



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 199 OF 2022

Ataram Kena Badole,
Age : 44 years, Occu. : Nil,
R/o. Gujarwadi, Tq. Bhagwanpura,
Dist. Badwani (MP).

... Applicant

Versus

The State of Maharashtra,
Through Police Station Officer,
Yawal Police Station, Tq. Yawal,
Dist. Jalgaon.

... Respondent.

.....
Mr. Syed Azizoddin R., Advocate for Appellant.
Mrs. Vaishali S. Chaudhari, APP for Respondent - State.
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 28 APRIL 2025

PRONOUNCED ON : 09 MAY 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order of conviction dated 31.12.2013 passed by learned Additional Sessions Judge, Jalgaon in Sessions Case No.156 of 2012 holding appellant guilty for offence punishable under section 399 of Indian Penal Code and under section 3/25 of the Arms Act.

PROSECUTION STORY IN NUTSHELL IS AS UNDER

2. Yawal police station received information from police patil of village Aadgaon about some persons armed with weapon

having made preparation to commit dacoity are spotted in the vicinity. On receipt of above information, team was constituted and accordingly five persons were spotted on Itchkheda - Kingaon Road, two managed to flee after arrival of police and three were apprehended and crime was registered. The same was investigated by PW7 API Pawar and PW8 PI Patil, at respective time. After gathering sufficient evidence, they were charge-sheeted.

After framing of charge, learned Additional Sessions Judge, Jalgaon conducted trial vide Sessions Case No.156 of 2012. After appreciating the oral and documentary evidence, learned trial Judge was pleased to accept the case of prosecution by recording guilt of the appellant vide judgment and order dated 31.12.2013.

Precisely said judgment is taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. Sum and substance of the arguments on behalf of appellant are that, there is false implication. That, there is improper appreciation of evidence. That, essential ingredients for attracting section 399 of IPC are patently missing. That, only witnesses are examined by prosecution are police witnesses and one police patil. He further pointed out that, a girl is also examined, but she has not

supported the prosecution. Therefore, with such quality of evidence, conviction ought not to have been recorded by learned trial Judge. Hence, indulgence at the hands of this court is urged for.

On behalf of Respondent - State :

4. Per contra, supporting the judgment of conviction, learned APP submitted that, on secret information, raiding party was constituted, raid was successful and five persons were found to be moving in suspicious condition getting armed with weapon like rod and screw driver etc. Thus, they were equipped with such material, which was meant to be used for committing dacoity. They were apprehended from spot. That, necessary ingredients for section 399 of IPC were available. Therefore, learned trial Judge committed no error whatsoever in accepting the case of prosecution and hence, learned APP prays to dismiss the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

5. In nutshell, case of prosecution is that, police patil of the village Aadgaon passed information to police regarding suspects about committing dacoity, and therefore, team was constituted and out of five, who were found to be in suspicion movement, three were managed to be caught hold of. However, two managed to escape by taking advantage of darkness. Prosecution has primarily relied on evidence of eight witnesses. Their role and status are as under :-

PW1 Puja, who saw the said person having revolver to the back side of his waist.

PW2 Prakash is the villager. In his presence accused were apprehended.

PW3 Sanjay, **PW4** Garbad, **PW6** Aliyarkhan are the Police Head Constables.

PW5 Shankarrao is the Police Patil.

PW7 API Vijay Pawar and **PW8** P.I. Ramdas Patil are the Investigating Officers.

For proper appreciation and comprehension, it would be fruitful to reproduce the very testimonies of relevant witnesses i.e. PW1 Puja, PW2 Prakash, PW3 Sanjay, PW4 Garbad, PW5 Shankarrao, PW6 Aliyarkhan, in verbatim as has been stated in witness box in trial court.

6. **PW1** Puja, who saw the said person having revolver to the back side of his waist. Relevant portion of his evidence at Exhibit 13 is as under:-

“On 19.3.2012 I having accompanied with my mother went to Manu devi. In the evening time at about 5 p.m. after taking meal I had gone to drink water. At that time near the water tank I noticed a person having beard and long crest. I was standing behind said person. He just bow to take out water of the tank at that time I noticed said person had revolver to the back side of his waist. I immediately left the said water tank and went to my mother and narrated her that I noticed revolver with the said

person. The other persons who had near my mother also heard the talk. Thereafter said person fled away. -Thereafter me and my mother left for home. The said person who was holding revolver with him is present before the court.

(The witness has pointed out towards the accused who has put on white shirt. He is by name Lalu Shankar Barela, the accused no.2). Police has recorded my statement on next day.

