had verified the articles by taking them in hand. They were sealed. In further examination-in-chief permitted under a separate order, he further deposed that he had given details of the stolen idols to the police. After finding idols the police had called him to the police station and had shown those idols to him. He was shown 27 articles comprising of five idols, eleven small chhatras, two mid size chhatras and three bigger chhatras. Those were total sixteen chhatras and five idols. The police had also shown him two bhavmandals and four chamars. He had taken custody of those articles by the order of the Court. They had taken custody of those articles from police and Mahendra Shah had executed a bond. Those idols and other items were in the temple except the silver idol of lord Parshwanath Bhagwan. He was shown photographs of those idols and some articles. He was shown twelve photographs which were exhibited as Exhibit-191/1 to 12.

He identified all those idols and articles from those photographs. He stated that the first informant had got frightened and had left to Nepal i.e. to his native place and after that he could not turn up. He could not get his address. He submitted that it was not possible to produce the items before the Court as they were fixed in the temple. But the police had shown the panchnama of those items. In further cross-examination, he stated that any idol which is fixed in the temple is called as 'Achal Pratima' and there are 'Chal Pratima' which could be moved for pooja purposes. He denied the suggestion that all those photographs were the previous photographs available with the trust.

11. As the investigation continued, the police traced the accused. PW-13 PI Adhav was in the team which had arrested the accused. He deposed that at that time he was attached to Crime Branch, Kandivali Unit. They had also taken part in the investigation. The Senior Inspector of the Crime Branch, Unit No.11 received a secrete information on 3.9.2010 regarding the whereabouts of the accused. It was learnt that they were near the Goregaon (East) bus depot. At around 10.45 a.m. on 3.9.2010 they went to that spot and arranged to lay a trap. At around 11.15 a.m.

they apprehended all the accused including the Appellant. During the personal search of the accused No.1 Haroon Abdul Shaikh one idol was recovered from a carry-bag. It was the idol of Lord Mahavir in *Padmasan*.

12. PW-15 PI Sanjeev Bhole was attached to Crime Branch. He deposed that the Crime Branch was simultaneously investigating C.R. No.212/2010 registered at MHB Colony Police Station. He deposed about the arrest of the accused on 3.9.2010 as was deposed by PW-13 PI Adhav. He further deposed that, while in custody, the Appellant showed his willingness to make a voluntary disclosure and point out the place where he had kept the stolen articles.

PW-15 and others then called two panchas. The Appellant's statement was recorded in their presence. It is produced on record at Exhibit-113. The Appellant gave this statement on 3.9.2010. He led the police and the panchas to a chawl at Dahisar (West). He went to room No.2. His wife was present in the room. The Appellant entered the room and produced one gunny bag. There was one idol of Lord having flower in the middle. There was a picture of moon inscribed on it. There was one square frame and

in the middle there was idol of Lord Mahavir with two golden plates. Apart from this, there were 22 gold umbrellas which were used for placing them over the idols. Accordingly, a panchnama was prepared. That panchnama is produced on record at Exhibit-114. PW-15 then caused photographs of those items idols and umbrellas to be taken. He handed over the seized muddemal with the police station.

In the cross-examination he stated that he had not recorded the statement of the photographer who had taken the photographs of those articles. Apart from that there was hardly any cross-examination of this witness.

Exhibit-114 describes the articles recovered under this panchnama. There were two idols including a frame, there were two circular chakras having image of the sun. There were eleven chhatras (umbrellas). There were two more differently designed chhatras. There were some more chhatras. In all there were twenty-two such chhatras or umbrellas.

13. In this context, PW-25 Rajesh Vyas is another important witness. He was a pancha when the police handed over the idols recovered during the investigation to the temple. He deposed that

on 18.12.2014 the police officers of MHB Colony police station called him to act as a pancha. They were handing over the idols to the Jain Temple. PW-25 and one Harshad Patel acted as panchas. The idols were handed over to the Jain temple in their presence. The photographs were taken. The panchnama was recorded. He signed the panchnama. He identified those photographs taken at the time of handing over the idols. The panchnama is produced on record at Exhibit-184. He described the idols. Those idols were made of panchdhatu (amalgamation of five metals). One idol was of pure silver. There were chhatras i.e. umbrellas and there were four silver chavar. He identified those twelve photographs.

