

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

**C.R.A. 756 of 2012
With**

**CRAN 5 of 2021
Bacchu Mir
-Vs-
State of West Bengal**

With

**C.R.A. 52 of 2013
Abdul Sakur Fakir
-Vs-
State of West Bengal**

With

**C.R.A. 738 of 2012
Totan De @ Totan Dey
-Vs-
State of West Bengal**

With

**C.R.A. 740 of 2012
Anwar Hossain Fakir
@ Bato Fakir
-Vs-
State of West Bengal
With**

**C.R.A. 744 of 2012
Bishnu Mondal & Ors.
-Vs-
State of West Bengal**

For the Appellants

In CRA 756/2012 : Mr. Ayan Basu, Adv.
 Sk. Salim, Adv.
 Mr. Pritam Roy, Adv.
 Mr. Sumit Routh, Adv.

For the Appellants

In CRA 738/2012 : Mr. Sourav Chatterjee, Adv.
 Mr. Debapratim Guha, Adv.
 Mr. Soumya Nag, Adv.

For the Appellants

In CRA 744/2012 : Mr. Avishek Sinha, Adv.
 Ms. Anasuya Sinha, Adv.

For the Appellants

**In CRA 52/2013
 & CRA 740/2012 :** Mr. Ranadeb Sengupta, Adv.

For the State : Mr. Ranabir Roy Chowdhury, Adv.
 Mr. Mainak Gupta, Adv.

Heard on : 13.09.2022 & 20.09.2022.

Judgment on: 20.09.2022

Joymalya Bagchi, J. :-

Appeals are directed against the judgment and order dated 10.10.2012 and 11.10.2012 passed by the learned Additional Sessions Judge, Sealdah, 24-Paraganas South in Sessions Trial No.05(08)07 arising out of Sessions Case No.08(07)07 convicting the appellants for commission of offence punishable under Sections 395/397/120B/412 of the Indian Penal Code and read with Sections 25(1B)(1a)/27 of the Arms Act and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under Sections 395/120B of the Indian Penal Code, to suffer simple imprisonment for seven years and to

pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under Sections 397/120B of the Indian Penal Code, to suffer simple imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under Section 412 of the Indian Penal Code, to suffer simple imprisonment for three years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under Section 25(1B)(1a)/27 of the Arms Act read with Section 120B of the Indian Penal Code; all the sentences to run concurrently.

Prosecution case:-

One Arun Samanta (PW8) is a jeweller. He had a workshop at 1/C, Roy Para Road, Kolkata-50. PWs.3 to 10 used to work in the said workshop as goldsmiths. On 5.10.2006 Arun Samanta had come to his workshop. After completing his day's business, he left the workshop. At about 2.30 PM, one Totan De @ Totan Dey who used to come to the shop to do "Meena work", came to the workshop and enquired about the whereabouts of Arun Samanta. Thereafter, he left the workshop. Within half an hour, four miscreants armed with fire arms and bhojali entered the workshop and two other miscreants stood outside the workshop. One of the miscreants who was subsequently identified as Abdul Sakur Fakir put pistol on the head of (PW3) Gopal Paramanick and snatched a city gold chain from his neck. Miscreants threatened the workmen to

hand over the gold ornaments. Out of fear the workmen handed over 7 pieces of gold chain, other unfinished gold ornaments and scrap to them. In course of the dacoity, Jayanta Chatterjee (PW5) was assaulted by one of the miscreants identified as Bacchu Mir with lei and Paresh Patra (PW7) was assaulted by another miscreant identified as Md. Aziz @ Raja with the backside of bhojali. Prior to the incident, one of the workmen Surya Kanta Raha (PW4) had gone out to bring rice. On his way back to the workshop he found the 'meena worker' viz., Totan De standing at a three-point crossing near the workshop. He enquired from Totan where he would go. Thereupon, Totan replied he had some job. Coming near the workshop PW4 found two of the miscreants sitting on a red bike. They pushed PW4 inside the workshop. After committing dacoity all the miscreants left locking the workmen inside the workshop. PW15, Rajib Kumar Das son of the owner of the premises broke open the lock and rescued the workmen. Police arrived at the spot. Gopal Paramanick (PW3) narrated the incident to the police officer which was reduced into writing and treated as first information report being Sinthi Police Station Case No.57 of 2006 dated 15.10.2006 under Sections 394/397 of the Indian Penal Code and Sections 25(1B)(1a)/27 of the Arms Act.

Proceedings before the trial Court:-

In course of investigation, the appellants were arrested. On their leading statements part of the booty was recovered. They were identified

by the witnesses during T. I. Parade. Charges were framed under Sections 395/397/120B of the Indian Penal Code and under Section 25(1B)(1a)/27 of the Arms Act against the appellants. In course of trial prosecution examined 38 witnesses. Defence of the appellants was one of innocence and false implication. In conclusion of trial, trial judge by the impugned judgement and order convicted and sentenced the appellants, as aforesaid. Hence, the present appeal.

Prosecution evidence:-

In order to prove its case, the prosecution examined 38 witnesses as follows:-

PW	Name of witness	Role
1	Kajal Monal	Plan Maker
2	Swaan Saha	Photographer of Lalbazar
3	Gopal Pramanick	Defacto-Complainant being worker of workshop
4	Suryakanta Rana	Went for bringing rice and on return he was poured in this workshop.
5	Jayanta Chatterjee	Worker got injury with lie from accused Bachhu Mir.
6	Bappa Das	Prior to dacoity he was cleaning utensil in bathroom and while return met with 4 miscreants who asked for this workshop
7	Paresh Patra	Eye-witness & worker who got injury with the back side of Bhojali from accused Md. Aziz
8	Prashanta Maity	Eye-witness & seizure List Witness for Helmet, Handkerchief, Lei, Padlock and Hammer
9	Soumen Chatterjee	Eye-witness, brother of Jayanta Chatterjee and Seizure List Witness of note book showing job assignment, mobile of Shambhu Mali & Halmet, Handkerchief, Lei, Padlock and Hammer
10	Shambhu Mali	Eye-witness & worker whose mobile was taken away by the miscreants
11	Nabin Samui	S/L Witness for accused Totan De of De Meena Works

14	Dinabandhu Ghosh	S/L Witness for accused Totan De of De Meena Works
34	SI Jyoti Prakash Dey	S/L Witness for accused Totan De of De Meena Works & Bishnu Mondal
12	Iftikar Ahmed	S/L Witness for accused Abdul Sakur Fakir
13	SI Amitava Sinha Roy	S/L Witness for accused Abdul Sakur Fakir
20	Md. Tariq	S/L Witness for accused Abdul Sakur Fakir
15	Rajib Kumar Das	Son of Landlord who rescued worker by breaking padlock
16	Suresh Kumar Das	Landlord of workshop of Arun Samanta
17	Dr. Amal Kr. Kanra	Doctor of R.G.Kar Medical College & Hospital who treated Jayanta Chatterjee and Paresh Patra
18	Arun Samanta	Owner of the workshop
19	Inspector, Prabal Kr. Chatterjee	Arms Expert
21	Babu Goswami	S/L Witness for accused Md. Aziz
25	Inspector, Soumya Banerjee	Officer of Beliaghata P.S. who assisted for recovery from Md. Aziz
28	Pradip Bhowmick	S/L Witness for accused Md. Aziz
22	Tarak Dey	S/L Witness for accused Tarak Malakar
23	Joydeb Dey	S/L Witness for accused Tarak Malakar
33	Sankar Shaw	S/L Witness for accused Tarak Malakar
24	Bhuba Rajanikant	Brother-in-law of Sanjay Patel & Party of Coimbatore who ordered for gold chains
32	Sanjay Patel	Party of Coimbatore who ordered for gold chains
26	Ashoke Sarkar	S/L Witness for accused Anwar Hussain Fakir
31	ASI Dipankar Sen	Went to Magrahat PS for search & seizure of accused Anwar Hussain Fakir & Bachhu Mir
35	SI Banamali Sandhukhan	Witness for production of motor bike relating to accused Bachhu Mir
27	SI Ramesh Roy Chowdhury	On duty officer who arrived at PO after hearing the incident from Additional Officer-in-charge, PS Mukherjee

29	Inspector, Partha Sarathi Mukherjee	Additional Officer-in-charge, PS Mukherjee while petrolling got the information of dacoity
30	Sourav Bhattacharjee	Ld Judicial Magistrate, who hold TI Parade
36	Kausik Banerjee	Deputy Manager of CESC who deposed that there was no loadshading on the day of dacoity
37	SI Dhirendranath Kumbhkar	Duty officer who went to the PO when received information from Additional Officer-in-charge Sinthi PS
38	SI Supratik Bandopadhyay	IO who received the case on 26.4.2007 and conducted investigation