7. **PW2** Prakash is the villager. Relevant portion of his evidence at Exhibit 14 is as under:-

“1. On 20.3.2012 Police Patil of my village called me and one Jagannath Sukhram Patil. It was about 4 a.m. He told us that some persons of Pavara community had come in the area of Vichkheda. Some police officials from Yawal Police Station was also with Police Patil. We then having accompanied with police party in their police vehicle proceeded towards Vichkheda along the Kingaon road. While proceeding towards Vichkheda we noticed some 4 to 5 persons in a suspicious condition in a agricultural land. We then all followed the police party and went to the said land. The police party apprehended persons by name Atmaram Kena Badole, Lalu Shankar Barela and Pyarelal Sing. Two persons out of them fled away on their motorcycle. On apprehending the said persons and on being inquired by police the said three persons had disclosed their names. The police then took search of the person of Atmaram Kena Badole and found a revolver loaded with six cartridges, one mobile phone and cash Rs.270/-. A motorcycle of Hero Honda make was also seized from him. Police then took search of the person of Lalu Shankar Barela and seized revolver loaded with fire cartridges, nylon

rope. The same were seized. The police officer then took search of the person of Pyarelal and seized revolver loaded with six cartridges and mobile phone. The police officer seized all those materials from said three persons. The seized material then kept and preserved in separate envelope. The same were sealed in my presence. The police officer then obtained my signature on each of the envelope. The police officer then prepared detail panchnama and obtained my signature. The document now shown to me is the said seizure memo. It bears my signature. The police also put signature of the said three persons. It is at Exh.15.

2. Today I can identify all those muddemal seized by police in my presence. The muddemal revolver and cartridges six separately kept in polythene bag now shown to me, have been seized from Atmaram Kena Badole. The pistol and cartridges commonly placed at Art. A. The envelope bears my signature. The mobile phone now shown to me was seized from Atmaram. The envelope bears my signature and that of another panch. The mobile phone is placed at Art. B.

3. The another envelope now shown to me bears my signature and that of Jagannath Sukhram Patil. The revolver kept there in and five cartridges, now shown to me are the same which was seized from Lalu Shankar Barela. The same are commonly kept at Art. C. the another envelope now shown to me bears my signature and that of Jagannath Sukhram Patil. The rope kept therein now shown to me is the same seized in my presence from Lalu Barela. It is kept at Art. D. The envelope now shown to me bears signature of me.

4. The envelope now shown to me bears my signature and that of Jagannath Patil. The revolver and six cartridges kept therein and now shown to me were seized from Pyarelal. It is at Art. E. The another envelope now shown to me bears my signature and that of Jagannath Patil. The mobile phone and torch kept there in and now shown to me were seized from Pyarelal. The mobile phone is Art. F and torch is at Art. G. Today I can identify those persons to whom we apprehended in the night of dated-20.3.2012. Out of them two persons are present in the court. The accused having black T-shirt told his name Ataram. The accused who put on white shirt told his name Lalu.

5. On the same day at 2 p.m. I was called by police officer in the police station. Now says I was called in the land where we apprehended these two accused and their companion. It was the agricultural land owned by Madhukar Chintaman Patil of village Kingaon. Jagannath Patil was also with me. Police then prepared the spot panchnama and obtained my signature and that of Jagannath Patil. The document now shown to me is the said panchnama. It bears my signature and that of Jagannath Patil as well as the police officer. It is at Exh.16.”

8. **PW3** Sanjay, Police Head Constable. Relevant portion of his evidence at Exhibit 20 is as under:-

“1. Since last two years I am attached to Yawal Police Station as Police Head Constable. On 19.3.2012 at 6 p.m. PSI V.S. Pawar Police Station, Yawal called me and other police staff namely H.C. Sonawane, Naik constable Malviya, Naik constable Chaudhary and Naik constable-c Rawate and told that there is

information from Police Patil Aadgaon that some suspects have been seen in Manu devi locality and there is possibility that they must be dacoit. We all the police officials and PSI Pawar on our own motorcycles went to village Aadgaon and met the Police patil of village Aadgaon. He is by name Shantaram Patil. Police Patil further led information to police party that he heard, the suspects are holding pistols and they are five in numbers. PSI Pawar then phoned to police station and requested to provide private jeep and some additional police force armed with guns.

2. In the said night at 1 a.m. dated-20.3.2012 P.C. Ayyub Tadvī, Vinod Bawaskar and Home guard Vijay Jawale came and joined us. They also brought a private jeep.