14. In the cross-examination he deposed that those six idols of panchdhatu and one silver idol were already kept in the temple. The other articles were also kept there. Sthapana of the idols was over. He referred to the photographs of the idols at Exhibit-191/1 to 191/12.

15. PW-28 PSI Shriram Bhosale was the police officer under whose supervision the idols were handed over to the temple on 18.12.2014. He deposed that the idols were handed over to the trustees of the temple under the bond executed under the

directions of the Court. The idols were kept in the temple by performing the religious ceremony known as *Pratishthapana*. He described all the idols and other articles referred to hereinabove. As the identification of the idols in the Court was important and as it was not possible to remove the idols after their *pratishthapana* he caused photographs of those articles to be taken and the panchnama was drawn. It is produced on record at Exhibit-184. There were twelve such photographs. He identified those photographs as Exhibit-191/1to12.

In the cross-examination, he denied the suggestion that the idols were damaged in the incident and they were not reinstalled in the temple. He accepted that he had not produced the negatives of the SD card of the photographs. This witness referred to the same Exhibit-184 panchnama which was referred to by PW-25 Rajesh Vyas.

16. PW-26 PI Pradeep More was examined to describe the articles in photographs at Exhibit-191. However, the evidence of this witness is with reference to Exhibit Nos.191/5, 191/8 and 191/3 which pertain to the recovery at the instance of the accused No.3 Santosh.

17. PW-24 Dharmesh Bhuta is another important witness for the Appellant. He was a pancha in whose presence the police recovered one silver idol at the instance of the Appellant on 9.9.2010. PW-24 deposed that on 9.9.2010 he was called by the police officers of MHB Colony Police Station. The Appellant gave his memorandum statement expressing his willingness to show the place where he had hidden that silver idol. The statement was recorded. It is produced on record at Exhibit-135. After that the Appellant led the police and the panchas to his house. His wife was present in that room. He shifted one table and removed the silver idol which was buried under that table. It was idol of Lord *Mahavir*. The panchnama was drawn. It was taken on record at Exhibit-136. PW-24 identified the Appellant before the Court. He identified the photograph at Exhibit-191/12 and the photograph of the said idol which was recovered in his presence. His cross-examination consisted mainly of the suggestions which were denied by him.

18. PW-27 Sanjeev Bhole was another police officer who supervised the seizure of the articles recovered under Exhibit-114 from the photographs at Exhibit-191.

19. PW-22 PI Arvind Shinde was the main investigating officer. He deposed that on 3.9.2010 the Crime Branch Unit No.11, Kandivali handed over the accused to MHB Colony police station. He then arrested those accused under the arrest panchnama. He deposed about recovery of silver idol effected at the instance of the Appellant. He also deposed about recovery made at the instance of other accused. On 6.9.2010 he seized clothes of the Appellant. He identified the silver idol by photograph at Exhibit-191/12.

20. These are the witnesses relevant for the evidence against the Appellant.

21. The other witnesses are either general in nature or are in respect of other accused. Briefly stated they are as follows :

- i. PW-2 Hasmukh Shah was a pancha in whose presence the sickle was recovered at the instance of the original accused No.5.
- ii. PW-3 Satyavan Khare was a pancha for spot panchnama.
- iii. PW-4 Chouhan was the photographer for the spot and the dead body.
- iv. PW-5 PSI Jalinder Chavan was the first police officer who had reached the spot.
- v. PW-6 Police Constable Devkate had carried the articles to the laboratory.

- vi. PW-7 Dhanraj Jain was a pancha for recovery of two idols at the instance of the accused No.3 but he had turned hostile.
- vii. PW-8 Narendra Sarpotdar was the another pancha for recovery of idols from the accused No.3.
- viii. PW-9 Shirrodkar had gone to the temple after the incident. He had seen the watchman lying in a pool of blood.
- ix. PW-10 Samar Yadav was a pancha for the arrest panchnama of the accused.
- x. PW-11 Hemant Kulye was a pancha for recovery from the accused No.1.
- xi. PW-12 Kamlesh Doshi was a pancha for recovery from the accused No.7.
- xii. PW-14 API Pradeep More had supervised recovery at the instance of the accused No.3.
- xiii. PW-21 PSI Ramdas Revgade had arrested the accused Nos.1, 5 and 6 on 4.9.2010.

