

Bombay High Court

Chendya Hurdy Kale vs The State Of Maharashtra on 26 July, 2017

Bench: T.V. Nalawade

Cri. Appeal No.252/2000 with
Cri. Appeal No.381/2000

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.252 OF 2000

Chendya Hurdy Kale,
Age 45 years,
R/o Wakodi, Taluka and
District Ahmednagar

... APPELLANT

VERSUS

The State of Maharashtra
(Copy to be served on
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad

... RESPONDENT

.....

Shri V.R. Dhorde, Advocate for appellant
Shri S.D. Ghayal, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.381 OF 2000

The State of Maharashtra
through Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad

... APPELLANT

VERSUS

- 1) Kalu Maruti Shinde,
Age 25 years,
R/o Vaidu Wadi, Ahmednagar
- 2) Chendya Hurdy Kale,
Age 45 years, R/o Wakodi,
Taluka and District Ahmednagar
- 3) Shaibai w/o Chendya Kale,

Age 40 years, R/o Wakodi,
Taluka and District Ahmednagar

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Cri. Appeal No.252/2000 with

Cri. Appeal No.381/2000

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4) Raju Bapu Shinde,
Age 35 years, R/o Vaiduwadi,
Ahmednagar

5) Suresh Shankar Dhangar
Age 35 years, R/o Vaiduwadi,
Ahmednagar

... RESPONDENTS

.....
Shri S.D. Ghayal, A.P.P. for respondent
Shri Satej S. Jadhav, Advocate for respondents
.....

CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 11th July, 2017
Date of pronouncing judgment : 26th July, 2017.

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. Criminal Appeal No.252/2000 is directed by original accused No.2 in Sessions Case No.115/1999 against the judgment and order of his conviction for the offence punishable under Section 379 of the Indian Penal Code, passed by 4th Additional Sessions Judge, Ahmednagar. Criminal Appeal No.381/2000 is directed against the same judgment, challenging the acquittal of accused No.1, 3 to 5 and against the lesser punishment to accused No.2 for the offence punishable under Section 379 of the Indian Penal Code. Criminal Appeal No.381/2000 is preferred by State of Maharashtra. The respondents in Criminal Appeal No.381/2000 are original accused Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 No.1 to 5. These both appeals are disposed of by this common judgment. For the sake of convenience, the parties are referred in accordance with their original status.

2. Shorn of necessary details, prosecution case in brief is that, Shri Santoshkumar Warma (P.W.2) used to run jewelery shop at Ahmednagar. Shri Sunil Arya (P.W.1) is servant of Santosh Warma (P.W.2). On 7/2/1999, accused No.1 contacted Santosh Warma (P.W.2) on telephone and called him near Sarda College, Ahmednagar at about 4.30 p.m. for some transaction of sale-purchase of gold. Accordingly Santosh Warma (P.W.2) along with his servant Sunil Arya (P.W.1) went towards Sarda College near Bus Stop, at Ahmednagar at about 4.30 p.m. Accused No.1 and two other unknown persons also came to that spot. Thereafter, accused No.1 showed two gold rings and two silver coins