3. PSI Pawar then called two villagers and led them information about the search of the suspects and requested to assist the police party as a panch. We then all the police officials and the panchas boarded in the jeep and at about 4 a.m. we proceeded towards Kingaon along the Itchkheda-Kingaon road. We crossed village Itchkheda and proceeded about 1 kilometer ahead. In the light of the torch I saw some five persons were attempting to hide themselves in agricultural land. Immediately the jeep was stopped. The police party including me thereafter proceeded towards the agricultural land. I noticed the said persons got hint of our arrival and therefore they started running away. I noticed two persons out of the five fled away on a motorcycle) The rest of the three were also attempting to flee away on motorcycle. But, we the police party apprehended them in the agricultural land itself.

4. Some of the police officials chased the said two persons

who fled away on the motorcycle. Said police officials used the jeep. I was one of the police official among who apprehended three suspects in the agricultural land. We then brought the said three persons on the road PSI Pawar then took search of the said three persons one by one in presence of panch witnesses and then inquired about their names and whereabouts.

5. The two accused present before the court are among the said three persons. They had disclosed their name Aataram Kena Badole, Lalu Shankar Barela and Pyaresing Rajaram Bhilala. Out of them Aataram Kena Badole and Lalu Shankar Barela are present before the court. During search of the person of accused Aataram a country pistol loaded with six cartridges found which he had kept to the back side of his waist. The motorcycle of Hero Honda make Splendor model was also seized from his possession. During search of the person of the accused Lalu Shankar he was also found possessing country pistol loaded with five cartridges. He was also possessing a nylon rope. The another apprehended person Pyaresing Rajaram Bhilala was also found possessing country pistol loaded with six cartridges. He was also possessing torch. PSI Pawar seized all those material under seizure memo in presence of panchas and prepared detail panchnama. The -panchnama Exh.15 now shown to me is the said seizure panchnama.

6. We the police party then carried the said three persons including these two accused with us and while taking said three persons in our custody we further took search of the two persons who fled away on the motorcycle. We went towards Manu devi temple, Itchkheda etc.-1 but, we could not apprehend them. Therefore, at about 9 to 10 a.m. we all returned to police station

alongwith the accused and Pyaresing on 20.3.2012. The accused and their companion who fled away found in suspicious state possessing pistol. I therefore filed F.I.R. against the accused present before the court, their companion Pyaresing and another two who absconded, alleging that they have intended to commit road robbery or dacoity. The document now shown to me is the said F.I.R.. It bears my signature. It is at Exh.21.

7. Today I can identify the pistols, cartridges, torch seized from these two accused and their companion Pyaresing. The Art. A pistol and six cartridges now shown to me are the same which were seized from the accused no.1 Aataram. The another pistol and five cartridges now shown to me were seized from accused no.2 Lalu Shankar Barela. The Art. D nylon rope is the same which was seized from Lalu Shankar accused no.2. The Art. E pistol and six cartridges now shown to me were seized from Pyaresing Barela the abscond accused. The Art. G torch was seized from Pyaresing Barela. Besides the Art. A pistol and cartridges, mobile phone handset of carbon make was seized from the accused no.1 Aataram. The Art. B is the said mobile phone handset. Another mobile handset of rocker make was seized from abscond accused Pyaresing. The Art. F now shown to me is the said mobile phone handset.

9. **PW4** Garbad, Police Head Constable. Relevant portion of his evidence at Exhibit 22 is as under:-

“1 Since last 3 years I am attached to Yawal P.S. as Head Constable. On 19.3.2012 when I was on duty PSI Pawar told me and other staff namely HC Sanjay Patil, PC Ravate, PC Malviya and PC Chaudhary that he had information that some suspects

have been seen in Manudevi Adgaon area and therefore in order to find them PSI Pawar directed me and the staff to accompany him. We then proceeded towards village Adgaon on our motorcycle. Reaching the village Adgaon we went to the Police Patil. The Police Patil led information to the police party that as per information total five suspects armed with revolvers have been seen.

2. PSI Pawar then phoned to the police station, Yawal and requested for additional police force and private vehicle. In the night time at 1 a.m. additional police force in private jeep came to village Adgaon. Till about 4 a.m. we the police party discussed how to apprehend the suspects. We then took assistance of two villagers of Adgaon as panch. The police party made known to the said panchas what for their assistance is necessary.

3. Thereafter at about 4 a.m. we the police party and panchas traveled in private jeep and proceeded towards Kingaon along the Itchkheda-Kingaon road. At about 5 a.m. In torch light we noticed some five persons in the attempt of hiding themselves in agricultural land. We all got down of the jeep. But, till we apprehend the suspects. two of them fled away on motorcycle. Three suspects were also in the attempt of flying away. But, we apprehended them.