22. PW-18 Dr. Kiran Kalyankar had conducted the postmortem examination. He deposed that the dead body of the deceased Devilal Sevak had three injuries as follows :

- i. CLW of the size 5 cm x 2 cm causing depressed fracture of left side temporo-occipital bone of skull.
- ii. CLW of the size 2 cm x 2 cm behind left ear pinna causing fracture of mastoid bone.
- iii. A contused abrasion of the size 3 cm x 1.5 cm behind left ear lobule.

The cause of death was head injury.

23. PW-20 Dr. Shyam Ansari had examined the first informant Raju Joshi. He had suffered four CLWs on the head and one contusion on the right knee. The nature of the injuries were 'simple'.

24. PW-23 Mahendrakumar Bhuta was a pancha for recovery from the accused No.3.

25. PW-19 ASI Ramesh Budhar was a pancha for seizure of the idol which were found near the Bhagwati Hospital.

26. PW-17 Balkrishna Rokade was working as a Special Metropolitan Magistrate. The test identification parade was conducted by him on 23.2.2010. Eight accused were put in the parade. He deposed that the first informant Raju Joshi identified the Appellant and one Vicky Mani Thapa. The other witnesses identified other accused. However, as rightly held by the learned Judge this evidence at best could be corroborative in nature. In this context, the first informant, who allegedly had identified the Appellant, was not examined and, therefore, there is no substantive evidence of identification of the Appellant. Therefore, we are leaving this evidence out of consideration.

. This, in short, is the evidence led by the prosecution

against the Appellant and the other accused.

27. The learned counsel for the Appellant made the following submissions:

The time of recording of the FIR is in doubt. There is no recovery of a weapon at the instance of the Appellant. Even if it is held that recovery was proved at the instance of the Appellant it would still not prove the presence of the Appellant at the scene of the offence and at the time of offence. He could at the highest be a receiver of the stolen property. None of the ingredients of murder is proved against the Appellant. In the absence of substantive evidence of identification parade the Appellant's presence at the spot cannot be established. No possible explanation is given for not examining the first informant. PW-1 is merely a formal witness. He had not seen anything and his identification of the idols and other articles is not free from doubt. The idols were already handed over and installed in the temple before their photographs were taken. Therefore, there is no connection between the recovery of those idols and the photographs. The necessary important description of the idols viz. weight etc. is not mentioned. He submitted that the ownership of the idols is not proved. He submitted that considering all these

aspects, the prosecution has failed to prove the offence charged against the Appellant.

28. The learned APP submitted that the articles were recovered from the Appellant soon after the incident. The Appellant has not offered any explanation whatsoever regarding the concealment and recovery of those articles at his instance. The trial went on for many years and, therefore, some of the witnesses were not available but recovery evidence is proved through the evidence of the investigating officers and one of the panchnamas is proved through the pancha witnesses as far as the Appellant is concerned.

PW-24 Dharmesh Bhuta was one of the panchas when the silver idol was recovered at the instance of the Appellant on 9.9.2010. PW-1 has identified the articles. All these articles were specifically referred to in the FIR lodged by the first informant.

29. We have considered these submissions. In this case the only direct evidence which could have been led by the prosecution was in the form of evidence of the first informant Raju Joshi; but the prosecution has not produced him before the Court. One of the trustees deposed that after the incident, the informant was under fear and had gone back to his native place in Nepal. This is the

possible explanation which could be accepted for his non-examination. However, the FIR was reduced into writing and lodged by PW-16 Arjun Girve, as mentioned earlier. He has proved his signature. His own signature is on the proforma of FIR as well as on the statement given by Raju Joshi. The FIR is produced on record as mentioned earlier. Importantly, apart from mentioning description of the offenders, the FIR also mentions as to what were the articles that were stolen. They were mentioned as silver and panchadhatu idols, two silver Tejchakkras, coated by gold, silver umbrellas and Chavars. They were worth more than Rs.4 Lakhs. It is mentioned in the FIR that this list was told to the first informant by PW-1 Anil Shah. Therefore, the evidence of Anil Shah is important. The statement was given by him immediately on 22.8.2010 within a short time from the dacoity. The stolen articles were specifically mentioned in the FIR statement. During the course of the investigation the articles were recovered and were handed over to the temple. PW-1, in his deposition, has stated that he had given description of all the stolen articles to the police. He described those articles as five panchadhatu idols, sixteen silver chhatras (umbrellas), two tejchakkra, one silver idol, four silver

chavras. He further deposed that on 7.9.2010 he was called in the police station and he identified all those articles except the silver idol. He is a truthful witness because by 7.9.2010 the silver idol was not recovered and it was recovered on 9.9.2010 at the instance of the Appellant.

