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RAJENDRA SHARMA

v.

STATE OF WEST BENGAL  
(Criminal Appeal No. 1109 of 2009)

B

JULY 17, 2013

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

*PENAL CODE, 1860:*

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*ss. 395/397 - Dacoity in gold jewellery workshop - Conviction of appellant-taxi driver along with another and sentence of 10 years RI - Held: The evidence on record has clearly established the involvement of appellant in commission of the offence - Courts below rightly convicted the appellant - However, as regards sentence, on going through all the aspects, particularly, the evidence of taxi-owner, who nowhere in his deposition stated about any illegal activity on the part of the appellant, ends of justice would be met by altering his sentence to the period already undergone, i.e. 7 ½ years.*

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**The appellant alongwith two others was prosecuted for committing offences punishable u/ss 395/397 IPC. The prosecution case was that on the date of incident the three accused along with 2-3 others, armed with revolvers, khajali, bombs etc. looted gold ornaments from a gold jewellery workshop and fled away in two taxis. The trial court convicted the three accused u/ss 395/397 and sentenced them to 10 years RI each. The High Court acquitted one of the accused and maintained the conviction and sentence of the appellant and the other accused.**

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**In the instant appeal, it was contended for the appellant that he being a taxi driver, was sitting inside his**

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taxi and in the absence of any individual overt act, the sentence of 10 years RI was not warranted.

Disposing of the appeal, the Court

HELD: 1.1 A conjoint reading of the evidence of PWs 3, 4 and 5 and the owner of the taxi (PW-12) clearly establish the involvement of the appellant in the commission of the offence. There is no reason to disbelieve their versions, and both the courts below rightly accepted their statements. [para 9] [575-C-D]

1.2 As regards the sentence, on going through all the aspects, particularly, the entire evidence of the owner of the taxi (PW-12), it is relevant to point out that he nowhere in his statement has described about any illegal activity on the part of the appellant who was his taxi driver, and also the fact that till date, the appellant has already undergone seven years and six months in jail, while confirming his conviction, ends of justice would be met by altering his sentence to the period already undergone. Ordered accordingly. [para 10] [575-D-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1109 of 2009.

From the Judgment and Order dated 09.04.2008 of the High Court at Calcutta in C.R.A. No. 81 of 2006.

Pradip Ghosh, Kunal Chatterji, Ghanshyam Joshi for the Appellant.

Chanchal Kr. Ganguli, Avijit Bhattacharjee, Soumi Kundu for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal is filed against the final judgment and order dated 09.04.2008 passed by the

- A Division Bench of the High Court at Calcutta in C.R.A. No. 81 of 2006 whereby the High Court dismissed the appeal preferred by the appellant herein by confirming his conviction and sentence passed by the Court of 1st Additional Sessions Judge, Alipore dated 19/20.12.2005 in Sessions Trial No. 1(2) of 2000 for the offence punishable under Sections 395/397 of the Indian Penal Code, 1860 (in short 'IPC'), Section 25 (1a) (b) of the Arms Act, 1959 and Sections 3 and 5 of the Explosive Substances Act, 1908.

**2. Brief facts:**

- C (a) As per the prosecution case, on 07.12.1998, at about 13:15 hours, the accused persons, viz., Rajendra Sharma, Sk. Muktar @ Dabbu, Sarban Singh and 2/3 others, armed with revolvers, khojali, bombs etc., committed dacoity in gold jewellery workshops at Gopal Bose Lane and looted gold ornaments weighing about 1820 grams approx. and fled away in two taxis.
- D (b) With regard to the above incident, a written FIR being No. 234 dated 07.12.1998 was registered by Arun Hazra (PW-3) at P.S. Cossipore under Sections 395/397 IPC and Sections 25/27 of the Arms Act, 1959 read with Sections 3 and 5 of the Explosive Substances Act, 1908.
- E (c) After investigation, the case was committed to the Court of 1st Additional Sessions Judge, Alipore and was numbered as Sessions Trial No. 1(2) of 2000.
- F (d) The trial Court, by order dated 19/20.12.2005 convicted the appellant along with other co-accused under Sections 395/397 IPC and directed him to suffer rigorous imprisonment (RI) for 10 years along with a fine of Rs.5,000/-, in default, to further undergo RI for a period of 2 years.
- G (e) Being aggrieved of the above said order, the appellants therein preferred separate appeals before the High Court at Calcutta.
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RAJENDRA SHARMA v. STATE OF WEST BENGAL 573  
[P. SATHASIVAM, J.]

(f) The High Court, by impugned judgment dated 09.04.2008, dismissed the appeal of the appellant (A-1) and one Sarban Singh affirming their conviction and sentence and set aside the order of conviction and sentence of other co-accused - Ranjit Kumar.

(g) Being aggrieved, the appellant (A-1) alone has preferred the above appeal by way of special leave before this Court.

