

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.320 OF 2013

Pankaj Bhagwat Giri Age 26 year, Occu.-Service, Residing at Room No.415, 4 th Floor, Om Sai Building, Shiwai Nagar, Applicant in Alibag District Jail, Thane (W)	...	Appellant
V/s. State of Maharashtra (Through L.D.P.P. High Court Mumbai Kharghar Police Station)	...	Respondent

.....

Mr.Vilas N. Mali, Advocate for the Appellant
Mrs.M.R.Tidke, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 20TH OCTOBER 2015

ORAL JUDGMENT :

1. The appellant and seven others were prosecuted on the allegation that they had committed offences punishable under Sections 402 of the Indian Penal Code (For short, "IPC"), 395 of the IPC, 397 of the IPC, 307 of the IPC, 427 of the IPC and 120B of the IPC, as also the offences punishable under Sections 25 and 27 of the Arms Act. After holding a trial, the learned Adhoc-Assistant

Sessions Judge, Raigarh, Alibag found the appellant and two others guilty of various offences and imposed sentences upon them. The other accused were held not guilty by the Assistant Sessions Judge Raigarh, Alibag and were acquitted. The learned Adhoc - Assistant Sessions Judge sentenced the appellant as follows :

OFFENCES	PUNISHMENT
Under section 397 of the IPC	Rigorous Imprisonment for 10 years and fine of Rs.1000/-, in default to suffer R.I. for three months.
Under section 426 of the IPC	Rigorous Imprisonment for 3 months.
Under section 120B of the IPC	Rigorous Imprisonment for 10 years and fine of Rs.1000/-, in default to suffer R.I. for three months.
Under section 25 of the Arms Act	Rigorous Imprisonment for 3 years and fine of Rs.1000/-, in default to suffer R.I. for three months.

The learned Assistant Sessions Judge directed that all the substantive sentences would run concurrently.

2. Being aggrieved by his conviction and the sentences imposed upon him, the appellant has filed the present appeal questioning the legality, propriety and correctness of the judgment and order delivered by the learned Assistant Sessions Judge thereof.

3. The prosecution case is that the appellant and other accused committed dacoity on 04/08/2010 at the Kharghar Branch office of Mannapuram General Finance and Leasing Ltd. – a Company conducting the business of advancing loans. The company used to accept gold ornaments from the borrowers, as and by way of security, and advance loans to them on the strength thereof. On 04/08/2010, there was a certain quantity of gold ornaments in the safe/strong room of the said Branch office.

That, at about 4.30 p.m. on 04/08/2010, the appellant and other accused came to the Branch office by two different vehicles. They were armed with firearms and knives. Three of them i.e. the appellant and two others (accused Nos.1,2 and 3 before the trial Court) entered inside the Branch office and handed over a metal chain to one employee of the Company for inspection. While the said employee was inspecting the same, three more of the accused persons (accused Nos.4,5 and 6) came inside the office and attacked the security guard. The security guard was overpowered. The appellant and two others (accused Nos.1,2 and 3) took out pistols and knife, put the employees working in the said Branch office in fear, took the keys of the strong room, opened the strong room, filled the packets containing ornaments in the sack bags/carry bags, which had been brought by them, and left the office. The appellant and others had also broken the wires of computers, CCTV and had snatched the laptop

and mobile telephones of the employees during the dacoity. When the dacoits, including the appellant, were leaving the Branch office, a police jeep arrived there. Three of them (accused Nos.4,5 and 6) could escape with a carry bag containing ornaments. However, the appellant and two others (i.e. the accused Nos.1,2 and 3) were apprehended by the police, with the help of members of public at a short distance, while they were running away. They were found with huge property, which had been robbed. The property and the weapons which they were having were seized from them, then and there.

4. After the apprehension of the appellant and two others immediately after the incident, and at a short distance from the place of offence, the other three who had managed to run away, were also apprehended in the course of investigation. Two other persons, who had not entered in the Branch office, but who were with the accused persons, were also apprehended. After investigation, all the eight accused were prosecuted, and the prosecution, as aforesaid, resulted in the conviction of the appellant and two others, and acquittal of the others.

5. Thus, the case of the prosecution as against the present appellant is that, he was caught almost on the spot immediately after the incident, and that, at that time the robbed property as also a firearm was found with him.

6. I have heard Mr.Vilas N.Mali, the learned counsel for the appellant. I have heard Mrs.M.R.Tidke, the learned Additional Public Prosecutor for the State. I have gone through the evidence adduced during the trial. I have also glanced through the impugned Judgment and Order.