to Santosh Warma (P.W.2) and informed him that 1 Kg. gold rings and 25 silver coins were available for sale, for the cost of Rs.2 Lakhs. He asked Santosh Warma (P.W.2) to check the gold and silver shown to him. Sunil Arya (P.W.1) accordingly checked those two gold rings and silver coins and found them genuine. He accordingly informed Santosh Warma (P.W.2). Thereafter accused No.1 told Santosh Warma (P.W.2) to come on next day at about 4.30 p.m. near Sarda College canteen at Ahmednagar and the 1 Kg. gold and 25 silver coins would be Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 made available from one Chendya Kale (accused No.2) at Religious Examination Board for the cost of Rs.2 Lakhs. Santosh Warma (P.W.2) was allowed to retain those two gold rings and two silver coins with him. After returning to jewelery shop, after passage of time, Santosh Warma (P.W.2) suspected that something must be wrong. Recently on behalf of Police Station, propaganda was made to prevent crime and to contact the police if anything suspicious is found by any citizen. Santosh Warma (P.W.2) was well aware of this propaganda. Therefore, on next day, he approached Topkhana Police Station, Ahmednagar and met to Police Station Incharge, P.I. Shri M.N. Kale (P.W.8). When this P.I. was informed regarding the occurrence, he directed Santosh Warma (P.W.2) to arrange one bag and 10 bundles of cut papers of the size of currency note of Rs.100/- and 10 genuine currency notes. Accordingly, Santosh Warma (P.W.2) made arrangement of decoy bundles of currency notes and briefcase. One genuine currency note of Rs.100/- was placed on the upper side of each bundle of paper and accordingly, such 10 paper bundles were kept in one briefcase (Article A). On 8/2/1999, after preparation of pre-trap panchanama (Exh.52) at about 4.30 p.m., trap was arranged. By autorickshaw, santosh Warma (P.W.2) and Sunil Arya (P.W.1) with briefcase containing decoy currency note bundles, started proceeding towards Sarda College Canteen, where they were Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 called by accused No.1. P.I. Shri Kale (P.W.8) and P.S.I. Shri C.B. Landge (P.W.9) accompanied Santosh Warma (P.W.2) in the same autorickshaw, but in plain clothes. Other police staff followed that autorickshaw by private Sumo Jeep and Maruti Car after taking precaution that they would not be noticed by third persons. When along with Santosh Warma (P.W.2) Sunil Arya (P.W.1), P.S.I. Landge (P.W.9) and P.I. Kale (P.W.8) reached near Sarda College Canteen, Ahmednagar, at that spot, accused No.1 met them and boarded in the same autorickshaw. P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) were introduced as probable customers for gold and silver. As per instructions of accused No.1, the autorickshaw was turned to Religious Examination Board. However, later on accused No.1 took that autorickshaw to Wakodi Shivar. All persons alighted from autorickshaw and accused No.1 along with Santosh Warma (P.W.2) and Sunil Arya (P.W.1) went towards "Shami Tree", which was at a distance of one furlong from the road. P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) also followed them up to "Shami Tree". Accused No.2 and one woman, one another unknown person and one 10 years old boy were present near Shami Tree. Accused No.1 introduced accused No.2 as Chendya Kale and that woman as Shaibai (accused No.3), wife of accused No.2. Accused No.2 asked whether cash of Rs.2 Lakhs was brought. When Sunil Arya (P.W.1) showed them the decoy currency note bundles by Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 opening the briefcase, immediately accused No.2 blew whistle. Immediately other 9 to 10 persons, armed with sticks and axes, who were hiding in the surrounding shrubs and bushes, rushed towards Sunil Arya (P.W.1) and Santosh Warma (P.W.2). Accused No.2 snatched the briefcase containing decoy currency note bundles. By that time, P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) rushed near them to save the briefcase. Accused No.2 and other accused started running away with the briefcase. When P.I. Kale (P.W.8) chased and caught accused No.2, that time other companions of the accused

attacked P.I. Kale (P.W.8) by sticks and by pelting stones. Accused No.2 was trying to run away with the briefcase. Apprehending danger from the accused persons and their friends, one bullet was fired by P.I. Kale (P.W.8) by his service revolver. Hearing that sound, other supporting police force also rushed on the spot. Accused No.1 to 5 were apprehended on the spot along with one 12 years old small boy. The briefcase was recovered from the accused persons. On enquiry with them, name of other accused persons and their friends were disclosed. During the incident, P.I. Kale (P.W.8), P.S.I. Lokhande (P.W.9) and other police personnel sustained injuries due to stick blows and stone pelting. The arrested 5 accused persons and one small boy were taken to Topkhana Police Station, Ahmednagar. Sunil Arya (P.W.1) lodged F.I.R. (Exh.44) to Police Station at about 7.45 p.m. Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000

