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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 73 of 2014**

Suresh Lahare S/o Jantoo Lahare, aged about 26 years, R/o Naveen Nagar, Ghar Sansar Society, near Pani Tanki, Pardi police station Kalamna, district Nagpur, Maharashtra.

Present Address : Chilhati Khurd, police station Daundi Lohara, district Balod, Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through police station Baagnadi, District Rajnandgaon, Chhattisgarh.

---- Respondent**AND****Criminal Appeal No. 77 of 2014**

Mukesh Sahu S/o Manharan Sahu Aged About 19 Years R/o Navin Nagar, Ghar Sansar Society, Near To Water Tank, Pardi, Ps Kalmana, Distt. Nagpur, Maharashtra. Hall Mukam - Village - Udaypur, police station Chuikhadan, Civil and Revenue District Rajnandgaon, Chhattisgarh.

---- Appellant**Versus**

State Of Chhattisgarh Through its police station Bagnadi Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Respondent

For the Appellant	:	Smt. Ranjana Jaiswal, Advocate and Shri Tarun Dansena, Advocate.
For the Respondent/ State:		Shri Anupam Dubey, Deputy G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****02.03.2017**

1. These appeals have been preferred against the judgment of conviction and order of sentence dated 14.11.2013, passed by the Learned Additional

Sessions Judge, Khairagarh, Link Court At, Dongargarh, Chhattisgarh, in Sessions Trial No. 14 of 2012, whereby and whereunder the learned Additional Sessions Judge has convicted the appellants under Section 392 of the Indian Penal Code (for short 'the IPC') and sentenced to undergo RI for 7 years and to pay fine of Rs.1,000/- each. Further, the appellants were convicted under Section 397 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs.1,000/- each with default stipulation.

2. The case of the prosecution, in brief, is that on 22.5.2012, when complainant – Nanuk Rao Banjare (PW-2) alongwith his wife Kalpana Banjare (PW-1) were travelling on motorcycle bearing registration No. C.G.07 ZE6427 towards Narayangarh on highway at about 10:30 pm, four persons on two motorcycles intercepted them. After that, two of them came near the complainant and one of them took out a long sword, brandishing it, threatened them to give all the things and money. Then one of the person tried to snatch the *mangalsutra* of Kalpana Banjare (PW-1) and she herself took out the same and handed-over to them. The articles which were kept in the hand-bag of Kalpana Banjare (PW-1) i.e. ATM, passbooks, cash of Rs.4,000/-, two mobile sets and a gold ring worn by Kalpana Banjare (PW-1) were looted. By brandishing the sword, Nanuk Rao Banjare (PW-2) was threatened and a purse containing driving license, ATM cards and cash of Rs.3,000/- were looted from his possession. The key of their motorcycle was also taken. Nanuk Rao Banjare (PW-2) lodged an FIR Ex. P/4 in police station, Baagnadi, stating that he has seen the persons at the time of incident and shall identify on seeing them.

3. During investigation, at the instance of accused Sher Khan vide memorandum Ex. P/18 one *mangalsutra* made of gold and one motorcycle were seized and recovered from his possession vide Ex. P/22. At the instance of the accused Birendra Sahu vide memorandum statement Ex. P/19, one Samsung mobile and one sword like weapon were seized from his possession vide Ex. P/23. At the instance of the appellant Suresh Lahre, motorcycle bearing registration No. MH 40 SR 7139 was seized and recovered from his possession vide Ex. P/25. Further a lady's handbag containing cash of Rs.4,000/-, ATMs of the State Bank and Andhra Bank, driving license of Nanuk Rao Banjare (PW-2), State Bank and Gramin Bank passbooks in the name of Kalpana Banjare (PW-1) and one identity card were seized vide Ex. P/26 from the possession of appellant - Suresh Lahre. The accused were arrested on 30.5.2012. The accused were identified in the Test Identification Parade (for short 'TIP') by Nanuk Rao Banjare (PW-2) and other witnesses vide memo of TIP Ex. P/5. Similarly, seized articles were identified by Nanuk Rao Banjare (PW-2) vide TIP Ex. P/6. Statements of the witnesses were recorded under Section 161 of the Cr.P.C. On completion of the investigation, the accused persons were charge-sheeted.