7. There is overwhelming and reliable evidence against the appellant.

8. The evidence of Anil Shinde (PW1) shows how the incident of dacoity took place. It also shows that three of the dacoits were apprehended immediately on the arrival of the police. Shinde (PW1) has witnessed the apprehension of the three persons himself. He has described in details the manner in which they were caught. The appellant has been identified by him as one of the said three persons, who were caught. He has given the name of the appellant as 'Pankaj' and has categorically stated that he was one of those, who were caught by the police while running. Shinde (PW1) categorically stated that one pistol and three cartridges were found with Pankaj in his personal search, which was taken in the presence of panchas. Though there is some doubt about whether Shinde (PW1) had seen the actual apprehension of the accused No.3-Vishnu Amarsingh Thakur, no doubt can be entertained about the fact that Shinde (PW1) had seen the appellant being caught, and that, the robbed property, as

also a pistol, was recovered from the person of the appellant in the presence of panchas. Shinde (PW1) has categorically identified the appellant as one of the dacoits, and has given a specific role of assaulting Rajesh Kumar- the Area Head of the Company, (who was present at the Branch office, at the material time), to the applicant.

9. Though the appellant was apprehended almost on the spot and red-handed, all the employees in the said Branch had not witnessed his apprehension. Those witnesses have, however, identified him as one of the offenders, in the Court. Their identification of the appellant, as one of the culprits, has been supported by their previous identification, made by them in the Test Identification Parade, held in the course of investigation.

10. Mohini Pawar (PW11), who was an employee of the said Company, who was working in the Kharghar branch thereof, and who had witnessed the incident of dacoity, has also described the incident. She has also identified the appellant as one of the dacoits. She has categorically stated that he was the one who had hit Rajesh Kumar on his head by a pistol's butt.

11. Rajesh Kumar (PW14) himself has also identified the appellant as the person who had hit him on his head by the butt of a pistol.

12. Though Shinde (PW1), Pawar (PW11) and Rajesh Kumar (PW14) were cross-examined at length, their evidence has not been shaken in any manner, whatsoever.

13. Anju Jangid (PW19), who was also an employee working in the said Branch of the Company has also identified the appellant as one of the dacoits, and as the person, who had caused injuries to Rajesh Kumar.

14. Mahesh Dalvi (PW20) is the one, in whose presence the police had apprehended the appellant while he was running away. He has categorically stated that the appellant was apprehended by the police in his presence. He has also identified the bag that was recovered from the appellant.

15. Avinash Gaikwad (PW23), a Police Naik attached to Kharghar Police Station, is the member of the police team that apprehended the appellant and two others after the incident. He speaks about apprehending the appellant and has given his name also. He also speaks of the pistol having been recovered during the personal search of the appellant taken after the apprehension.

16. Thus, there is overwhelming and convincing evidence against the appellant. All the aforesaid witnesses were extensively cross-examined by the counsel for the appellant and the other accused, but none of them has been discredited. There can be no

doubt that the appellant had committed dacoity, and that, during the commission of dacoity, he had caused hurt and has also used deadly weapon.

17. The learned counsel for the appellant is unable to advance any arguments, which would create a doubt about the guilt of the appellant. What the learned counsel submitted is that the conviction of appellant, as recorded by the trial Court, in respect of offence punishable under Section 397 of the IPC simplicitor, is not in accordance with law. The learned counsel for the appellant is right in that regard.

18. Section 397 of the IPC does not create any substantive offence, but merely regulates the punishment provided for 'robbery' and 'dacoity' by fixing a minimum term of imprisonment, if the culprit has used a deadly weapon, or caused grievous hurt, or attempted to cause death or grievous hurt, at the time of committing robbery or dacoity.

19. Thus, the operative part of the Order passed by the Adhoc-Assistant Sessions Judge, in so far as it records the conviction of the appellant only in respect of an offence punishable under Section 397 of the IPC, is not correct. The learned Judge ought to have recorded the conviction with respect to an offence punishable under Section 395 read with section 397 of the IPC.

20. The conviction of the appellant as recorded in Clause (1) of the Operative Order shall, therefore, stand corrected as, ‘ in respect of an offence punishable under Section 395 of the IPC read with Section 397 of the IPC’.

21. Except this correction, no other change or modification is required in the Operative Order.

22. The appeal is dismissed.

(ABHAY M. THIPSAY J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.