3. Offence was registered at Topkhana Police Station against the accused persons under 353, 332, 420 read with Section 34 of the Indian Penal Code and under Sections 395, 120-B of the Indian Penal Code. Investigation of this crime was handed over to A.P.I. Shri Umbre (P.W.10). Dr. Sanjay Thube (P.W.6) examined P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) and Constable Shri Kasode, and issued injury certificates (Exhs.57, 58 and 59). Briefcase with decoy bundles of currency notes with 10 genuine currency notes was seized under panchanama (Exh.61). Investigating officer (P.W.10) also seized two gold rings and two silver coins under panchanama (Exh.62). P.I. Kale (P.W.8) also produced empty cartridge before panchas and the same was also seized under panchanama (Exh.63). Panchanama of the scene of offence was drawn on 9/2/1999 in presence of the panchas (Exh.64). On 9/2/1999 P.S.I. Wagh from Local Crime Branch produced accused No.6 and 7 before Investigating Officer (P.W.10) and they were arrested under arrest panchanama (Exh.54). On 9/2/1999, four silver coins, cash of Rs.570/- and one wrist watch were seized from accused No.6 and metal ring, cash of Rs.2780/-, wrist watch and 70 metal rings were seized from accused No.7. Accused No.8 was arrested on 10/2/1999 under arrest panchnama (Exh.55) by the investigating officer. Accused No.1 to 5 and small boy were Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 arrested on the date of incident at about 7.55 p.m. under panchanama (Exh.53). After completion of the investigation, charge sheet was submitted against accused No.1 to 8 before Judicial Magistrate, First Class, Ahmednagar.

4. Offence punishable under Section 395 of the Indian Penal Code being exclusively triable by Court of Sessions, this case was committed to Sessions Court, Ahmednagar. Charge (Exh.24) was framed against accused No.1 to 8 for the offences punishable under Sections 353, 332, 420 read with Section 34 of the Indian Penal Code and under Sections 395, 120-B of the Indian Penal Code. Accused pleaded not guilty and claimed trial. Defence of the accused is of total denial.

5. Prosecution examined total 10 witnesses. After considering the evidence placed on record, the 4th Additional Sessions Judge, Ahmednagar acquitted all the accused of the offences punishable under Sections 332, 353, 420 read with Section 34 of the Indian Penal Code and under Sections 395 and 120-B of the Indian Penal Code. Only accused No.2 was convicted for the offence punishable under Section 379 of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for two years. Therefore, Criminal Appeal no.352/2000 is preferred by accused No.2. State has challenged Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 only acquittal of the accused No.1 to 5 of the offence punishable under Section 395 of the Indian Penal Code. Acquittal of all accused persons

for the offence under remaining Sections is not challenged by State Government. Even acquittal of accused No.6 to 8 is not challenged by the State Government. Therefore, evidence available against accused No.6 to 8 will not be discussed.

6. Learned Advocate for accused No.2 has drawn our attention towards cross-examination of prosecution witnesses and submitted that, all witnesses have contradicted each other regarding occurrence of the incident. He pointed out that, Sunil Arya (P.W.1) and P.I. Kale (P.W.8) are contradicting regarding passing of the stolen briefcase. Regarding applicability of Section 395 of the Indian Penal Code, learned Advocate for respondent No.2 submitted that, no evidence is available to show that more than 5 persons conjointly committed the offence of robbery or theft and, therefore, accused No.2 cannot be convicted for the offence punishable under Section 395 of the Indian Penal Code.

7. On the other hand, learned A.P.P. for the State assailed the judgment passed by the trial Court acquitting accused No.1 to 5 of the offence punishable under Section 395 of the Indian Penal Code. According to learned A.P.P., complainant Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 Sunil Arya (P.W.1) was fully corroborated by truthful testimony of Santosh Warma (P.W.2), P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9). He submitted that, the oral version of these eye witnesses is also corroborated by medical evidence of Dr. Thube (P.W.6) and injury certificates (Exhs.57 to 59).

8. Initially, we will consider the evidence available against accused No.1, 3 to 5 to examine whether their acquittal is justified or the view taken by learned trial Court while acquitting them is impossible. Correctness of the conviction of accused No.2 will be considered subsequently.

9. Sunil Arya (P.W.1), Santosh Warma (P.W.2), P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) are the eye witnesses of the incident. Out of these four witnesses, P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) are the injured witnesses. A.P.I. Umbre (P.W.10) is investigating officer and Bhausahab Jawale (P.W.3), Ravindra Thorat (P.W.4), Rajendra Channa (P.W.5) and Vijay Gupta (P.W.7) are the panch witnesses. Dr. Thube (P.W.6) is Medical Officer, who examined P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) along with other Police Constables.

