

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS).

CRA 501 of 2005

**RAM CHANDRA DAS & ANR.
VS.
THE STATE OF WEST BENGAL**

With

CRA 101 OF 2005

**AVIJIT SAHA & ANR.
VS.
THE STATE OF WEST BENGAL**

For the Appellants : Mr. Santanu Talukdar, Adv.
For the State : Ms. Faria Hossain, Ld. A.P.P.,
Mr. Anand Keshari, Adv.
Last heard on : 07.11.2025
Judgement on : 07.11.2025
Uploaded on : 10.11.2025

CHAITALI CHATTERJEE (DAS), J. :-

1. The instant criminal appeal has been filed under Section 374 of the Code of Criminal Procedure by the appellants against the judgment and order of conviction dated 25th January, 2005 passed by the learned Additional Sessions Judge, Fast Track, Court-2, Kalyani, Nadia whereby the order of conviction is passed under Sections 399 and 402 of the Indian Penal Code and sentenced

to suffer rigorous imprisonment for five years for the offence punishable under Section 399 of the Indian Penal Code and three years for the offence punishable under Section 402 of the Indian Penal Code.

Brief resume of the case

2. The genesis of this criminal case embedded on the strength of the complaint lodged by the S.I., Kalyani P.S. on 23rd January, 2004 before the O.C., Kalyani P.S. when he produced five accused persons, namely, (1) Ram Chandra Das (2) Raju Das @ Saha @ Susanta Saha @ Chaina (3) Paltu Sarkar (4) Abhijit Saha and (5) Bappa Das along with some deadly weapons. It was alleged that the complainant along with some other police persons on receiving information that some miscreants have assembled at Bijohnagar, a lonely place near Railway line (up & down main line) with deadly weapons to commit dacoity in a closed factory under Kalyani Industrial Estate, rushed there at around 22.45 hrs. and reached near R.T.C. and left their vehicle and reached Bijohnagar on walking. They found some young men sitting in an isolated place and gossiping in a low voice and they rounded them and disclosed their identity and asked them to surrender before them then those said young men disclosed their identity as described hereinabove. After that, the complainant searched their persons and on search, recovered one iron chopper from the possession of Ram Chandra Das, one iron chopper from the possession of Raju Das @ Saha, one iron made Sidkati from the possession of Partha Sarkar, one iron rod about 3 ½" from the possession of Abhijit Saha and one iron rod about 3" from the possession of Bappa Das. Those persons

failed to give any satisfactory explanation regarding possession of such weapons and also failed to give any appropriate reply regarding their presence on the spot at that point of time. It was further mentioned in the written complaint that on interrogation, those persons confessed their guilt and stated that they assembled there with weapons to commit dacoity in the locality and other places.

3. On the basis of such complaint, Kalyani P.S. Case No.19 dated 23rd January, 2004 under Sections 399/402 I.P.C. started and after completion of investigation, the charge-sheet was submitted. The case was transferred on commitment before the learned District Judge, Nadia, subsequently, transferred to the Additional Sessions Judge, Fast Tract, Court-2, Kalyani, Nadia for trial. The learned Court framed the charges under Sections 399 and 402 against all the accused persons and the content of the charge was read over and explained to them to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

Submissions

4. The learned Advocate representing the appellant initially submitted that the learned Court passed the order of conviction without considering the discrepancies in the evidences adduced by the prosecution witnesses. It is his specific contention that the complaint was lodged on 23rd January, 2004 by the S.I., Kalyani P.S. and he seized offending weapons from each of the accused persons which were five in numbers. No independent witness was there who was present since it was dead at night. More so, no evidence can be

found to establish any conspiracy to be by the accused persons. He further argues that in the sketch map, the industrial belt is not shown by the I.O. and also no adjacent houses surrounding the alleged place of occurrence can be found from the sketch map. That apart, the article seized did not possess any special mark on the seized weapon and no label or seal were found from the said articles as seized. The most glaring discrepancies found in the number of weapon seized the description of which differs in course of the evidence by the prosecution witnesses before the Court. The learned Advocate representing the appellants draws the attention of this Court to the evidence adduced by the witnesses as well as the seizure list and the content of the complaint which prima facie shows that glaring inconsistencies mentioned therein. The last argument that has been placed before this Court that P.W.6 in course of his evidence though mentioned that he received the information but no diary was exhibited before this Court in order to substantiate his contention. In **Chaturi Yadav & Ors. Vs. State of Bihar**¹ reported at it was held that merely some persons assembled at an isolated place and some of them had weapons with them by itself would not constitute offence Sections 399/402 of the I.P.C. Accordingly prays for an order of acquittal.

5. The learned Advocate representing the State in this case very candidly submits that the prosecution has failed to establish any mens rea in order to attract Sections 399/402 I.P.C. No other criminal antecedent of those accused persons can be found from the evidence of the de facto complainant or the I.O.

¹ AIR 1979 SC 1412

It is further submitted that there was a closed factory mentioned in this sketch map which may be a probable place for dacoity but the prosecution failed to establish any such material which can attract the ingredients of Sections 399 and 402 I.P.C. That apart the seizure as alleged was defective and did not follow the required procedure for special identification. According to the prosecution, the benefit of doubt should have been accorded in favour of the appellant.

