

Niranjansing Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Mar-04-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Appeal No.680 of 2011

Appellant : Niranjansing

Respondent : State of Maharashtra

Judgement :

The appellant questions conviction recorded in Sessions Case No.55/2009 for offense under Section 395 of IPC, directing to undergo rigorous imprisonment for ten years and to pay fine of Rs.5,000/-; in default, rigorous imprisonment for three months, by order dated 15.9.2011 of the learned Assistant Sessions Judge, Majalgaon, district Beed.

2. FACTS:

(a) In the night of 15.9.2009, PW No.1 Dilip Sable and Dnyanoba Sable were sleeping in the jewellery shop of his uncle, Omkar Jewellers with Babasaheb Arjun Muli, Arjun Laxman Jadhav, Santosh Balasaheb Solunke, Sandip Chaganrao Chalak. As per practice, said Dilip had carried gold ornaments of his shop Kedareshwar Jewellers to the shop of Omkar Jewellers to be safely stacked. At about 4 a.m., Santosh heard rattling noise of disturbance to shutter and, resultantly, they woke up. They were stunned to see five persons, muffled, barged

in the shop by curving the shutter. They were armed with knife, iron bars. All of a sudden, those persons started thrashing inmates, and commanded key of the locker. On pleading ignorance by the inmates, the decoits broke open the cupboard and removed silver and gold ornaments. When they were busy in opening / fiddling with the locker, taking advantage of the situation, PW No.1 contacted Deelip Solunke, owner of the shop on mobile. Resultantly, Dilip, along with his father, Tukaram rushed to the spot. Dacoits started leaving the shop with loot. Owing to commotion, one of the decoits was nabbed by these five inmates.

In the scuffle, shoulder of the shirt of the suspect was torn, however, he was controlled. Outside the shop also, scuffle and commotion emerged. Dilip and Tukaram were brutally assaulted by four thieves, who left the shop with booty. One of the person, apart from them, was waiting in a car, however he, sensing gravity of the matter, sneaked away. Decoits were chased. Injured were rushed to hospital. A detailed report was lodged to the Police. The nabbed suspect / appellant was produced before the Police. He was put under arrest, in his search gold ornaments worth Rs.97,280/- was taken charge. There was no explanation offered by the appellant for possessing gold ornaments and his presence at about 4 a.m. in the jewellery shop. Immediately, at the instance of the accused, house of his accomplice was searched where gold ornaments worth Rs.5,39,520/- were collected under panchnama Exh.109-C. From the house of another suspect Raghuvirsing, gold ornaments worth Rs.1,66,000/- were taken charge (panchnama Exh.110C).

(b) The injured Dilip and his father Tukaram being in serious condition, were referred to hospital and they remained indoor patient for a considerable duration.

(c) The accused Chatursing was arrested on 27.1.2010, gold ornaments worth Rs.1,17,267/- were taken charge from him in terms of statement under Section 27 of the Evidence Act under seizure panchnama.

d) Another accused Bablusing was arrested, supplementary chargesheet was filed against him on 27.7.2010. All the three accused were separately chargesheeted in respect of common offense, and common intention, the learned Sessions Judge clubbed the cases together and a common charge for offense under Section 395,

397 of IPC was explained to the accused below Exh.8, and the accused pleaded not guilty and claimed to be tried. The defense was of total denial.

(f) Eighteen witnesses have unfurled the prosecution case.

3. Complainant Dilip Sabale is PW No.1. His evidence is corroborated by PW No.4 Narayan Mali who was vendor himself but, incidentally, in the said night, had rested in Omkar Jewellers, had kept the ornaments at the said shop for safety. Evidence of PW Nos.1 and 4 is substantially corroborated by PW No.15 Tukaram Solunke, his son Dilip Solunke, PW No.13, who are owners of Onkar Jewellers. There was no controversy about five persons sleeping / resting in Onkar Jewellers at the material time in the night of 15.9.2009. PW Nos.13 and 14 corroborated of receiving phone call of the Decoity and they rushed to the shop. PW No.6 Arjun Jadhawar had also supported PW No.1 Dilip as he was in the shop.

4. The appellant did not dispute recovery of gold ornaments, referred to above.

5. The challenge by the learned Counsel for the appellant was:

(a) No stock register was produced by PW Nos.1, 4 and 15, nor any list of the gold ornaments was produced. Consequently, the recovery of gold ornaments, from various places, cannot be said to be of the heist and it cannot be assigned to the appellant as a perpetrator.

