

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.733 OF 2005**

The State of Maharashtra  
Through Public Prosecutor  
High Court Bench at Aurangabad

**...APPELLANT**  
**(Orig. Complainant)**

**VERSUS**

Ravindra alias Pintya Kisan Sonawane  
Age-21 years, Occu:Labour work,  
R/o Kalyan Railway Station,  
Kalyan.

**...RESPONDENT**  
**(Orig. Accused)**

**WITH**

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...  
Mrs. S.D. Shelke, A.P.P. for Appellant-State.  
Mr.Rajendra N. Chavan, Advocate as  
Amicus Curiae.

...

**CORAM: A.I.S. CHEEMA, J.**

**DATE : 15TH JANUARY, 2015**

**JUDGMENT :**

1. The Respondent-accused was prosecuted under Section 399 and 402 of the Indian Penal Code, 1860 ("I.P.C." in brief) in Sessions Case No.23 of 2005 before Ad-hoc Additional Sessions Judge, Ahmednagar. On 22nd September 2005 the trial Court acquitted the Respondent-accused of the offence punishable under Section 399 of I.P.C. He, however was convicted for offence punishable under Section 402 of the I.P.C. and sentenced to suffer rigorous imprisonment for two years and fine of Rs.100, in default, to suffer further rigorous imprisonment for one month. Admissible set off was given to

him.

. Against the above Judgment, State of Maharashtra filed Criminal Appeal No.733 of 2005 to set aside the acquittal under Section 399 of I.P.C. Criminal Appeal No.734 of 2005 was also filed by the State seeking enhancement in the sentence imposed under Section 402 of I.P.C.

2. The case of the prosecution, in brief, is as follows:

(A) On 3rd December 2004, complainant P.S.I. Ramrao Dikale (PW-1) filed F.I.R. (Exhibit 21) at Topkhana Police Station, District-Ahmednagar and it was claimed that on that day the complainant along with other Police staff had gone for investigation of one Crime No.245 of 2004. They were on Bolhegaon road and near Seena river. They noticed on the side of the road near tree there were two motorcycles and near the motorcycles, six

persons were standing. Moment the vehicle of the Police stopped near them, two of the persons started one of the motorcycle and immediately ran away by the Bolhegaon road. From the remaining four persons, two were trying to start the other motorcycle but the Police staff caught them. Remaining two persons were also trying to run but they were also caught with the help of Police staff. These four persons were asked reasons for coming there but they were avoiding to give answers. Police recorded their names. They did not tell the names of the other two persons who had run away. Search of these persons (which included Respondent-accused Ravindra alias Pintya) was taken in presence of Panchas and Panchnama was drawn. From Respondent-accused Ravindra and one Santosh Balu Jadhav two gold rings were found. In the search of Shakil Razzak Ansari, near his pant, one sattur was found. From the fourth person - Raju Murlidhar Kalokhe a knife was found in his pocket. The Motorcycle Pulser bearing No. MH-12

BJ-9671 had a bag hanging. From the bag, one torch and a rope was found. Below the seat of the motorcycle, iron rod was found. When the persons were asked regarding the gold rings, it was told that yesterday night near Zalani Hospital from, a couple on motorcycle, threatening by sattur, those rings had been robbed. The complainant filed F.I.R. in this regard at Crime No.246 of 2004 under Section 399 and 402 of I.P.C.

(B). P.I. Suresh Bhamre (PW-5) who was also part of the Police team which caught the accused persons, investigated the offence. Spot Panchnama was recorded. The accused persons were arrested. According to investigation, accused Raju Kalokhe gave discovery of a Mani Mangalsutra robbed from a lady. Prosecution claims that the accused persons had assembled on the spot with preparation to commit dacoity. In the investigation, Police found that there were other offences pending against the accused persons and they had criminal records. It

was found that the motorcycle seized was owned by one Balu Chandu of Pune and that the same had been stolen.

(C) After investigation, State filed charge-sheet against three accused, - (1) Raju Murlidhar Kalokhe, (2) Ravindra alias Pintya Kisan Sonawane and (3) Shakil Razzak Ansari. Fourth accused - Santosh Balu Jadhav was juvenile and thus in present charge-sheet he was not arrayed. Two other accused without names, were shown as absconding.

(D). Record of the trial Court shows that accused No.1 Raju and No.3 Shakil were absconding when the matter came up for trial before the Sessions Court and thus the trial of the present Respondent-accused Ravindra was separated and conducted.

3. Charge was framed against the Respondent-accused under Section 399 and 402 of I.P.C. He

pleaded not guilty. His defence is of denial. Cross-examination of the accused and his statement under Section 313 of the Code of Criminal Procedure shows the defence claiming that on the day concerned at about midnight the accused was proceeding to go to Kalyan from Tarakpur Bus Stand and he was apprehended at that time.