Analysis

6. Having heard the submission of both the learned Advocates and on careful perusal of the materials on record, it transpires that the seminal issue falls for consideration is whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt.
7. The Learned Trial Court in this case scanned the evidences adduced before the Court on behalf of the prosecution witnesses and observed the place of occurrence is a lonely place without having any light. The learned Court perused the exhibit 4, that is the sketch map and found that the closed factory is situated at the northern side of the place of occurrence and that the contention of prosecution about the assembly of these accused persons in the place of occurrence was substantiated by the statement of the accused persons in their examination under Section 313 of Cr.Pc. No reason can be found from the four corner of the decision as to why the learned Court arrived at a conclusion that the Court cannot disbelieve that the intention of the accused persons was not to commit dacoity when it was specifically observed that there

was no sufficient light, the P.O. was not fully described and also the accused persons were not of that area.

8. The learned Advocate has further relied upon the evidence of the accused persons while the incrementing materials were put before them and they failed to give any satisfactory explanation. In the criminal jurisprudence, the prosecution is to establish the case beyond the shadow of all reasonable doubt in order to bring home the charges and to pass an order of conviction and not on the deficiency in making out appropriate defence case. In **Ashish Batham vs. State of M.P.²**, Hon'ble Supreme Court of India held, as under:

"8. Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicating or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between "may be true" and "must be true"."

² (2002) 7 SCC 317

9. The evidence of the P.W.1 disclosed the description of the nature of the weapons seized from each of the accused which included iron rod, sidkathi and chopper. This act was not substantiated by the P.W.2 who being the seizure list witness described the weapons in a different manner. The said witness specifically mentioned that the seized article did not contain any special mark of identification and he failed to say which articles were seized by the police from whom. P.W. 3, being a member of the team specifically mentioned that when they reached at the P.O. they found the accused persons gossiping there which was a lonely place. They gheraoed the entire place of occurrence, chased them and searched them and on asking them, they failed to give any satisfactory explanation, then they arrested them and found the offending weapons. This witness mentioned about only two choppers and only two iron rods. Nothing was said about seizure of the sidkathi as can be found from the evidence of P.W.1. In his cross-examination on the suggestion put to him on behalf of the defence counsel he admitted that it was Netaji's birth day and different clubs have organized evening football match. However, they denied that the accused persons came to play football from different places. Therefore, the defence tried to make out a case that on the eve of Netaji's birthday on 22nd January, late at night there was possibility of football tournaments organized by the various clubs and accused persons arrived there from different places in order to participate in the said tournaments and they have been falsely implicated in the instant case by the police persons. P.W.4 being the Constable who went to Bijoynagar along with other police persons

recovered the articles and arrested the accused persons also seen from seized list mentioned that the articles were seized by the police in his presence but the list was prepared at the P.O. This witness also failed to recollect as to which weapon was recovered from whom. P.W. 5, the Constable who was posted at Kalyani P.S. on the relevant day failed to say the surroundings on the north, west and south of the said place of occurrence which has been described as the eastern side of the RTC. According to him there were houses by the side of the Railway track when nothing can be found from the sketch map as prepared by the I.O. about the existence of any houses nearby place.

10. This witness for the first time disclosed about using torch light to detect the miscreants when this fact was never mentioned by any other witnesses. The most glaring discrepancy found from the entire evidence is from the testimony of P.W.6 who alleged to have received the information while he was in duty but did not diarized the same. Therefore, no evidence was produced before the Court in order to show that on the basis of an information and considering the nature of information regarding the particular place, they proceeded towards the place to apprehend the accused persons.

11. In order to bring on the charges under Section 399 I.P.C., it is essential that the prosecution must establish that there was any preparation for committing dacoity. Section 402 of IPC deals with the assembly for the purpose of committing dacoity when one of five or more persons assembled for the purpose of committing dacoity shall be punished with the rigorous imprisonment for a term which may extend to seven years. Therefore, the

preparation and the assembly of five persons for commission of a dacoity are the points which must be established by the prosecution by adducing cogent evidence. In the case of **Chaturi Yadav & Ors. Vs. State of Bihar (supra)** the Hon'ble Apex court held that mere assembly of people armed with weapons is not, by itself, sufficient evidence to prove they were preparing to commit a dacoity. The Hon'ble Court acquitted the accused in that case because the prosecution failed to present sufficient evidence of intent and preparation for a dacoity, holding that it was a well-founded contention.

12. In the case in hand it is abundantly clear that the accused persons were found gossiping and on search such weapons were found. So prima facie when they found the accused they did not have the weapons in their hand and in view of the discrepancies
13. From the above facts and circumstances and the nature of evidence adduced, these two ingredients are found missing.
14. The learned prosecution appearing before this Court also candidly submits about the lacunas on the part of the prosecution and how they have failed to establish this case beyond shadow of all reasonable doubt. Admittedly, the crux of case as could be gathered a group of persons sitting at a lonely place were gossiping when they got arrested by the police personnel and hence by no stretch of imagination can be said to have attracted the necessary ingredients for commission of an offence under Sections 399/402 I.P.C.
15. In the decision as relied upon by the learned Advocate in **Chaturi Yadav (supra)**, almost similar situation arose before the Court and it was observed by

the Hon'ble Supreme Court that mere presence of the persons in an assembly is not sufficient to attract Sections 399/402 of the I.P.C.

Conclusions

- 16.** After going through the evidence of the witnesses, the facts and circumstances and the submission advanced before this Court on behalf of the learned Advocates, this Court is unable to concur with the judgment passed by the learned Trial Court. Accordingly, the said judgment and order of conviction is liable to be set aside.
- 17.** Hence, the criminal appeals stand allowed.
- 18.** Accordingly, CRA 501 of 2005 and CRA 101 of 2005 are disposed of.
- 19.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[CHAITALI CHATTERJEE (DAS),J.]