

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 481 of 2005

**Sahanaz Alam @ Lula
Vs.
State of West Bengal**

With

C.R.A. 506 of 2005

**Aurangzeb Alam @ Gudda
Vs.
State of West Bengal**

For the Appellants : Ms. Devipriya Mitra
(Amicus Curiae)

For the State : Mr. Rudradipta Nandy
Ms. Sanjana Saha

Heard on : 17.05.2024, 26.09.2024

Judgment on : 06.05.2025

Ananya Bandyopadhyay, J.:-

1. These appeals are preferred against the judgment and order dated 24.03.2005 passed by the Learned Additional Sessions Judge, 1st Court, Alipore in S.T. No. 2(12)/2000 convicting the accused appellants to suffer rigorous imprisonment of 7 years and also to pay a fine of Rs.2,000/- in default to suffer rigorous imprisonment for a period of 2 months for the offence committed under Section 394 of the Indian Penal Code and also sentenced to suffer rigorous imprisonment for 7 years for the offence under

Section 397 of the Indian Penal Code and both the sentences shall run concurrently.

2. The facts of the prosecution case that on 25.10.1999 at about 20.15 hours while the shop of M/s. Archies Gallery situated at P-246, C.I.T. Road, Kolkata-700054 was opened to customers, at that point of time some unknown miscreants under the disguise of customers entered into the shop and committed dacoity at the point of fire arms and other weapons and looted away a cash of Rs.8,050/- and 2 gold neck chain, 1 cellular phone and one of the miscreants fired one round from his firearms aiming at the de-facto complainant which stuck on the rack made of glass and thereafter the miscreants hit the complainant and his son by the butt of the firearms for which they sustained injury on their forehead and ultimately the miscreants fled away with the looted items by a taxi, hence the case.
3. Based on the aforesaid incident, a complaint was lodged at the Phoolbagan Police Station which was registered as Phoolbagan P.S. Case No. 202 dated 25.10.1999 under Sections 395/397 of the Indian Penal Code.
4. On completion of the investigation, charges were framed against the appellants under Sections 395/397 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.
5. The Learned Amicus Curiae representing the appellants submitted as follows:-
 - i. Save and accept the police personnel and the persons attached with the shop rooms where the alleged dacoity took place, no independent

witnesses were examined to bring home the charge as levelled by the prosecution.

- ii. The purported search and seizure as made by the prosecution during the course of investigation had not been proved by any independent witnesses.
 - iii. The evidences of PW-3, 4, 5, 8, 11 and 12 were contradictory to each other.
 - iv. There were discrepancies with regard to the manner of dacoity as found from the complaint and the evidence of witnesses.
 - v. Test Identification Parade was held by the Learned Magistrate after a long delay and as such delay in holding the Test Identification Parade vitiated the prosecution story altogether.
 - vi. There was no credible evidence in the course of trial particularly with regard to the recovery of golden chain, mobile phone and no independent witness came forward to prove such recovery.
6. The Learned Advocate representing the State submitted that the Learned Trial Court, after assessing oral and documentary evidence of the prosecution, rightly passed the impugned order of conviction and this Court should not interfere with the same.
7. Perused the reasoned order passed by the Learned Trial Court. The appellants were identified in the T.I. Parade. The stolen articles had been recovered.

8. The relevant portion of the order dated 24.03.2005 in S.T. No. 2(12)/2000 passed by the Learned Additional Sessions Judge, 1st Court, Alipore is reproduced hereinbelow:-

“It has been described that the accused persons at the time of commission of the dacoity snatched away two golden neck chain from the possession of P.W. 3 Debiprosad Saraf and P.W. 4 Goutam Saraf and also one of the accused took away mobile phone from Goutam Saraf and then during investigation the I.O. was able to recover the same as per the statement made by accused Rizwan Alam and Sahanaz Alam and such seizure could be proved by the oral evidence of P.W. 13, P.W. 15 and P.W. 16. The material witnesses namely P.W. 3 and P.W. 4 in course of their evidence have identified the same as the mobile phone which was taken away by the miscreants. Accordingly the fact of taking away of the mobile phone and its recovery has conclusively been established.

Thus on an earnest consideration of the evidence both oral and documentary on record, giving due regard to the facts of the case and in the light of the discussion made above I am convinced to hold that the prosecution has been able to establish that the accused persons entered into the shop name Archies Gallery around 8/8-15 P.M. on 25.10.99 and they took away cash and a mobile phone including two golden neck chain therefrom at the point of force and by causing injury on the person of P.W. 3 and P.W. 4. It is to be mentioned here that the accused persons have been charged for the offence U/s. 395/397 I.P.C. To constitute an offence U/s. 395 I.P.C. there must be participation of five or more persons for commission of the offence but in the present case as could be accumulated in the evidence of P.W. 4 that four persons namely these accused persons had the involvement in commission of the offence and they at the time of committing the offence caused hurt to P.W. 3 and P.W. 4 and thereby their offence would come under the purview of section

394/397 I.P.C. and accordingly they are liable to be convicted ... in terms of section 222 Cr.P.C.”

9. In view of the above discussions, this Court is not inclined to interfere with the order of the Learned Trial Court.
10. Under such facts and circumstances, the instant criminal appeals being CRA 481 of 2005 and CRA 506 of 2005 stand dismissed.
11. There is no order as to costs.
12. I record my appreciation for the able assistance rendered by the Learned Advocate Ms. Devipriya Mitra as Amicus Curiae in disposing of this appeal.
13. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. 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.)