10. It is to be noted that, Sunil Arya (P.W.1), Santosh Warma (P.W.2) and P.I. Kale (P.W.8) have not uttered anything Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 against the accused No.1 except his participation for taking the jeweler Santosh Warma (P.W.2) along with other persons to Wakodi Shivar to have some transaction with accused No.2 Chendya. On the other hand, Sunil Arya (P.W.1), in paras 10, 12 of his examination-in-chief deposed on oath that on way to the spot, even in rickshaw, accused No.1 told Santosh Warma (P.W.2) that accused No.1 had no concern with the transaction. So also accused No.1 did not take any part during the incident when Santosh Warma (P.W.2) was robbed by accused No.2 and his companions. On the other hand, in cross-examination Sunil Arya (P.W.1) has admitted that, when accused No.2 snatched the bag from his hand, that time accused No.1 and Santosh Warma (P.W.2) helped him to retain the bag in his hand. Even Santosh Warma (P.W.2) has deposed before the Court that when accused No.2 tried to snatch bag from the hand of Sunil Arya (P.W.1), that time accused No.1 and this witness tried to recover that bag from accused No.2. From the evidence of Santosh Warma (P.W.2), it also emerges that, accused No.1 told

him that he had no concern with the transaction. Only P.S.I. Landge (P.W.9) deposed before the Court that accused No.1 to 5 were arrested while snatching the bag. However, his contention is proved as material omission. Therefore, the evidence of prosecution itself indicates that, accused No.1 did not take any active part for snatching the bag from the hand of Sunil Arya (P.W.1). On the other hand, he Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 helped Sunil Arya (P.W.1) to avoid the theft of that bag by accused No.2. No other evidence is available against accused No.1 to show that he had any knowledge regarding the plan or the trap arranged by accused No.2 to rob the jeweler Santosh Warma (P.W.2). Therefore, considering this type of evidence available against accused No.1, the learned trial Court rightly awarded benefit of doubt in his favour.

11. So far accused no.4 and 5 are concerned P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) have brought on record totally inconsistent theory. According to P.I. Kale (P.W.8), when accused No.2 snatched bag from the hand of Sunil Arya (P.W.1) and when this witness tried to catch accused No.2, that time accused No.2 passed over that bag to accused No.5. According to P.I. Kale (P.W.8), accused No.4 was amongst those persons who attacked him at the time of occurrence of the incident. On the other hand, P.S.I. Landge (P.W.9) contradicted P.I. Kale (P.W.8) by deposing that accused No.4 and 5 snatched the bag from the hand of Sunil Arya (P.W.1). According to P.S.I. Landge (P.W.9), he recovered the bag from accused No.4. On the other hand, P.I. Kale (P.W.8) claims that he recovered the bag by apprehending accused No.2. Thus, P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) are not certain regarding the part played by accused No.4 and 5 at the time of dacoity.

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12. However, cat has come out of the bag when Sunil Arya (P.W.1) was subjected to cross-examination. Sunil Arya (P.W.1) has admitted in his cross-examination that, accused No.4 and 5 were not present, when P.I. Kale (P.W.8) was assaulted and stones were pelted. In para 13 of his cross-examination, he made it crystal clear that, accused No.4 and 5 came after hearing sound of firing of bullet by P.I. Kale (P.W.8) from his service revolver. Sunil Arya (P.W.1) has also made it clear that he included the name of accused No.4 and 5 in F.I.R. as per the information given by police and he was not knowing accused No.4 and 5 till they were brought to police station. Even jeweler Santosh Warma (P.W.2) has made it clear that, accused No.4 and 5 were not amongst the above referred 10 to 12 armed dacoits who pelted stones and assaulted or who snatched the bag containing dacoit currency notes.

13. Thus, two probabilities arise. One is that, accused No.4 and 5 had taken active part in commission of the dacoity and the second is that, accused No.4 and 5 reached on the spot only as anxious spectators after hearing the sound of bullet firing. It is settled principle of law that, when two probabilities arise, benefit of doubt goes in favour of the accused. Therefore, even acquittal of accused No.4 and 5 cannot be faulted.