4. The appellants were charged for the offence punishable under Sections 392, 397 of the IPC. Accused – Suresh Lahre and Birendra Sahu were also charged under Section 25 of the Arms Act. The appellants and other accused persons denied the charges framed against them and thereafter the trial was conducted. The prosecution examined as many as 14 witnesses. On being examined under Section 313 Cr.P.C., denying all the incriminating evidence against them, the accused persons pleaded

innocence and false implication. No evidence was led in defence. By the impugned judgment, the appellants in the two appeals have been convicted and sentenced as mentioned above.

5. The grounds of appeal in the two cases are similar. The grounds taken are that the judgment of conviction and order of sentence passed against the appellants is bad, improper, incorrect and illegal. The trial court has failed to appreciate the evidence on record. As per the evidence brought on record, no case under Sections 392 and 397 of the IPC is made out. The TIP of the appellants is doubtful. The appellants are entitled for benefit of doubt which was not extended by the trial court and the appellants may be acquitted.

6. It is submitted by counsel for the appellants that witnesses Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1) have not identified any of the persons, who have looted them at the time of incident. The TIP of the appellants was conducted in doubtful circumstances which cannot be relied upon. Similarly, the memorandum and seizure recorded in investigation is not supported by the independent witnesses, who have stated that they have affixed their signatures on the memos on asking by the police officer and also the witnesses of the TIP have not supported the case of the prosecution as well. For these reasons, the appellants are entitled for benefit of doubt.

7. Learned State counsel has opposed the grounds in appeal and the arguments submitted on behalf of the appellants. It is submitted that there is no dispute regarding the incident of loot. The identification of the accused

persons and identification of the seized articles have been proved by the prosecution beyond reasonable doubt. Similarly, the TIP for seized articles was also conducted which confirms that the stolen articles were found in the possession of the appellants. It is lastly submitted that for these reasons, these appeals are liable to be dismissed.

8. Considering the material on record and the arguments submitted on behalf of the parties, the question which arises in these appeals is, whether the conviction against the appellants is supported by the evidence of prosecution beyond all reasonable doubt?

9. Nanuk Rao Banjare (PW-2) has stated that on the date and time of incident he alongwith his wife was coming on a motorcycle to Narayangarh and on the way four persons on two motorcycles intercepted them. One of the accused took out the key of the vehicle and another person put the sword on the neck of Nanuk Rao Banjare (PW-2) and forced him to give all the articles threatening that otherwise he will be killed. Another one went towards Kalpana Banjare (PW-1) and tried to snatch her *mangalsutra*. Thereafter, he snatched the handbag of Kalpana Banjare (PW-1) having ATM cards, cash, mobile phones and other articles. Thereafter, this witness arrived at police station, Baagnadi and lodged a report. In cross-examination, his statement has not been rebutted that on the date of incident, four persons stopped him on the way and took away the property which was in his possession and in possession of his wife. Similar is the statement of Kalpana Banjare (PW-1), which stands un-rebutted. On the basis of this evidence, it is established that Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1) were looted on the date of incident. The evidence

connecting the appellants with this incident is the evidence of test identification parade, memorandum seizure and identification of the seized articles by the complainant.

10. Sub-Inspector, R.P. Yadav (PW-14) has stated that the accused were apprehended and interrogated. Accused – Sher Khan gave memorandum statement Ex. P/18. On the basis of which, one *mangalsutra* made of gold and one motorcycle were seized from his possession. Accused – Birendra Sahu gave memorandum statement Ex. P/19. On the basis of which, one mobile of Samsung Company and one sword like weapon were seized from his possession vide Ex. P/23. Appellant – Mukesh Sahu gave memorandum statement vide Ex. P/20 and from his possession one mobile of Nokia company and one sword like weapon was seized by the seizure memorandum Ex. P/24. Further this witness stated that appellant Suresh Lahre gave his memorandum statement vide Ex. P/21. On the basis of which, articles as detailed in Ex. P/26 were seized from his possession. This statement has remained unrebutted in his cross-examination. He denied all the adverse suggestions given in defence.

11. The witness of this procedure, Palni Swami (PW-13) has vaguely described that the some statement was given by the accused persons which he could not remember and some articles were seized which he could not disclose in detail. With the permission of the court, the memory of this witness was refreshed by showing him the memorandum and seizure memo given by the accused. He again stated that he could not remember the details and he admitted that the signatures were affixed by him on all the memos which he did on asking by the police officer. Similar statement is

given by Prakash (PW-12). It is argued in defence that these witnesses are hostile witnesses. Hence, their statements cannot be considered as having supported the statement of the Investigating Officer. This argument is not acceptable. Prakash (PW-12) and Palni Swami (PW-13) have stated that they were present during the recording of memorandum statement of the accused and the seizure of articles from the possession of the accused. The only thing is that they could not remember each and every detail of the memorandum and the seizures made even though their memory was refreshed by showing them the memorandum statements and the seizure memos. The note written on the deposition of these witnesses clearly mentions that these witnesses have not been declared hostile. Hence, to some extent these witnesses have supported the deposition of Sub-Inspector, R.P. Yadav (PW-14) who has categorically stated about the memorandum statement recorded with regard to the seizure. Thus, this is sufficient to prove the seizure of articles from the possession of the accused as detailed in the memorandums and seizure memos mentioned above.

