

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 196 of 2008**

**Ujjal Raha @ Nobu  
-Vs-  
The State of West Bengal**

For the Appellant : Mr. Arnab Chatterjee,  
Ms. Poulomi Bose,  
Ms. Dhanasree Biswas

For the State : Mr. Anand Keshari

Heard on : 03.10.2023, 20.12.2023, 22.01.2024,  
07.02.2024, 24.04.2024

Judgment on : 14.05.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against the judgment and orders dated 19.12.07 and 20.12.07 passed by the court of the Learned Additional Session Judge, Fast Track Court No. 1, Barrackpore in Sessions Trial No. 1(1)/07 under Sections 395/412 of the Indian Penal Code, 1860, (Sessions Case No. 3(8)/2006 arising out of G.R. Case NO. 1008/06 in connection with Ghola Police Station Case No. 73 dated 11.04.06 under Section 392 of the Indian Penal Code, thereby convicting the appellant of the charge under Section 395 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- in default to undergo further rigorous imprisonment for 3 months.

2. Ghola Police Station Case No. 73 dated 11.04.06 under Section 392 of the Indian Penal Code was initiated on the basis of GD Entry No. 1034 dated 16:10 hrs regarding the alleged commission of offence at 3 a.m. The complainant Md. Sahidur Sk., son of Rustam Ali, resident of Natun Malancha, District – Murshidabad alleged inter alia that he was the driver of Tala LP Truck bearing no. WB 41B – 5986 owned by Sukla Das, wife of Shyamal Das, resident of Madhyamgram Rabindra Pally, Police Station – Barasat. On 09.04.06 he went with the truck to Islam Bazar for transporting sand. He along with two khalasis reached in front of the Kalyani Express way and approached towards Sodpur road and kept the truck by the side of road to reach in a roadside hotel at about 11 p.m., on 10.04.06. Thereafter they slept there in the truck. At about 3 a.m. in the morning they started approaching towards Madhyamgram. After passing Sajirhat crossing when they were moving towards New Barrackpore No. 8 Rail Gate, one white coloured Tata Sumo overtook them from behind and stopped in front of their truck. Three miscreants pointed firearms and made him and the khalasis descend from the truck and board the Sumo. He could see the miscreants near Bodhan Club in the light of lamp post and they were all aged about 25 to 30 years, wearing shirts and pants. Then they tied up their hands, feet's and covered their eyes and started driving the vehicle. After quite some time the miscreants left them in a lonely place. After a long time they could open their hands, feet's and eyes to fathom that they had been left near Rajarhat New Township Field, then they walked to cross Pachakhal field to reach the main road. Subsequently, they boarded a taxi to reach Madhyamgram

Trinath Petrol Pump wherefrom the complainant informed the owner. They along with the owner searched for the truck near Bodhan Club and the nearby area but they could not find the truck. The miscreants conversed in Bengali and Hindi.

3. After investigation the charge-sheet no. 93 dated 04.07.04 under Section 392/395/412 of the Indian Penal Code was submitted against (1) Nripen Debnath @ Suman (2) Sumit Dey (3) Pappan @ Soumyajit Poddar (4) Provat Kr. Ghose and (5) Ujjal Raha @ Nobu (the appellant). Finally, charges were framed against the appellant and others when they pleaded not guilty and claimed to be tried.
4. The prosecution examined 13 witnesses viz. PW-1, Akbar Ali, PW-2 Rahamat Ali Sardar (both labours of the truck), PW-3 Nachiketa Bera, the Ld. Judicial Magistrate, 3<sup>rd</sup> Court at Barrackpore, PW-4 Biswajit Ganguly, the writer of the written complaint, PW-5 A.S.I. Balaram Ghosh, PW-6 Akhilesh Pandey, the Ld. Judicial Magistrate, 4<sup>th</sup> Court, Barrackpore, PW-7 Safikul Sekh, Khalasi of truck, PW-8 Sahidur @ Sahidul Sekh, PW-9 Nirmal Kumar Jash, I.O., PW-10, Gautam Roy, the seizure witness, PW-11, Anjan Biswas, PW-12 Shyamal Das (both seizure witnesses), PW-13, I.O., the Learned Additional Sessions Judge, Fast Track Court No. 1, Barrackpore and exhibited certain documents.
5. Heard the submissions of the Learned Advocate for the appellant as well as the State.
6. The evidence of PW-1, the labour of the truck, inter alia, deposed that Shyamal Das asked him to unload the sand in the morning of 11.04.2006.