4. PSI Pawar then asked the three suspects to disclose their names. One of them disclosed his name Aataram Kenya Badole r/o. Gujarwadi, Tal. Bhagwanpura, District- Khargon. (The witness has pointed out the accused who has put on black T shirt and stated that he is Aataram Kenya Badole i.e. the accused no.1.) PSI Pawar then took search of his person and found

gavathi pistol loaded with six bullets, a mobile handset and cash Rs.270/-. Today I can identify the revolver and bullets as well as the mobile handset. The pistol Art. A, six bullets Art. 1--A now shown to me are the same seized from the accused no.1 Aataram. The Art. B now shown to me is the mobile handset seized from the accused no.1 Aataram. A motorcycle of Hero Honda make black colour was also seized from the possession of accused no.1.

5. *The another suspect had disclosed his name Lalu Shankar Barela of village Jamathi Tal. Bhagwanpura, District- Khargon. PSI Pawar took search of his person and seized gavathi pistol, loaded with five bullets and nylon rope. Today I can identify those articles and the suspects who was apprehended. {The witness has pointed out the accused who has put on white T shirt. He is by name Lalu Shankar Barela accused no.2.) Having seen the pistol Art. C and five bullets I say these were seized from the possession of accused no.2 Lalu Shankar. Art. D nylon rope was seized from the accused no.2 Lalu Shankar.*

6. *The third suspect disclosed his name as Pyaresing Rajaram Bhilala of village Kabari, Tal. Bhagwanpura, District-Khargon. PSI Pawar took search of his person and seized gavathi pistol loaded with six bullets, mobile phone handset and three cell torch. Today I can identify the material seized from the possession of Pyaresing Bhilala. Said suspect is not present today. I say when he was in sub jail, Yawal, he broke opened the jail and fled away. Today I can identify the articles seized from said Pyaresing Bhilala. The pistol and six bullets as well as mobile phone handset and three pencil cell torch. Art. E, F and G were seized from Pyaresing Bhilala the abscond accused.*

7. *Having seized all those articles from the accused nos. 1, 2 and the abscond accused respectively PSI Pawar fasten label on each of the article containing signatures of panchas and PSI Pawar. He then prepared detailed seizure panchnama. We then brought all the three suspects to the police station. Sanjay Patil H.C. then lodged F.I.R. My statement has been recorded.”*

10. **PW5** Shankarrao is the Police Patil. Relevant portion of his evidence at Exhibit 23 is as under:-

“1. I am Police Patil of village Adgaon. On 19.3.2012 an information was received to me that some suspects armed with weapon were seen in the forest near Manudevi temple. I also received information thar one girl and her mother saw some persons armed with weapon. The said girl and his mother were travelling in auto rickshaw. I caused the auto rickshaw driver to stop. I inquired with the girl and her mother about the suspects. Thereafter I phoned to PSI Pawar and led him information about the suspects. On the same day in the evening at or about 7 p.m. PSI Pawar having accompanied with one police official came to my village. He then inquired with me about the information which I led to him. He then phoned to police station, Yawal and asked them to send police force and vehicle. In the same night at about 10 p.m. some police officials in a private jeep arrived to Adgaon. The police official held meeting. They took assistance of two panchas and at about 2 a.m. the police party and panch proceeded towards forest for searching the suspects.

2. In the morning of dated 20.3.2012 I came to know that the police party apprehended three suspects. I thereafter went to

police station, Yawal and provided address of the girl and his mother with whom I inquired about the suspects. I had collected the address from the said girl and his mother. Police recorded my statement.”

11. **PW6** Aliyarkhan, Police Constable. Relevant portion of his evidence at Exhibit 25 is as under:-

“1. On 10.4.2012 I was attached to Yawal P.S. as police constable. On that day the P.S.O. allotted me duty to carry gavathi three revolvers and bullets to the Forensic Lab, Mumbai. The said muddemal was handed to me by P.S.O. in a box and the said was sealed. Yogesh Mahajan P.C. B. No.421 was allotted duty to accompany me for carrying the muddemal. I carried said muddemal under requisition signed by P.I. R.S. Patil and PSI Pawar. The said requisition handed to me in duplicate.

2. On 11.4.2012 me and my companion handed the sealed box containing the muddemal to the officer bearer Forensic Lab, Mumbai. He having received the muddemal gave acknowledgment thereof on the office copy of requisition and kept original thereof with him. The document now shown to me is the office copy of the requisition upon which the attendant Forensic Lab gave acknowledgment regarding receipt of the muddemal. It is at Exh. 26.”