Arguments on behalf of the parties:-

Mr. Avishek Sinha, learned Advocate for the appellants Tarak Malakar, Bisnu Mondal and Md. Aziz @ Raja submits identification of the appellants by prosecution witnesses is doubtful. Sambhu Malik @ Sambhu Nath Malik (PW10) stated he had been shown the accused persons at police station. No signature of the witnesses identifying the appellants appeared in the T. I. parade sheet. T. I. Parade examination was held seven months after the incident and twenty one days after the arrest of the appellants. Prosecution witnesses did not describe the features of the appellants or the roles played by them during TI parade. With regard to recovery of gold chain and fire arms from his clients, he contends there was no test identification of the seized articles. No identification mark was visible on the gold chains which were produced in Court. Identification of gold chains in Court is not convincing. He accordingly prayed for acquittal.

Mr. Ayan Basu, learned Advocate for the appellant Bacchu Mir adopts the submissions of Mr. Sinha with regard to the alleged irregularities in identification of the appellants during TI parade and in Court. He further submits no independent witness supported recovery of gold chain or motor cycle pursuant to the purported statement of his client. Though Jayanta Chatterjee (PW5) claimed he had been assaulted by Bacchu Mir, in court the said witness could not recollect the roles of the appellants.

Mr. Ranadeb Sengupta, learned Advocate for the appellant Abdul Sakur Fair and Anwar Hossain Fair @ Bato Fakir submits the identification of his clients was faulty. There was delay in holding T. I. Parade. Purported recovery of gold chain from Anwar Hossain Fair @ Bato Fakir is not supported by independent witness. He accordingly prayed for acquittal.

Mr. Sourav Chatterjee, learned Advocate for the appellant Totan De @ Totan Dey submits none of the witnesses saw him at the workshop during dacoity. Only PW4 claimed he had seen him at a three point crossing which is at a five minutes' walking distance from the workshop. He was not named in the first information report. Recovery from his possession was made six months after the incident. Hence, there is no legally admissible evidence connecting him with the dacoity.

In reply, Mr. Ranabir Roy Chowdhury with Mr. Mainak Gupta, learned Advocates for the State submits the appellants had committed a

daring dacoity in the workshop of PW-18. Four of the miscreants entered the workshop. They had fire arms and bhojali. Two others kept watch outside the workshop. Totan Dey who used to come to the workshop as a 'meena worker' helped the other appellants. He came to the workshop soon before the incident and enquired about the whereabouts of the owner. During the incident PW4 saw him standing at a three point crossing near the workshop. Stolen articles on the leading statement of the appellants were recovered. Appellants were identified in course of T. I. Parade as well as in court. Hence, prosecution case is proved beyond doubt.

Whether prosecution case is proved:-

Analysis of the evidence on record in the backdrop of the rival submissions show the prosecution case is founded on:-

- a) Identification of the appellants
- b) Recovery of stolen articles.

(a) Identification of the appellants:

PW30 (Sourav Bhattacharya) conducted test identification parade of the appellants. From his deposition it appears that test identification parade was conducted on three dates i.e. 18.05.2007, 19.05.2007 and 04.06.2007. All the suspects are mixed up with similar looking under-trial prisoners. During test identification parade, PWs 4, 6 and 8 identified Tarak Malakar. They also identified him in court. Similarly, Bishnu Mondal was identified in course of test identification parade as

well as in court by PW 4. Md. Aziz @ Raja was identified by PWs. 3, 5, 7 and 10 during test identification parade and in court. Abdul Sakur Fakir was identified by PWs. 3, 4, 5, 6, 7, 9 and 10 during test identification parade and in court. Anwar Hossain Fakir @ Bato Fakir was identified by PWs 4,6 and 8 as one of the persons who was sitting outside the workshop in a motorcycle. Bacchu Mir was identified by PWs. 3, 5, 7, 8, 9 and 10. Toton Dey, meena worker, was identified by PWs. 3, 4, 6, 7, 8, 9 and 10, both in test identification parade as well as in Court. PW 18 (Arun Samanta), owner of the shop also identified Toton and stated he used to come to the shop regularly for meena work.

Identification of the appellants during test identification parade has been assailed on various grounds. It is contended there was delay of more than six months from the date of occurrence and about three weeks from the arrest of appellants in holding test identification parade. Identification during test identification parade is not substantive evidence. It is an exercise undertaken during investigation to corroborate the identification of an accused in court. There is no hard and fast rule with regard to the time within which a test identification parade is to be undertaken. It is desirable such exercise is undertaken at the earliest opportunity so as to rule out any possibility of false implication. Delayed test identification parade also has adverse impact on recollective faculties of a witness.

In the present case, appellants had absconded after the incident. They could be arrested after a lapse of six months between 26.04.2007 and 01.05.2007. They were taken into police custody for the purpose of investigation. Prayer was made for their test identification parade. Pursuant to direction given by the learned Magistrate, test identification parade was held between 18.05.2007 to 04.06.2007. A number of witnesses who were present in the workshop attended the test identification parade and identified the appellants. Due to a large number of witnesses who attended the test identification parade it was necessary to hold it on various dates. The aforesaid factual circumstances show the test identification parade was delayed primarily due to abscondence of the appellants and was promptly held upon their arrest. No complaint was raised by the appellants before PW 30 that they had been shown to the witnesses prior to the test identification parade. Though it is argued PW 10 claimed he had been shown the accused persons at the police station, none of the other witnesses stated they had seen the appellants at the police station. It is also argued the witnesses had not described the roles or features of the appellants during test identification parade. Such argument is misconceived. PW 3 (Gopal Paramanick), the F.I.R. maker, had described the features of the miscreants in the F.I.R. itself. That apart, the roles of the appellants graphically stated by the eye-witnesses in Court. The incident occurred in the afternoon and all the witnesses had ample time to see the

miscreants who committed robbery in the workshop. This naturally created an enduring impression in their minds with regard to their identities. Hence, I am of the opinion identification of the appellants by the witnesses in course of test identification parade as well as in court does not suffer from any infirmity and can be relied upon.

PWs 3 to 10 have described the roles of the appellants in court. PWs. 4,6 and 8 stated Tarak Malakar was one of the persons who was standing outside the workshop. He placed a knife on the waist of the PWs. 4 and asked the whereabouts of the workshop to PWs. 6 and 8. Similarly said witnesses stated Anwar Hossain Fakir @ Bato Fakir was also standing outside the workshop at the time of dacoity and had enquired from PW 4 where he was going.

Bishnu Mondal, Md. Aziz @ Raja, Abdul Sukur Fakir and Bacchu Mir were identified as the miscreants who had entered the shop and committed dacoity.

PW 4 (Surya Kanta Raha) stated Bishu Mondal had put a knife on his body.

PW 7 (Paresh Patra) stated he had been assaulted by Md. Aziz @ Raja with the backside of bhojali. He was corroborated by PW 3 (Gopal Pramanick) and PW 9 (Soumen Chatterjee) who stated that the said appellant had bhojali in his hand.

With regard to Abdul Sakur Fakir (PW 3), the de facto complainant, stated he brought out a revolver and snatched a chain from the neck. His version is corroborated by other witnesses.

PW 5 (Jayanta Chatterjee) stated Bachhu Mir assaulted him with a lei.

All the witnesses stated Toton Dey came to the workshop half an hour prior to the dacoity and enquired about the whereabouts of the owner, PW 18 (Arun Samanta). Thereafter he left the workshop and had been found loitering at three-point crossing near the workshop by PW 4 (Surya Kanta Raha).

Presence of the aforesaid witnesses who have identified the appellants at the workshop is most natural. They used to work as goldsmiths under PW 18. PW 18 stated they were present on the fateful day at the workshop. PW 15 (Rajib Kumar Das), son of the landlord, also corroborated the presence of the aforesaid witnesses at the place of occurrence. In course of dacoity PW 5 and PW 7 were assaulted. They were medically examined by Dr. A. K. Kanra (PW 17) at the R. G. Kar Medical College and Hospital. These witnesses support the evidence of PWs. 3 to 7 and establish their presence at the place of occurrence during dacoity beyond doubt.

(b) Recovery of stolen articles:-

PW 38 is the investigating officer. He deposed he arrested Toton De, Bacchu Mir, Anwar Hossain Fakir, Md. Aaziz @ Raja and Bishnu

Mondal on 26.4.2007. On the basis of leading statement of Toton De (Ext 37) a 14” gold chain and a key was recovered. Recovery has been witnessed by PWs 11, 14 and 34. Bishnu Mondal, Anwar Hossain Fakir and Abdul Sakur Fakir also made disclosure statements to the I.O being Ext 27, 43 and 38 respectively. Pursuant to their statements a plastic container and a gold chain were recovered from Anwar Hossain Fakir. A maroon coloured jewellery box and gold chain was recovered from Abdul Sakur Fakir and a gold chain in a plastic box was recovered from Bishnu Mondal. Similarly on the leading statement of Tarak Malakar (Ext 39) a gold chain and fire arms with bullets were recovered on 3.5.2007. Md. Aziz @ Raja made a disclosure statement (Ext 41) leading to the recovery of a bag containing a gold chain. Bacchu Mir made two disclosure statements. His initial disclosure statement (Ext. 42) lead to the recovery of a blue coloured velvet box containing gold chain. Subsequent disclosure statement (Ext. 44) lead to the recovery of a motor cycle which had already been seized in connection with another case by PW 35.

It is argued some of the recoveries were not supported by independent witnesses.

I have gone through evidence of the investigating officer (PW 38) and the other official witness, i.e., S.I Dipankar Sen (PW 31) who were present at the time of recovery.

PW 38 Investigating Officer has proved the disclosure statements of the aforesaid appellants leading to the recovery. Her evidence regarding recovery is supported by the other official witness, namely, PW 31. Their evidence are clear and convincing and the witnesses remained unshaken during cross-examination.

I have no reason to disbelieve the evidence of the aforesaid witnesses which is corroborated by the disclosure statements with regard to recovery of the gold chains from the said appellants.

It has been strenuously argued the gold chains were not put up for identification during investigation. No identification mark was noted on the chains produced in court. Gold chains were identified by the prosecution witnesses including PWs 3 and 18. PW 3 stated he could identify the gold chain from its make and identification mark. However, it was noted no identification mark was visible to the court or the counsels. Clarifying the position, PW 3 stated the identification mark of his owner is "LJ4"

PW 3 is a gold smith. In the course of their trade they put minute identification marks on the ornaments manufactured by them in the workshop. Such identification marks being unique to the manufacturer is discernible only to the specialist but not to the lay eye of others. Identification of the gold chain in court by the goldsmith (PW 3) and the owner of the workshop (PW 18) is, therefore, more reliable and ought not

to be wished away on the ground that the mark was not visible to the ordinary eye of the others in Court.

Under such circumstances I am of the opinion recovery of the stolen articles on the disclosure statements of the appellants as well as their identification in court has been proved beyond reasonable doubt.

Role of Toton De:-

Coming to the role of Toton De it has been argued he was not present at the place of occurrence during dacoity. Hence, his conviction under section 395/120B IPC is unfounded.

All the witnesses stated Toton De, a meena worker, used to come to their workshop. On the fateful day around 2.30 p.m. he came to the workshop. He enquired whether the owner of the workshop (PW 18) had left. Thereafter he left the workshop. Within half an hour the other appellants came and committed dacoity. At that time PW 4 who had gone out to bring rice saw Toton loitering at a 3 point crossing near the workshop. On enquiry as to where he was going, Toton was unable to give any clear answer. Soon after the incident he absconded with other appellants and was finally arrested on 26.4.2007. Pursuant to his disclosure statement a gold chain (a part of the booty) was recovered. These incriminating circumstances clearly show he was an insider who provided information to the other appellants to facilitate the dacoity. He was also a beneficiary of the dacoity and a part of the booty was

recovered from him. Hence I am not inclined to hold culpability of Toton is any less than the other appellants.

Conclusion:-

In the light of the aforesaid discussion, I uphold the conviction of the appellants.

With regard to the issue of sentence, I find the appellants have been awarded the maximum sentence of life imprisonment for the offence punishable under section 395/120B IPC. They had committed a daring dacoity in a workshop and had stolen gold ornaments. However, none of the appellants have prior convictions.

Balancing the aforesaid aggravating and mitigating circumstances, I consider it prudent to modify the substance sentence imposed on the appellants and I direct that they shall suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/- each, in default, for the offence punishable under sections 395/120B of the Indian Penal Code. Sentences imposed on them on other count shall remain unaltered. All the sentences shall run concurrently.

We are informed Bacchu Mir has already undergone 15 years of actual imprisonment. In the event he deposits the fine amount, he shall be released from custody if not wanted in any other case.

Bail Bonds of the appellants Tarak Malakar, Bishnu Mondal, Md. Aziz @ Raja, Abdul Sakur Fakir, Anwar Hossain Fakir @ Bato Fakir and Toton De @ Toton Dey are cancelled and they are directed to forthwith

surrender and serve out remainder of their sentences, failing which the trial Court shall issue appropriate process to execute the sentences in accordance with law.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

With the aforesaid modification as to sentence, appeals are disposed of.

In view of disposal of the appeal, connected applications, if any, also stand disposed of.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)