30. In further examination-in-chief he identified the photographs of twelve articles i.e. Exhibits-191/1 to 12 including the silver idol. Thus, he has identified all the articles recovered during the investigation which included the articles recovered at the instance of the Appellant. The prosecution has thus proved the incident of dacoity, the theft of those particular articles, identification of those articles by PW-1 and the identification of photographs of those particular articles.

31. As far as the Appellant is concerned, the recoveries are effected at his instance on two occasions. The first recovery was on 3.9.2010, when two idols, tejchakkras, chhatras and chavras were recovered at his instance. They were immediately identified by PW-1 on 7.9.2010. On 9.9.2010, again, a recovery was effected at his instance of a silver idol which he had buried below a table. There is no infirmity in this evidence of recovery at his instance.

Thus, the evidence of recovery of articles at the Appellant's instance and their identification by PW-1 is sufficiently proved beyond reasonable doubt by the prosecution.

32. Since the idols are identified by PW-1, it is not necessary to prove from where the idols were procured by the temple.

33. Therefore, the issue which needs to be considered is as to whether the Appellant can be said to be merely a receiver of the stolen property as argued by the learned counsel for the Appellant or was involved in the serious crime punishable under Section 396 of IPC. In this context, a few provisions of the Indian Evidence Act are important as follows :

34. Section 114 of the Indian Evidence Act reads thus:

114. Court may presume existence of certain facts.-- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

. The first illustration under this section is significant, which reads thus”

“(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;”

35. In this case the incident of dacoity had taken place on 22.8.2010. The Appellant was arrested on 3.9.2010 and immediately the articles were recovered from him on that day itself. One more idol was recovered on 9.9.2010. Thus, he was found in possession of stolen goods soon after the theft. Therefore, there is a presumption that either he has committed the theft or has received the goods knowing them to be stolen unless he accounted for his possession. In this case the Appellant has offered no explanation whatsoever regarding possession of those stolen articles which are directly connected with the incident of dacoity at the Jain temple. Therefore, it was necessary to draw a presumption against him under Section 114 of the Evidence Act. Thus, there is a strong presumption that the Appellant himself is the thief.

36. Apart from that, Section 106 of the Indian Evidence Act also operates against him, which reads thus :

"106. Burden of proving fact especially within knowledge.—

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

In this case since the prosecution has proved that the Appellant was in possession of those stolen articles which were

distinctive in nature. The burden was on him to explain as to how these articles came in his possession. Therefore, these are the strong presumptions against the Appellant which he has not rebutted at all. Hence it can safely be concluded that the Appellant was one of the dacoits who had committed that offence.

37. Learned counsel for the Appellant tried to contend that even assuming that the Appellant was present at the spot of incident at the time of incident he could still not be held responsible for death of the deceased as there is nothing to show that he inflicted the fatal blow. In this context, the evidence of PW-18 Dr. Kiran Kalyankar clearly proved that it was a homicidal death. Section 396 of IPC reads thus :

“396. Dacoity with murder.-- If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

. In this case there were more than five persons. The section lays down that if any one of five or more persons commits

murder in so committing dacoity every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Therefore, it is not necessary to prove that the Appellant had inflicted the fatal blow in this case. Section 396 of IPC takes care of this argument. The Appellant cannot escape his liability under Section 396 of IPC.

38. As a result of the above discussion, we do not find any infirmity in the impugned judgment recording conviction. However, it is clarified that the learned Trial Judge had no authority to direct a minimum sentence of sixteen years once he imposed sentence of Life Imprisonment. The actual years in prison pursuant to the sentence of Life Imprisonment shall be governed by the Rules. With this clarification, the Appeal is dismissed.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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