

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.836 of 2017

1. Hiralal @ Hira Gond, S/o Tekram Gond, aged about 28 years, R/o Village Kargi Tikra, Police Station Premnagar, District Surajpur, Chhattisgarh
2. Omsingh @ Baniya, S/o Bhajjuram Gond, aged about 22 years, R/o Majhopara, Police Station Premnagar, District Surajpur, Chhattisgarh
3. Parmeshwar @ Panne Gond, S/o Bajur Bani, aged about 28 years, R/o Village Kargi Tikra, Police Station Premnagar, District Surajpur, Chhattisgarh
4. Guddu @ Chhotu Chandrawanshi, S/o Gopal Chandrawanshi, aged about 22 years, R/o Village Kutumba, District Aurangabad (Bihar)
5. Rustam Ansari, S/o Sirajuddin Ansari, aged about 12 years, R/o Village Chapraga, Police Station Garwah (Jharkhand)

---- Applicants

versus

State of Chhattisgarh through Station House Officer, Police Station Bishrampur, District Surajpur, Chhattisgarh

--- Respondent

For Applicants	:	Shri Surfaraz Khan, Advocate
For Respondent/State	:	Shri Arvind Shukla, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

9.7.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. This revision has been preferred against the order dated 2.8.2017 passed by the 3rd Additional Sessions Judge, Surajpur in Sessions Trial No.88 of 2016, whereby the Additional Sessions Judge has framed charges against the Applicants under Sections 380, 427, 395 of the Indian Penal Code and Section 3 of the Prevention of Damage to Public Property Act, 1984 (henceforth 'the Act of 1984').

3. As per the prosecution story, on 22.3.2015 at about 2:00 a.m., Complainant Head Constable Rakesh Sharma reached the ATM of State Bank of India situated at Ambedkar Chowk, Bishrampur. He saw that a vehicle Scorpio bearing registration No.CG 15 B 9405 was standing there. Having seen the police party, one person suddenly sat in the Scorpio and the persons sitting in the Scorpio ran away from the spot by the said Scorpio. The police party saw that the glass of the ATM had been broken. They chased the Scorpio. The persons sitting in the Scorpio left the Scorpio near Village Newardad and fled from there. A Dehati Nalishi was lodged by Head Constable Rakesh Sharma on the basis of which, First Information Report was registered. On completion of the investigation, a charge-sheet has been filed for offence punishable under Sections 380, 395 and 427 of the Indian Penal Code and Section 3 of the Act of 1984. Vide the impugned order dated 2.8.2017, aforestated charges have been framed by the Learned Additional Sessions Judge. Hence, this revision.
4. Learned Counsel appearing for the Applicants submits that no offence under Section 395 of the Indian Penal Code is made out against the Applicants. On the basis of the charge-sheet, only the charges framed under Sections 380, 427 of the Indian Penal Code and under Section 3 of the Act of 1984 are made out.
5. Learned Counsel appearing for the State supports the impugned order and submits that the Trial Court has rightly framed the charge under Section 395 of the Indian Penal Code.
6. I have heard Learned Counsel appearing for the parties and

perused the material available with due care.

7. Section 391 of the Indian Penal Code reads as under:

“391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.”

8. Section 390 of the Indian Penal Code runs thus:

“390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

xxxxx

xxxxx

xxxxx

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.”

9. From perusal of the material available, it is clear that nothing is available on the basis of which it could be considered that in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property which was a part of the ATM Machine, any of the Applicants voluntarily caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. There is also no evidence available to show that the present Applicants did any of the acts as defined under Section

390 of the Indian Penal Code. There is no evidence on the basis of which it could be presumed that at the time of commission of the offence, the Applicants caused or attempted to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. Therefore, no offence under Section 395 of the Indian Penal Code is made out. On the basis of the evidence collected by the prosecution, only the offence under Sections 380 and 427 of the Indian Penal Code and under Section 3 of the Act of 1984 is made out.

10. Resultantly, the revision is allowed in part to the extent indicated above.
11. A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge