

(1992) 01 BOM CK 0053
In the Bombay High Court
Case No : Criminal Appeal No. 63 of 1989

Jagan Ramsingh Nepali

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 22-01-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 392, 397

Citation : (1994) 2 BomCR 156

Hon'ble Judges : S.M. Daud, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : Kiran V. Gupta, for the Appellant; K.D. Randive, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—The appellant arraigned as accused No. 1 in a Sessions Case challenges the conviction and sentence recorded against him for the alleged commission of offences punishable under sections 392 and 397 read with 34 of the Indian Penal Code.

2. On 7-7-1985, P.Ws. 2 and 3 who are man and wife had gone for a picnic alongwith their son and daughter named Nikhil and Nilanjana respectively to the Sanjay Gandhi National Park at Borivli. P.W. 3 Jambunathan was carrying on his person a sum of Rs. 200/- and Nirmala his wife had on her person ornaments, being four gold bangles with two in each hand, a gold ring and mangalsutra also of gold. While the family was picnicking at their favourite spot, they were horrified to see four miscreants making their way towards the family. One of the miscreants was flourishing a sword while the others were otherwise armed. The sword-wielding person was the appellant and flourishing it, he managed to extract from the couple the aforementioned articles. The culprits made good their escape after collecting the above booty.

3. Jambunathan went to the Dahisar Police Station where he lodged a report

which is at Exhibit 11. An offence was registered and P.W. 5 P.S.I. Pawar went with panchas to the scene of offence where he drew up the panchnama which is at Exhibit 9. The further investigation was handed over to P.W. 6 P.S.I. Suryavanshi. The commission of several robberies in the area indicated the existence of a gang at work. P.S.I. Suryavanshi was attached to a special squad and he was in search of the culprits. On 13-7-1985, the appellant and his co-accused were arrested. The appellant gave a statement in pursuance whereof, the police were led to Sony Jewellers of Mulund. Here, on being so required, the shopkeeper produced two gold bangles and a gold chain which are Articles 1 and 2. These were said to be articles prepared from out of the metal yielded by the melting of four gold bangles and a mangalsutra received by the jeweller from the appellant. In due course, the complicity of accused Nos. 2 to 4 was also revealed. An identification was held on 15-7-1985 and the investigation over, a charge-sheet came to be lodged against the appellant and his three companions. After the usual enquiry, the foursome were committed to stand trial at the Sessions Court at Thane.

4. To the charge of having committed offences punishable under sections 392 and 397 read with 34 of the Indian Penal Code, the appellant and his companions pleaded not guilty.

5. To substantiate the charge levelled against the appellant and his co-accused, the prosecution examined Jambunathan, Nirmala, Dr. Dixit, P.S.Is. Pawar and Suryavanshi and a panch of the scene of offence panchnama named Naseer. The trial Judge was satisfied about the guilt of the appellant and the co-accused. The appellant was convicted under sections 392 and 397 read with 34 of the Indian Penal Code and sentenced to R.I. for seven years and a fine of Rs. 500/-. In case the fine was not paid, he was to undergo additional R.I. for a month. The co-accused were convicted u/s 392 read with 34 I.P.C. and sentenced to imprisonment already undergone. The appellant takes exception to the conviction and sentence recorded against him. We see no merit in the appeal and dismiss it for the reasons given below.

6. The victims Jambunathan and Nirmala have given a clear and consistent version about how they had gone to the National Park on 7-7-1985, pounced upon by four robbers, the said robbers being the appellant and his co-accused, the appellant wielding a sword and forcing the husband and wife to make over the cash and ornaments respectively.

7. Miss Gupta argues that the robbers had covered up their faces right up to the nose and, therefore, the victims would not have had an opportunity to take a good look at the culprits. It is not possible for us to accept this submission. The incident lasted for quite some time and Jambunathan and Nirmala are a cut above the normal level of people. Both of them are educated persons expected to take a good look at those who were depriving them of their valuables and bear their faces in mind at a later stage. Barely seven days after the incident, an identification parade took place, and, at that parade, the witnesses saw the

appellant and his co-accused. It was argued that the parade had not been carried out properly and that the identification made at the parade cannot be relied upon. Even if that identification is excluded, there remains the substantive identification made at the trial. Jambunathan and Nirmala had no reason to falsely implicate the appellant and his companions. Their great regard for the truth is evident from their disclaiming articles 1 and 2 as part of the valuables of which Nirmala had been deprived of by the robbers. This shows a high level of integrity and it has to be given due credit. Seeing no reason to differ from the conclusion reached by the learned Judge, we have only one clarification to make. Sections 392 and 397 do not create different offences. Section 392 deals with the punishment for robbery which, in the normal circumstances, is to be rigorous imprisonment to a term which may extend to 10 years and a liability to pay a fine. Section 397 prescribes a minimum sentence where the robber either uses a deadly weapon or causes grievous hurt or attempts to cause death or a grievous hurt to any person in the commission of the robbery. The minimum sentence prescribed is imprisonment of not less than seven years. In a case of this nature, the proper order to pass is a conviction u/s 392 I.P.C. and the sentence of seven years as specified by section 397 I.P.C.

8. The appeal fails and is hereby dismissed.