12. Sunderlal Dhritlahre (PW-9) is the Executive Magistrate, who conducted the TIP of the accused persons. He stated that he conducted the TIP on 29.6.2012 in sub-jail Dongargarh where all the four accused were identified correctly by complainant – Nanuk Rao Banjare. In cross-examination, no variation has come in his statement. Nanuk Rao Banjare (PW-2) has stated about the identification of the accused in TIP Ex. P/6. In cross-examination, he stated that during the time of identification about 10 to 11 persons were also standing with the accused and he denied that all the four accused were standing serially. He denied that he was told by the policemen about the accused prior to that. He denied the adverse

suggestions given by the defence. His statement that some policemen were also present in the jail at the time of identification by itself is not suggestive that the identification was done at the instance of the policemen and he has specifically denied that the identification was made on suggestion of the policemen. Hence, his statement is sufficient to corroborate and support the statement of Sunderlal Dhritlahare (PW-9). This evidence is sufficient to prove that the persons identified by Nanuk Rao Banjare (PW-2) were the accused who were present at the time of incident and committed the offence of loot.

13. Sunderlal Dhritlahare (PW-9) also conducted the identification parade of seized articles i.e. Samsung mobile, Nokia mobile, ATM cards, driving license and passbooks etc. and memorandum Ex. P/6 was recorded for this procedure. Test identification parade was needed only for identification of the articles of gold and the handbag, whereas other articles like mobile phones have identification on the basis of their IMEI number. The ATM cards and passbooks have the names of the account holders which needs no identification. As per the seizure memorandum Ex. P/26, the ATM cards were recovered and seized from appellant – Suresh Lahare in the name of Nanuk Rao Bangare (PW-2) and Kalpana Bangare (PW-1). Palni Swami (PW-13) though he had been unable to explain in detail but as the details have been explained by the investigating officer, no further explanation was required from this witness.

14. Corroboration does not mean that the fact has to be confirmed on each and every particular. The investigating officer has narrated about the procedure conducted by him. Prakash (PW-12) and Palni Swami (PW-13)

had sufficiently supported his statement by stating that they have witnessed the recording of memorandum and the seizure made thereafter. The evidence of identification by itself is sufficient to hold that the property that was stolen from the possession of Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1) were found in possession of the accused. The presumption under Section 114 of the Evidence Act becomes applicable in this case.

15. Considering the entire evidence of the prosecution, it is found that the appellants were the persons who have robbed complainant Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1).

16. It is submitted by counsel for the appellants that offence under Section 397 of the IPC is not made out in this case because admittedly no injuries were suffered by the complainants. Learned State counsel has argued and opposed the submission of the appellants referring to statements of Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1) and the fact that their statements at this point stand unrebutted that swords were brandished to threaten them at the time of incident due to which they got afraid and handed over the things in their possession.

17. Section 397 of the IPC provides that at the time of committing robbery, or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. According to this provision, mere use of any deadly weapon by itself makes the person using it liable for punishment. As it is clear from the evidence that all the appellants were armed with sword which

they brandished and they used to threaten complainant Nanuk Rao Banjare (PW-2) and Kalpana Banjare (PW-1) for commission of offence, hence the offence under Section 397 of the IPC is clearly made out. For these reasons, the conviction of the appellants under Sections 392 and 397 of the IPC has been properly held by the trial court, which needs no interference.

18. Lastly, it is submitted by counsel for the appellants that all the appellants are in jail since four years and eight months and as such, it is prayed that their sentence be modified to the period of custody already undergone by them in jail. Section 397 of the IPC clearly provides that the punishment for the offence under this section shall not be less than seven years and as the sentence of RI ordered by the trial court is seven years, which is the minimum sentence provided for this section, there is no scope for interference in the impugned judgment.

19. In view of the above discussion, it is held that these appeals have no merit. According, they are dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge