

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

CRIMINAL APPEAL NO.17 OF 2017

1. Kishore Bhima Pawar (Bhil)
Age : 30 years, Occ. Labour

2. Balu Bhima Pawar (Bhil)
Age : 28 years, Occ. Labour,

Both r/o. Ozhar Khurd
Tq. Jamner, Dist. Jalgaon

..Appellants

Vs.

The State of Maharashtra

..Respondent

**WITH
CRIMINAL APPEAL NO.246 OF 2017**

1. Kishore Bhima Pawar (Bhil)
Age : 30 years, Occ. Labour

2. Balu Bhima Pawar (Bhil)
Age : 28 years, Occ. Labour,

Both r/o. Ozhar Khurd
Tq. Jamner, Dist. Jalgaon

..Appellants

Vs.

The State of Maharashtra

..Respondent

Mr.Satej S. Jadhav, Advocate for appellants
Mrs.Geeta L. Deshpande, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : FEBRUARY 04, 2022**

JUDGMENT :-

Both these appeals against conviction are decided by this common judgment and order since common questions of fact and law arise herein.

2. The appellants in both these appeals were accused along with nine others in Sessions Case Nos.270 of 2013 and 22 of 2014. Learned Addl. Sessions Judge, Jalgaon, has convicted and consequentially, sentenced the appellants, as detailed below:-

Sessions Case No.	Conviction for offence(s)	Sentence
270 of 2013	395 and 397 of Indian Penal Code	Rigorous imprisonment for ten years under Section 395 of I.P.C.; and rigorous imprisonment for seven years under Section 397 of I.P.C. with a fine of Rs.1,000/- each under Section 395 of I.P.C., in default, simple imprisonment for one month each.
22 of 2014	143, 148, 307, 333, 353 read with 149 of Indian Penal Code	Rigorous imprisonment for ten years each under Sections 307, 333 r/w.149 of I.P.C.; rigorous imprisonment for two years each under Section 353 r/w. 149 of I.P.C. with a fine of Rs.1,000/- each under Section 307 r/w. 149 of I.P.C., in default, to suffer simple imprisonment for one month each.

The substantive sentences imposed in both the Sessions Cases were directed to run concurrently. It is unfortunate that both these appeals came up for hearing after the appellants were released on account of having served out the sentence imposed.

3. The facts, in nutshell, giving rise to both the appeals are as under:-

It is the case of prosecution that on 01.09.2013 at about 09:30 p.m. in Bhavani Ghat section on Jamner to Bodhwad road, the appellants herein along with the acquitted accused intercepted the travellers, assaulted and robbed them of their valuables, such as, cash, gold ornaments, cell phone, laptop, etc. When the matter was immediately reported to the concerned police station, the police party arrived. The appellants and the acquitted persons had a fight with the police officials. They assaulted the police officials with sword, iron rod, etc. As such, two separate crimes i.e. one for robbery/dacoity and another for attempt to commit murder of police officials and related offences, were registered against them. On investigation of both the crimes, the appellants and the acquitted accused persons were proceeded against. On appreciation of the evidence in both the cases, learned Addl. Sessions Judge convicted

the appellants herein, as stated above. Rest of the accused persons in both the cases were acquitted. The State has not filed an appeal.

4. In Sessions Case No.22 of 2014, the prosecution examined as many as eleven witnesses; while in Sessions Case No.270 of 2013, the prosecution examined eighteen witnesses.

5. Heard learned counsel for the parties.

6. Mr.Satej Jadhav, learned counsel for the appellants, would submit that the alleged incident took place late in the evening. There was complete darkness. The miscreants had covered their faces. There is no recovery of anything from the appellants. There is no arrest panchnama. Nothing has been seized from any of the appellants. T.I. parade was not held. The FIR has been lodged late. Statements of some of the witnesses had been recorded very late. Most of the prosecution witnesses and particularly, the panchas and even victims of dacoity did not stand by the prosecution. None of them could identify the appellants before the Court. The evidence of the police officials is that of the interested witnesses. There was no necessity to register two separate crimes. When all other accused person were acquitted, the offence of dacoity is not proved against

the appellants herein. Learned counsel has relied on the Apex Court judgments in the cases of (i) **Wakil Singh and ors. Vs. State of Bihar, AIR 1981 SC 1392** and (ii) **Shaikh Umar Ahmed Shaikh and anr. Vs. State of Maharashtra, AIR 1998 SC 1922**, to ultimately urge for acquitting the appellants herein.

7. Learned APP would, on the other hand, submit that although it was dark and some of the miscreants had covered their faces, both the appellants have been arrested on the spot. As such, there is no question of their identification. Both of them had assaulted the police officials. They had also robbed the travellers. Since the appellants were caught red-handed, they have no defence to make. Learned APP, therefore, urged for dismissal of both the appeals.

8. Considered the submissions advanced by learned counsel for the parties. Perused the evidence in both the cases.

9. True, the panchas and even some of the eye witnesses did not stand by the prosecution. The eye witnesses were none other than the victims. They gave evidence consistent with what had happened with them but could not identify the appellants before

the Court. When the incident of robbery was informed to a nearby roadside tea stall owner (PW 11), he, immediately, informed the same to the concerned police station. The police staff, therefore, arrived to find both the appellants and others indulged in committing robbery. When the police party attempted to overpower both of them, they assaulted the members of the police party. The injury certificates on record (duly proved in Sessions Case No.270 of 2013) indicate following injuries :-

Sr. No.	Name of injured	Nature of injuries
1	Santosh R. Sable (PW 17)	Abrasion over right wrist joint (Injury certificate, Exh.95)
2	Vikas Suresh Sonawane (PW 14)	Abrasion over left wrist joint (Injury certificate, Exh.96)
3	Nilesh Babulal Chaudhary (PW 13)	Blunt trauma over right tibia and swelling (Injury certificate,Exh.92)
4	Anil Narayan Javare (PW-12)	(i) Sharp incised wound on Right shoulder of 12 cm x 6 cm (ii) Sharp incised wound on forehead over frontal region above the eyebrow of 4 cm x 2 cm – bone deep (Injury certificate, Exh.98)

10. Since both the appellants were overpowered when they were indulging in the crimes in question, learned counsel representing them could not be heard to say that there is

inconsistency *inter-se* the evidence of the witnesses, it was dark and therefore identification was not possible, T.I. parade was false, etc. Suffice it to say that on appreciation of the evidence of a number of witnesses, the trial Court has rightly convicted both the appellants and sentenced them.

11. On re-appreciation of the entire evidence in the case, although a detailed reference thereto is avoided, in the facts and circumstances of the case, this Court finds no reason to interfere with the impugned orders of conviction and consequential sentence.

12. Both the appeals, therefore, fail. The same are dismissed.

[R.G. AVACHAT, J.]

KBP