ANALYSIS

12. Operative part of the impugned judgment shows that there is conviction recorded under section 399 of IPC and section 3/25 of the Arms Act. Section 399 of IPC deals with preparations to

commit dacoity. For attracting offence under section 399 of IPC, it is incumbent upon prosecution to establish following ingredients :-

- “(i) That the accused was one of the five or more person;
- (ii) That the accused or more of such persons were making a preparation
- (iii) That the preparation was for committing dacoity.”

13. On re-appreciation, it is emerging that, **PW1** Puja is the village girl, who claims to have accompanied her mother to the temple and she claims that near the water tank, she noticed one person with a revolver tucked to the waist and she reported it to her mother. However, while under cross in paragraph no.3, the girl, who is 17 years of age, has stated that the said person to whom she saw a woodcutter, then she answered that after noticing said person, she was there for half an hour and then left for Bhusawal.

14. Another witness is **PW5** Shankararo, police patil, who allegedly passed information to police on 19.03.2012, he claims that information was received about some suspects armed with weapon seen in the forest near Manudevi temple. The girl i.e. above witness **PW1** has not deposed about going to the forest. This witness states that one girl and her mother saw some persons. But again the girl **PW1** has deposed about seeing only one person.

While under cross, he is unable to state the name of the person, who gave information about suspects. He is also unable to state name of the person, who told him that the girl and mother had seen suspects armed with weapon. He also admits of not disclosing the name of informer to the police.

Remaining witnesses are police witnesses, who claimed to be part to the raid.

15. In view of the nature of charges, it is essential on the part of prosecution to demonstrate by way of legally acceptable material regarding there to be five or more persons, who had assembled together and these persons had further made preparations to commit crime and they had intention to commit dacoity. It is settled position that, it is incumbent upon prosecution to also demonstrates existence of *mens rea* to commit dacoity.

16. Here, on complete re-appreciation of above discussed testimonies, as stated above, there is ambiguity about five persons allegedly spotted together and secondly the girl had only seen one person, whereas PW5 police patil, who gave information to police, speaks about receiving information about some persons to be armed with weapon and are in the forest. None of the witness speaks that

five persons in furtherance of their intention to commit dacoity has acted in any manner.

17. Merely equipped with tools like screw driver and rope and alleged country-made revolver is itself not sufficient to attract the rigors of section 399 of IPC. To this extent the Hon'ble Apex Court has dealt in the case of ***Sunder vs State (N.C.T. Of Delhi)*** reported in (2002) 6 SCC 593, wherein it has been held that, mere recovery or seizure is not sufficient to record guilt under section 399 of IPC.

18. It is further pertinent to note that, accused persons being strangers, it was imperative to get identification confirmed by holding T.I. parade. However, in paragraph no.18 of cross examination, Investigating Officer has clearly and candidly admitted about not holding T.I. parade and calling witnesses.

19. Perused the impugned judgment under challenge, it is pertinent to note that, in the judgment, reasoning part commences from paragraph nos.6 to 17. However, upto paragraph no.13, learned trial Judge has reproduced the evidence of prosecution witnesses and after relying the ruling of Hon'ble Apex Court in the case of ***Birbal B. Chowhan and Anr. v. State of Chhatisgarh etc.***, reported in AIR 2012 SC 911, learned trial Judge in paragraph no.15 held and concluded

that, considering the evidence of panch witnesses as well as police witnesses, offence of preparation of dacoity as well as offence punishable under section 3/25 of Arms act is made out. Absolutely, no distinct reasoning has been assigned for accepting the case of prosecution. There is no analysis of testimonies or answers given in cross. Thus, apparently merely by relying on citation, conclusion seems to have been drawn. As pointed out, there is improper appreciation of evidence as well as law. Lacunas noticed by this court in above paragraphs are not at all dealt by learned trial Judge. Hence, interference is called for. Accordingly, I proceed to pass the following order :-

ORDER

- (I) Criminal Appeal stands allowed.
- (II) The conviction awarded to appellant Ataram Kena Badole in Sessions Case No.156 of 2012 by the learned Additional Sessions Judge, Jalgaon on 31.12.2013 for the offence punishable under sections 399 of Indian Penal Code and section 3/25 of the Arms Act, stands quashed and set aside.
- (III) The appellant stands acquitted of the offence punishable under section 399 of Indian Penal Code and section 3/25 of the Arms Act.
- (IV) He be set at liberty, if not required in any other case.

- (V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)