(b) As the learned Judge has acquitted accused no.2 Chaturising, accused no.3 Babulsing, there could not be conviction under Section 395 of IPC against the appellant Niranjansing.

(c) Learned Counsel has placed reliance to the judgment of this Court in the matter of Mohamed Nabi Yarmohammed Shaikh V. State of Maharashtra 2008 ALL MR (Cri.) 176), to the judgment of the Hon'ble Supreme Court in the matter of Ram Sunder Mahto and Ors Vs. State of Bihar (2009 ALL SCR 2526), to the matter of Raj Kumar @ Raju V. State of Uttaranchal (2008 ALL MR (Cri) 1376 (S.C.).

6. In the matter of Raj Kumar (supra), the Hon'ble Apex Court found, out of six accused, two were acquitted by the trial Court without recording a finding that though offense of Decoity was committed by six persons, identity of the two accused could not be established. They were simply acquitted by the Court. Hence, Lordships observed, four persons could not be convicted for an offense of decoity, with less than five, which is an essential ingredient for commission of Decoity. Moreover, all of them were acquitted for offense of criminal conspiracy punishable under Section 120-B of IPC as also for receiving stolen property in the commission of Decoity punishable under Section 412 of IPC. The Supreme Court, ultimately, set aside conviction of the appellant for offense under Section 396 of IPC.

7. In the matter of Ram Sunder Mahto, four accused were convicted for offense under Section 395 of IPC. The Hon'ble Lordships, considered overall circumstance and wanted a lenient treatment to be given as 28 years had elapsed since the offense took place. The Hon'ble Lordships reduced the sentence which has been awarded by the High Court to that of three years and dismissed the appeal.

8. In the matter of Mohamed Nabi Yarmohammed Shaikh, there were four accused put in for trial; two were absconding; one was dead. The trial Court had acquitted three of the accused. In the said case, the State has not filed appeal against acquittal of accused Nos.1 to 3.

9. In the instant case, apart from the appellant, four persons had joined him in the shop; one was on the wheels, out of those, two were later apprehended. The matter is still pending against absconding accused. Out of heist / decoity of Rs.82,00,000/- (Rs.eighty two lacs), total recovery so far, could be of Rs.8,02,800/-.

10. The glaring evidence in the matter about appellant having been nabbed at the spot is indicated by afore referred eye witnesses; they had no animosity to grind axe; there was recovery of gold ornaments immediately from the person of the appellant, taken charge under panchnama. Even if Panch did not support, however, the panchnama was proved by PW No.17, investigating officer. The panchnama, could not be said to be a fabrication against the accused / appellant.

In A.I.R. 1973 SUPREME COURT 760 (Saktu and another v. State of U.P.) it was held, where about 14 persons had admittedly taken part in decoity and charge framed against eight named persons was they along with six others had taken part in the decoity, the conviction of three of them only is not bad merely because they are less than five.

11. In Deepak @ Wireless Vs. State of Maharashtra 2012 (4) Bom.C.R.(Cri.) 356), the accused with four others (two juveniles and two absconding) had committed a decoity. The appeal was preferred on the ground that decoity or robbery was not proved nor there was recovery. For offense under Section 395, 396, 397 of IPC, participation with a group of five persons is required. Hon'ble Lordships, on 4.9.2012, observed that, the basic ingredient of involvement of minimum five persons for the offense was lacking in the said case and, in peculiar facts of the said case, the evidence was sufficient for the Court to hold that there was really an act of theft committed by the appellant and other accused. Said commission of offense, having regard to involvement of number of persons and murder of one Sharad and grievous injuries inflicted upon PW No.9, would definitely constitute an offense falling under Sections 395, 396, 397 of IPC.

12. Non production of stock register will not be an impediment to success of case. It cannot be said that there was no weapon with the appellant. Evidence illustrate, the appellant was armed with a weapon, had inflicted injuries to inmates. However, while in the process of taking away bags of gold ornaments, he was controlled from backside and no opportunity was given to him to further use the weapon. Reference of five persons committing the offense is reflected in the depositions. Acquittal of the two, therefore, will not take away and deflate effects of prosecution case from bracket of Section 395 of IPC. This is more so, to repeat, two suspects are still absconding. The judgment impugned does not call for interference.

Criminal Appeal (No.680/2011) is dismissed.

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