

**(2016) 02 BOM CK 0065**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 361, 69 of 2000**

|                           |    |            |
|---------------------------|----|------------|
| Balu S/o Sakharam Bhosale | Vs | APPELLANT  |
| The State of Maharashtra  |    | RESPONDENT |

**Date of Decision :** 10-02-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154  
Evidence Act, 1872 — Section 3  
Penal Code, 1860 (IPC) — Section 395, 397

**Citation :** (2016) ALLMRCri 1700 : (2016) 3 BomCR(Cri) 447 : (2016) 3 MhLJCrI 597

**Hon'ble Judges :** M.T. Joshi, J.

**Bench :** Single Bench

**Advocate :** G.A. Kulkarni, Advocate, Zia-UL-Mustafa, Advocate, for the Appellant; R.V. Dasalkar, A.P.P, for the Respondent

**Final Decision :** Allowed

## Judgement

M.T. Joshi, J. (Oral) - Heard both sides.

2. The present appellants were convicted by the learned Additional Sessions Judge, Kopargaon for the offences punishable under section 395 and 397 of the Indian Penal Code vide judgment and order dated 26/04/2000 passed in Sessions Case No. 21 of 1999. They were sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs. 7000/- each. They along with other accused nos. 3 to 5 were acquitted of the offences punishable under section 420, 109 r/w. 120-B of the Indian Penal Code. The other accused were also acquitted of the offences punishable under section 395 r/w. 397 of the Indian Penal Code. Aggrieved by the conviction and sentences, these two separate appeals are preferred by the present appellants.

3. Appellant - Balu in Criminal Appeal No. 361 of 2000 was arrayed as accused no.1 while appellant - Jalindar in Criminal Appeal No. 69 of 2001, was arrayed as accused no. 2 in the said Sessions Case.

4. The prosecution case, in short is as under:-

That PW1 - Somnath Pandhare complainant residing at Paranda had agreed to purchase 19 kg of gold from Ashok Vitthal Chavan (identified as accused no. 2 - Jalindar during investigation), as he represented that the said gold is found as the treasure trove while digging a house.

Present appellant - Balu was working as a driver with one Prabhakar Bargole i.e. brother-in-law of the complainant. Both the present appellants were always representing about finding of the gold and were asking the complainant to purchase the same. This pestering continued for about one year. Accused no. 2 told that the gold can be purchased for Rs. 15,00,000/- and the same is in the custody of Sushilabai Pardhin of village Padhegaon.

In the situation, on 13/2/1999, complainant PW1 Somnath along with PW2 - Gopi with driver PW3 - Deepak went to Pandharpur Urban Bank at Barshi. The complainant collected an amount of Rs. 3,50,000/- from the said urban Bank. The complainant along with brother-in-law Prabhakar came by a jeep to Kolhar, Tq. Shrirampur, District - Ahmednagar. They went to the house of PW2 - Gopi. Accused no. 1 - Balu also met them there. Thereafter, along with accused no. 1 - Balu, PW2 - Gopi and PW3 jeep driver - Deepak went to village Soygaon. Thereat, accused no. 1 - Balu brought accused no. 2 after about one hour. All of them thereafter proceeded to Kopargaon. They reached there at about 7:30 pm. Accused no. 2 asked them to wait at one square. He represented that the gold was hidden far away from the road and, therefore, he had asked one Sushilabai Pardhin to bring the gold by the side of the road. Accordingly, he went by rickshaw and returned by 10.00 pm in the night.

Thereafter, he escorted all of them by the side of one canal. About 200 feet on the dirt road, said Sushilabai Pardhin along with one lady was found. Said Sushilabai enquired, as to whether the amount was brought. Both the ladies took the personal search of the prosecution witnesses by confirming as to whether they were having any weapon. About 6-7 persons from the Pardhi community surrounded the prosecution witnesses. They manhandled the prosecution witnesses by stick, iron rods etc. They took out the money from PW1.

In the circumstances, the prosecution witnesses anyhow went by the jeep to Shirdi. They halted there in a lodge for the whole night and when the shock of the incident worn out, on 14/02/1999, they went to Kopargaon and filed the complaint at 4.15 pm.

5. The investigation in the case was started. The present appellants, being known to the complainant were arrested. From the person of the accused no. 1 - Balu, an amount of Rs. 25,000/- was recovered. It was having a slip of a bank. From the person of accused no. 2 - Ashok Chavan @ Jalindar, an amount of Rs. 25,000/- was recovered, which also had a slip of the bank. Rest of the accused were also searched. Some more accused were absconding. In the circumstances, the charge-sheet came to be filed.

6. Before the learned Additional Sessions Judge, Kopargaon, in all 10 witnesses were examined. So far as the present appellants are concerned, PW1, PW2 and PW3 were examined to give the details of the earlier transactions with them and also as eye witness to the incident of looting.

PW4 - Adinath is the employee of the bank, who identified the slip of the bank. PW5 - Baban was examined as the panch witness in whose presence, according to the prosecution, both the present appellants were arrested and from their person, the currency notes were seized.

7. The learned Additional Sessions Judge disbelieved the case of cheating, however, he found that the present appellants had role to play in the dacoity and, therefore, the conviction and sentences, as detailed supra came to be recorded.