3. Heard Mr. Pradip Ghosh, learned senior counsel for the appellant-accused and Mr. Chanchal Kumar Ganguli, learned counsel for the respondent-State.

4. Mr. Pradip Ghosh, learned senior counsel for the appellant, after taking us through the entire materials submitted that in the absence of any individual overt act committed by him, particularly, even when the prosecution witnesses identified the appellant as the person who was sitting inside the taxi in which the other dacoits got up after committing dacoity, awarding maximum punishment of 10 years is not warranted. He also submitted that even if the conviction is sustainable, taking note of his limited role, namely, keeping taxi near the spot and of the fact that out of 10 years of sentence, so far he had served seven years and six months in jail, the same may be considered sufficient and he may be released forthwith. On the other hand, Mr. Ganguli, learned counsel for the respondent-State submitted that the prosecution witnesses, particularly, PWs 3, 4 and 5 and the owner of the taxi, viz., Kartik Santra (PW-12) amply prove the involvement of the appellant. He also pointed out that considering the seriousness of the offence, the sentence awarded, namely, 10 years cannot be construed as excessive or unreasonable.

5. We have carefully considered the rival submissions and perused all the relevant materials.

**A Discussion:**

6. Among the witnesses, the evidence of Arun Hazra (PW-3) is heavily relied on by the prosecution and accepted by both the courts who was a goldsmith in the shop of Uttam Majhi at 2F Gopal Bose Lane. It was he who made a complaint under Exh. 3-3/3. In his evidence, he asserted that on 07.12.1998, at about 1.30 p.m., while he was working in the shop of Uttam Majhi along with others, suddenly a man of 25-30 years entered into their shop through their collapsible gate with a pistol. 4-5 persons also entered into their shop following him. They all were armed with pistols, knives and curbed knives. They were running here and there and they picked up the manufactured gold ornaments from their workers and kept the same in a jute bag. Some persons also entered into the gold shops of Prosanta and Nasiruddin. When people assembled in front of their shops and shouted 'dacoits dacoits', the said persons, on hearing the same, fled away. He also stated that when he came out while following them, he noticed that the engines of two taxis, viz., yellow and black yellow were on with the drivers standing outside the taxis. He noted down the registration numbers of the taxis. He identified the appellant as one of the person standing with the taxi on.

7. The next witness examined on the side of the prosecution was Asim Das (PW-4). He also worked as a goldsmith in a jewellery factory of Uttam Majhi at 2F Gopal Base Lane, Kolkata. He narrated the incident similar to one as mentioned by PW-3. PW-4 also came to the road and shouted 'dacoit dacoit' and noted that two hired taxis were standing on the road with start condition and drivers were standing besides them. He also identified the appellant who, according to him, standing near the taxi in start condition. In the same effect, PW-5 also deposed before the Court.

8. Apart from the evidence of PWs 3, 4 and 5, the prosecution has also examined one Kartik Santra as PW-12 who is the owner of a yellow taxi No. WB/237672. He admitted

RAJENDRA SHARMA v. STATE OF WEST BENGAL 575  
[P. SATHASIVAM, J.]

that the appellant Rajendra Sharma (A-1) was the driver of the said taxi. He identified him in the dock. He also stated that Rajendra Sharma took the vehicle on 07.12.1998 at about 7.00 a.m. and returned the same at 3.00 p.m. on that day. On 08.12.1998, the police informed him that there was a dacoity in which his taxi was involved. On inquiry by the police, he took them to his driver's residence and, thereafter, the police arrested him from his house and the taxi was seized on the very same day. He also produced the Garage Register maintained by him which has been marked as Exh.-10.

9. A conjoint reading of the evidence of PWs 3, 4 and 5 and the owner of the taxi, namely, PW-12 clearly establish the involvement of the appellant in the commission of the offence. There is no reason to disbelieve their versions and we are satisfied that both the courts below rightly accepted their statements.

10. Relating to sentence, Mr. Ghosh pointed out that even if the prosecution case is accepted that the appellant had facilitated in the commission of crime, considering the fact that he did not enter the jewellery shop and was not armed with any weapon, the maximum sentence of 10 years is excessive. On going through all the aspects, particularly, the entire evidence of the owner of the taxi PW-12, we inclined to accept the claim of Mr. Ghosh. It is relevant to point out that PW-12, nowhere in his statement has described about any illegal activity on the part of the appellant who was his taxi driver. Inasmuch as no adverse statement has been made by him and also of the fact that till date, he had already undergone seven years and six months in jail, while confirming his conviction, we feel that ends of justice would be met by altering his sentence to the period already undergone.

11. In view of our conclusion on the sentence, we direct that the appellant be released forthwith, if he is not required in any other case. The appeal is disposed of on the above terms.

R.P.

Appeal disposed of.