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14. If the evidence available against accused No.3 is scrutinized, it emerges that, Sunil Arya (P.W.1) and Santosh Warma (P.W.2), P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) have merely deposed regarding her presence along with accused No.2 as his wife at the time of occurrence. However, nobody whispered a single word against accused No.3 regarding any part played by her during the incident of dacoity. No prosecution witness says that accused No.3 tried to save accused No.2 who was apprehended by P.I. Kale (P.W.8). None of the prosecution witness says that accused No.3 pelted any stone or she took any part to remove the bag. Therefore, only because she is passive witness of the occurrence, it cannot be said that she was the part of gang of dacoits. Benefit of doubt was rightly given to accused No.3 Saibai by the trial Court.

15. Now turning towards the evidence available against accused No.2 Chendya, it reveals that, Sunil Arya (P.W.1), Santosh Warma (P.W.2) and P.I. Kale (P.W.8) have consistently deposed before the Court that when Sunil Arya (P.W.1) opened the bag to show the bundle of dacoit currency notes to accused No.2, he blew whistle and thereafter, from nearby bushes and shrubs, 10 to 12 persons rushed to the spot of the incident and they were armed with sticks and axes. Only P.S.I. Landge Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 (P.W.9) contradicted these witnesses by deposing that Sureshkumar Dhangar snatched the bag from the hand of Sunil Arya (P.W.1). This witness claims that he recovered the bag from accused No.4. However, this version of P.S.I. Landge (P.W.9) is proved as material omission and can be safely ignored. However, undisputed fact remained on record that as per information given by accused No.1 when Sunil Arya (P.W.1) and jeweler Santosh Warma (P.W.2) went to the spot of occurrence, accompanied by P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) and when Sunil Arya (P.W.1) showed the bag of dacoit currency notes to accused No.2, he called his armed companions by blowing whistle, who were hiding nearby bushes. Further evidence shows that, accused No.2 snatched the bag from the hand of Sunil Arya (P.W.1) and tried to run away. That time, P.I. Kale (P.W.8) chased him and apprehended him with the bag. To save the accused No.2 Chendya from the clutches of P.I. Kale (P.W.8), the 10 to 12 armed co-accused started assaulting P.I. Kale (P.W.8) and others by stick blows and they also pelted stones to rescue the accused No.2. During that assault, P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) sustained injuries along with one police constable. Apprehending danger, when P.I. Kale (P.W.8) fired bullet from his service revolver, that time, the supporting police staff rushed on the spot and succeeded in apprehending accused No.1 to 5 on the spot along with one small boy.

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16. This evidence brought on record by prosecution, was heavily attacked by defence counsel. However, this version of prosecution witnesses remained unshattered on every material particulars. Some contradictions pointed out by learned defence counsel regarding passing over bag by accused No.2 to other co-accused is so minor that it deserves to be ignored. Such minor improvements may occur due to passage of time because the incident occurred in the month of February 1999 and evidence of P.I. Kale (P.W.8) and other witnesses is recorded after lapse of nearabout one year. After passage of time, the contradictions and omissions pointed out by defence counsel are natural and no importance can be attached to it when all the prosecution eye witnesses are independent and truthful witnesses.

17. Even the oral testimony of these witnesses is corroborated by Dr. Thube (P.W.6) who examined P.I. Kale (P.W.8) and found one contusion over his right forearm lower 1/3rd portion and haematoma over forehead on left side. Dr. Thube (P.W.6) also found one contusion over right leg later aspect, multiple scratches over left scapular region and contusion over left sterno clevicular joint on the body of P.S.I. Landge (P.W.9). Dr. Thube (P.W.6) also opined that, these injuries were caused within 24 hours from the time of examination i.e. 8.30 Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 p.m. on 8/2/1999. The incident occurred on 8/2/1999. Thus, the medical evidence supports the contention of P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) that during the occurrence of dacoity the 10 to 12 companions of accused No.2 assaulted them by sticks and stones and thereby these witnesses sustained injuries. We find that, the oral testimony of these four prosecution witnesses including two injured witnesses is sufficient to hold that on 8/2/1999, accused No.2 snatched the bag containing dacoit currency notes, and in order to commission of that theft, voluntarily hurt was caused to P.I. Kale (P.W.8) and P.S.I. Landge (P.W.9) by stick blows and stone pelting by other co-dacoits. Thus, offence of robbery conjointly by accused No.2 and his 10 to 12 co-accused is established by prosecution beyond reasonable doubt.