4. From the Police team which caught the accused persons, prosecution examined the complainant P.S.I. Ramrao Dikale (PW-1), Head Constable Dilip Gaikwad (PW-4) and the investigating officer P.I. Suresh Bhamre (PW-5). PW-2 Sanjay Sapre and PW-3 Dattu Wakale have been examined as Panchas before whom the search of the accused persons was taken.

5. The trial Court considered the evidence and found that there was no cogent evidence that the accused persons were found making preparation to commit dacoity. It was observed that evidence

was not sufficient to bring home guilt of the accused under Section 399 of I.P.C. Still, however, the trial Court went on to observe that it was proved that the accused persons had assembled on the spot and concluded that the purpose of assembly was of committing dacoity. In view of such observations, the trial Court went on to acquit the accused under Section 399 of I.P.C. but convicted the accused under Section 402 of I.P.C. and sentenced for two years.

6. Before this Court, there are only the present two Appeals of the State, one seeking conviction of the accused under Section 399 of I.P.C. and other seeking enhancement of sentence under Section 402 of I.P.C. The Accused has not filed Appeal against his conviction, it is informed.

7. I have heard learned A.P.P. for the State and learned Amicus Curiae for Respondent-accused.

Learned A.P.P. is submitting that the evidence of the Police Officials as well as the Panchas clearly shows that from the possession of the present accused, gold ring was seized and from the other accused who were with this Respondent, articles like torch, rope, iron bar, knife and sattur were seized and thus the trial Court wrongly held that the accused persons had not done preparation for committing dacoity. Learned A.P.P. also submitted that when the trial Court convicted the accused under Section 402 of I.P.C., the sentence imposed was too lenient and the sentence on that count was required to be enhanced.

8. Learned Amicus Curiae for the Respondent-accused - Ravindra submitted that the Judgment of the trial Court is not maintainable as mere presence at the given spot and being found in possession of the articles stated, would not be sufficient to conclude that the accused persons had assembled for the purpose of committing

dacoity.

9. I have gone through the evidence of the Police witnesses as well as Panchas. In a nutshell the evidence is that when the Police Personnel were passing towards village Bolhegaon and came near Seena river, the Police Personnel noticed six persons with two motorcycles. Seeing the Police Personnel, two persons ran away on one of the motorcycle and the remaining persons including the present Respondent-accused were caught. On inquiry by the Police, the accused persons disclosed their names. The evidence shows that from present Respondent-accused one gold ring was found from his finger. In the search of the other accused and the motorcycle torch, rope, iron rod, knife and a sattur were found. The Police witnesses referred above, are supported by two Panchas who have also stated that when they were passing from there, Police called and when search was carried out, the articles mentioned, were

seized. Looking to the cross-examination, it can be said that the prosecution witnesses are not shattered on the count that at the spot concerned at about 7.30 p.m. the Respondent-accused along with others were caught with the articles mentioned.

10. Section 399 and 402 of I.P.C. read as under:

**"399. Making preparation to commit dacoity.**

- Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

**"402. Assembling for purpose of committing dacoity.** - Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also

be liable to fine."

11. Normally, attempt to commit an offence of actual committing of offence is punishable under I.P.C. but the above Sections are exceptions where "preparation to commit dacoity" and even "assembling for the purpose of committing dacoity" are punishable.

12. The evidence which is available on record, is merely to the effect that the Respondent-accused along with others were caught with the instruments as mentioned above at the spot concerned. The time appears to have been about 7.30 p.m., and the spot, near a road which is not very far from the Ahmednagar Highway. Panch PW-3 Dattu deposed in cross-examination that the spot was on Savedi-Bolhegaon tar road and persons of their village and vehicles of M.I.D.C. pass from there. I find that the facts as proved, are not at all sufficient to conclude that the object

of the assembling was for the purpose of committing dacoity. There is no direct or circumstantial evidence brought on record that the intention of the accused persons was to commit dacoity. Merely pointing out criminal record would not be sufficient. The trial Court held that the articles as above were seized from the accused persons, but preparation to commit dacoity was not proved. But on the same evidence, it went on to hold that the assembly was for the purposes of committing dacoity. This is contradictory. The Police witnesses may have assumed that the assembly was for the purpose of dacoity. However, assuming by these witnesses and claiming that the accused persons had assembled for the purposes of committing dacoity, is not enough. There is, thus no material to show that the aim and object of the assembly was to commit "dacoity".

13. For the above reasons I do not find any substance in either of the Appeals filed by the

State.

14. Criminal Appeal No.733 of 2005 as well as  
Criminal Appeal No.734 of 2005 are both dismissed.

**[A.I.S.CHEEMA, J.]**

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