He was further informed that the truck did not reach its destination with the sand. The truck interdicted in front of the New Barrackpore Bodhan Club by the miscreants who came in front of the truck in a Tata Sumo blocking the passage and threatened the driver, khalasi and Kalu to disembark the truck and fled with the same.

7. PW-2 reiterated the complaint case further elucidating to have seen the Tata Sumo stationed in front of the truck whose inmates raised a clamour. One of the perpetrators climbed on the truck and slapped in the face and withdrew him from the hood of the truck where he slept. He further stated to have been assaulted by one of the miscreants at a given point. They removed them to a long distance, tore his dress, tied his eyes and hands. After the miscreants left, he untied his eyes and hands and that of the driver and khalasi. Subsequently, after traversing a long distance they hired a taxi. PW-2 identified the accused Prabhat Ghosh and Ujjal Raha both in Test Identification Parade and also in Court.
8. PW-3, the Judicial Magistrate who held the Test Identification Parade in respect of articles in his chamber in Test Identification Form marked as Ext. 2 and also conducted the Test Identification Parade at Barrackpore Sub Correctional Home where the present appellant and Prabhat Kr. Ghosh were identified. The T.I. Parade sheet was written by him and marked Ext. 1.
9. PW-4 had scribed the written complaint marked Ext. 3.
10. PW-5 identified the signature of the I.C. who endorsed the formal FIR marked Ext. 4 and identified his endorsement on the written complaint marked Ext. 3/1.

11. PW-6 conducted the T.I. Parade with respect the suspects Nripen Debnath, Sanjoy Dey @ Samir and Sumanjit Poddar @ Papan. The said suspects were identified by one Md. Sahidur who identified the suspects namely Nripen Debnath, Sumanjit Poddar @ Papan while other witness Safikul identified all the three suspects namely Nripen Debnath, Sanjoy Dey @ Samir and Sumanjit Poddar @ Papan. He identified the T.I. Parade sheet written and signed by him along with official seal marked Ext. 5.
12. PW-7, Safikul Sk., the khalasi of the disputed truck, deposed inconsonance of that PW-2. PW-7 identified Nripen Debnath, Sanjoy Dey, Sumanjit Poddar.
13. PW-8, the driver of the truck reiterated the evidence of PW-2 and PW-7 and disclosed to have identified Nripen Debnath, Sanjoy Dey, Prabhat Ghosh, Ujjal Raha and Sumanjit Poddar. He further identified his silver locket and wrist watch, snatched by accused person, which was produced in the Court marked as MAT Ext. I collectively.
14. PW-9 was the Investigating Officer who filed the charge-sheet on completion of investigation.
15. PW-10, PW-11 and PW-12 were the seizure list witnesses.
16. PW-13 had arranged for the T.I. Parade.
17. PW-2 is the labour who was present in the track on the date of the incident. He narrated the prosecution case and also identified the appellant and stated that he had earlier identified the appellant in jail.
18. PW-8 is the driver of the truck and the informant. He has fully corroborated the prosecution case and has also stated about his identifying the appellant

and another in court as well as in the jail. He also said he had identified few of his personal articles during the T.I.P.

19. PW-3 is the Learned Magistrate who had conducted the T.I.P. with respect to the appellant and had proved the T.I.P.

20. PW-9 is the investigating officer who had arrested all the accused persons including the appellant when they were already in custody in connection with similar cases. On the leading statement of the appellant and another, the personal belongings of the driver PW-8 was recovered and seized under the provision of Section 27 of the Evidence Act, the said seizure was proved by the prosecution.

21. PW-10, PW-11 and PW-12 are the seizure witnesses who have proved the seizure of articles during the course of investigation.

22. Section 391 of the Indian Penal Code states as follows:-

**“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”.”

23. Section 390 of the Indian Penal Code states as follows:-

**“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.”

24. Section 395 of the Indian Penal Code states as follows:-

***“395. Punishment for dacoity.—Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”***

25. The identification of the accused persons through T.I. Parade, the recovery of the stolen articles and the corroborative evidence of PW-2, PW-7 and PW-8 established the commission of the offence by the accused persons.
26. The miscreants had carried away the property being the truck as well as snatched away the silver locket and wrist watch which was recovered later on. Three of the victims were threatened and wrongfully restrained by the appellants.
27. The prosecution has been able to prove the offence committed under Section 395 of the Indian Penal Code and this Court is not inclined to interfere with the impugned judgment.
28. In view of the above discussions, the instant criminal appeal is dismissed.
29. There is no order as to costs.
30. I record my appreciation for the able assistance rendered by Learned Advocates, Mr. Arnab Chatterjee and Ms. Poulomi Bose, as Amicus Curiae in disposing of the appeal.
31. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
32. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**