18. Learned defence counsel raised objection that accused No.2 alone cannot be convicted for the offence of dacoity because, in view of definition of dacoity under Section 391, the offence of robbery must be committed by 5 or more persons conjointly. Learned defence counsel pointed out that, except accused No.2, accused No.1, 3 to 8 are acquitted by the trial Court by giving benefit of doubt and other absconding dacoits cannot be arrested and prosecuted, by prosecution. However, Hon'ble Apex Court had occasion to consider similar situation in the case of Raj Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 Kumar alias Raju Vs. State of Uttaranchal (Now Uttarakhand) reported in AIR 2008 SC 3248, wherein the Apex Court observed as under :

"It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not dispute or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons - or even one - can stand."

This authority was also followed by Apex Court in the case of Manoj Giri Vs. State of Chhatisgarh reported in 2013 CRI.L.J. 3024 (SUPREME COURT). Same view was also taken previously by larger Bench of the Supreme Court in Saktu & anr.

Vs. State of Uttar Pradesh reported in AIR 1973 SC 760.

19. Thus, in view of law settled by Apex Court, though other accused are acquitted and some of the co-dacoits are not Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 arrested and prosecuted, as prosecution has established that the offence of robbery was committed by accused No.2 and other 10 to 12 co-accused conjointly, and during that occurrence, simple hurt was caused to P.I. Kale

(P.W.8) and P.S.I. Landge (P.W.9), the accused No.2 deserves to be convicted for commission of the offence of dacoity punishable under Section 395 of the Indian Penal Code.

20. At the time of commission of the offence, accused No.2 was 45 years old. Therefore, now in the year 2017, he must be around 63 to 64 years old. Considering this advance age of the accused No.2, it is not desirable to impose imprisonment for life under Section 395 of the Indian Penal Code. On the other hand, considering overall circumstances of the case, the nature of the injuries sustained by witnesses and the age of accused, imprisonment of five years and fine of Rs.5000/- for the offence punishable under Section 395 of the Indian Penal Code will suffice to meet the ends of justice.

21. It follows that, Criminal Appeal no.252/2000 filed by original accused No.2 deserves to be dismissed and Criminal Appeal No.381/2000 filed by the State deserves to be partly allowed to modify the conviction and sentence of accused No.2. Accordingly, we pass the following order :

Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000 ORDER

(i) Criminal Appeal No.252/2000 is dismissed.

(ii) Criminal Appeal No.381/2000 is partly allowed.

(iii) Judgment and order of acquittal of accused No.2 Chendya Hurdy Kale for the offence punishable under Section 395 of the Indian Penal Code is quashed and set aside.

(iv) The respondent No.2 Chendya Hurdy Kale is held guilty for commission of the offence punishable under Section 395 of the Indian Penal Code and he is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.5000/- (rupees five thousand), in default to suffer rigorous imprisonment for three months under Section 395 of the Indian Penal Code.

(v) Set off be given to accused No.2 Chendya Hurdy Kale under Section 428 of the Code of Criminal Procedure for the period already undergone.

(vi) Accused No.2 Chendya Hurdy Kale shall surrender to his bail bonds before the trial Court to undergo the punishment.

Cri. Appeal No.252/2000 with Cri. Appeal No.381/2000

(vii) Criminal Appeal No.381/2000 against respondent No.1 Kalu Maruti Shinde, respondent No.3 Shaibai w/o Chendya Kale, respondent No.4 Raju Bapu Shinde and respondent No.5 Suresh Shankar Dhangar is dismissed.

(viii) Respondent No.1 Kalu Maruti Shinde, respondent No.3 Shaibai w/o Chendya Kale, respondent No.4 Raju Bapu Shinde and respondent No.5 Suresh Shankar Dhangar shall execute before the trial Court bail bonds with sureties for the amount of Rs.5000/- (Rupees five thousand) each to appear before the Supreme Court as and when notices are issued to them in respect of any proceedings filed

against this judgment vide Section 437-A of the Code of Criminal Procedure and the said bail bonds shall remain in force for a period of six months from today.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/