8. Mr. Zia-Ul-Mustafa, learned counsel for the appellant - Jalindar in Criminal Appeal No. 69 of 2001 and Mr. G.A. Kulkarni, learned counsel for the appellant appointed for appellant - Balu in Criminal Appeal No. 361 of 2000 took me through the evidence on record.

It was submitted that the charge framed by the learned Additional Sessions Judge was vague, as it was recited in the charge that all the accused with the aid of absconding accused have committed the dacoity. It was submitted that when rest of the accused nos. 3 to 5 were acquitted and when it was not definitely known as to how many accused were absconding, offence punishable under section 395 or section 397 of the Indian Penal Code would not have been made out. Further, on merit, it was submitted that the prosecution failed to prove its case beyond reasonable doubt.

9. On the other hand, learned A.P.P. submits that the statement of PW1 to PW5 would squarely go to show that the present appellants were very much involved in the offence. He submits that since some of the accused were absconding, merely because their numbers were not detailed in the charge, since 5 accused were arrayed during the trial, no prejudice have been caused due to the defective charge. On merit, it was submitted that the evidence of the relevant witnesses has been rightly believed by the learned Additional Sessions Judge.

10. On the basis of this material, following points arise for my determination :-

I) Whether the prosecution has proved that the present appellants along with other accused committed dacoity regarding cash of Rs. 3,50,000/- on 13/02/1999 near village Padhegaon and that the dacoits were armed with weapons ?

My finding to the said point is in the negative. Both Criminal Appeals are therefore allowed and the appellants are therefore acquitted of the offences for the reasons to follow.

**REASONS**

11. PW1/complainant - Somnath deposed that for a period of about 1 year prior to the incident of dacoity, Ashok Chavan was pestering him for the purchase of the gold. Ultimately, it was agreed that the complainant would purchase the gold for the price of Rs. 7,00,000/- from the mother of said Ashok.

In the complaint, however, there is no recital that accused no.2 had told that the treasure trove was with his mother. On the other hand, in the complaint, it is alleged that the said gold was with one Sushilabai Pardhin of Padhegaon. PW1 Ashok thereafter gave narration of the collection of the amount from the bank while proceeding to Kopargaon with PW3 - his driver, where PW2 - Gopi met them there.

12. According to the complainant, he along with PW2 - Gopi went at the spot, where the incident of dacoity has occurred.

13. PW2 - Gopalkrishna alias Gopi has corroborated this fact. It was however brought on record that in his earlier statement before the Police, he has stated that he remained with PW3 - the driver of the vehicle and did not go to the spot. Not only this, PW3 - Deepak during cross-examination has again corroborated that PW2 Gopi did not go to the spot and remained with him.

14. The learned Additional Sessions Judge has disbelieved the case of cheating either by accused no. 2 or accused no. 1 and found them guilty for the offence of commission of dacoity. According to the prosecution, cash of Rs. 25,000/- with the label of the bank fixed to the van, were seized from them.

15. PW5 - Baban Sasane was examined to show that in his presence, both the appellants were arrested and from them, those bundle of currency notes were seized. His deposition would show that there were several accused persons in the Police Station and he could not identify any of the accused person. To a leading question in the examination-in-chief, he admitted that amount was seized from Balu Bhosale (appellant) however in the next breath, he deposed that he can not identify accused no. 1 or Ashok Chavan out of the accused.

During Further examination-in-chief of the witness, he admitted that he signed several panchanamas prepared by the Police and the bundles of the currency notes were kept on the table by the Police. The police simply pointed him the arrested persons and asked him to sign the panchanamas.

16. Thus, the very fact of seizure of currency notes from these appellants is not proved.

17. There are some variances between the statements of the witnesses. While the complainant states that they proceeded by a jeep of Marshal make, PW2 Gopi deposed that they proceeded by Tata Estate car. Further, there is a contradiction, as to whether the dacoits were wielding sticks or iron bar and axe.

18. Last but not the least, though according to the prosecution, the incident has occurred on 13/02/1999 at about 11.30 pm in the night, the FIR came to be filed

on 14/02/1999 at about 4:15 pm. The belated FIR is in the face of the admitted fact that PW1 - complainant did not return to his village Paranda after the incident but halted in a lodge at Shirdi i.e. near Kopargaon, where the FIR was to be filed.

19. If all these facts are taken into consideration, in my view, the learned Additional Sessions Judge ought to have extended benefit of reasonable doubt to the accused in the present case. In the circumstances, the following order :-

:ORDER:

20. Both the Criminal Appeals are hereby allowed.

21. The impugned judgment and order of the learned Additional Sessions Judge, Kopargaon, convicting the present appellants for the offences punishable under section 395 and 397 of the Indian Penal Code is hereby set aside.

Instead, both the appellants are acquitted of all the offences. Their bail bonds shall stand cancelled.

Fine amount, if any, deposited by them be refunded to them, after a period of eight (8) weeks from the date of this order.

22. Fees of Mr. G.A. Kulkarni, Advocate appointed for the appellant in Criminal Appeal No. 361 of 2000, is quantified at Rs. 10,000/- (Rs. Ten Thousand) and the same be paid to him by the High Court Legal Services Sub Committee at Aurangabad from the appropriate funds.

23. Both Criminal Appeals stand disposed of accordingly.