

Gangs of Majalgaon and poor farmers

Introduction - To remove the nose ring of their minor daughter as the nose ring was of gold and was required by Marathwada is a region in Maharashtra with little rainfall, destroyed forests, acres of fields devoid of trees, and deteriorating soil quality as sugarcane harvesting continues unabated. With all these miseries, one more misery the agriculturists have to face is the threat of gangs of dacoits. The farmers usually have them visualize what terror these families face at the time of attack of gang. In the present case, the parents were compelled the gang of dacoits. This case involves houses in their fields, and therefore the houses are isolated from villages. Taking advantage of the situation the gangs targeted families residing in isolated houses. One can imagine an event taking place in the territories of three police stations where officers worked together to apprehend the dacoits while putting their own lives in danger.

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In the Court of sessions at-----

(Presided over by: Ajay Nathani Additional Sessions Judge, Majalgaon.)

Sessions Case No.19/2007.

The State of Maharashtra (Through Police Station Officer,
Police Station, Majalgaon, Tq. Majalgaon, District Beed).

Complainant.

Versus.

- 1) Suresh alias Badri s/o. Mohan Bhosale, age 25 years,
Dist. Beed.
- 2) Dhok s/o. Mohan Bhosale, age Major, R/o. as above.
- 3) Akash alias Rathodya Vithal alias Ramu Chavan, age
Major,
- 4) Shahdya alias Shahurao Congress Chavan alias Bhosale,
age 20 years,

Accused.

ADVOCATES:

[Salve, A.P.P.](#) for State.

Shri V.B. Laute and Shri S.S. Rathod, for accused.

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J U D G M E N T

(Delivered on 11th September, 2007)

1. The accused stand to trial for the offence punishable under Sec. 395, 457 of the Indian Penal Code.

2. Facts, constituting the prosecution case, are as under;

Informant Sukhdeo and his brother Namdeo are resident of village Mali Pargaon. They are agriculturists. They reside in the house constructed in their field. The field is at some distance from the village. On 30.07.2006 at about 12-00 midnight Namdeo and Sukhdeo were sleeping in their house with their family members. Five robbers entered the house of Namdeo. They put Namdeo and his wife Yamunabai under the threat of causing hurt by showing knife. The robbers compelled them to provide gold and silver ornaments. From the house of Namdeo, they proceed to the house of Sukhdeo. They compelled Sukhdeo to open the door of the house by giving him threats. After entering the house, they beat him, his wife and his daughter-in-law. They compelled them to provide gold and silver ornaments. They also had taken away cash amount of Rs.15,200/- from the house of Sukhdeo.

3. On the same day Sukhdeo lodged report of the incident with police station, Majalgaon. On the basis of his report, offence was registered against unidentified persons. Investigation was initiated by P.I. Mr. Shejul.

4. On the same day at about 10-30 A.M. Eknath, a home guard, found 7 to 8 persons distributing cash amount and ornaments amongst themselves at Shivneri eatery situated at village Sirasdevi. He suspected that the said persons are involved in some crime. He, therefore, contacted Talwada Police Station and Gevrai Police Station on phone and informed the officers at Police Station about the facts noticed by him. He stayed there keeping watch on the activities of said persons. After about 20 minutes, police officers from both the police stations came there. When the said persons noticed that the police had arrived at the eatery, they started to run towards village Nipani Jawalka. Police officers and villagers chased the said persons. Four of them were arrested by the policemen present at the said place. A.P.I. Mr. Lakade of Talwada Police Station succeeded to seize ornaments and weapons from the possession of said persons.

5. P.I. Mr. Shejul during the course of investigation inspected the place of incident. He found two pairs of footwear and sticks behind the house of Namdeo. He summoned the dog squad to identify the person who used the said footwear. Dog squad handler police constable Mr. Tanpure with the assistance of trained beach Kamala conducted identification parade. The beach identified accused Dhok Mohan and accused Shahadeo as the persons who have used these pairs of (Analysis at end of the Judgment)

footwear on the basis of resemblance smell of their body and smell of footwear. After collection of this evidence, charge-sheet was filed with Judicial Magistrate, First Class Majalgaon. As the offence under Section 395 of the Indian Penal Code is triable by the Court of Session, the learned Magistrate committed the case to the Court of Session. The Sessions case was made over to this Court for trial by the Additional Sessions Judge at Majalgaon.

6. Charge of the offence punishable under sections 395 of the Indian Penal Code was explained to the accused. Accused pleaded not guilty. Defence of the accused is that of total denial.

7. Following points arise for my determination. I have recorded my findings against each of them for the reasons to follow:

POINTS

FINDINGS.

- 1) Does the prosecution prove that on 30.07.2006 at about 1-00 a. m. at village Mali Pargaon, all the accused alongwith absconding accused committed dacoity by putting Sukhdeo, Namdeo and their family members in fear of causing hurt and by dishonestly extorting cash amount and ornaments worth Rs.24,400/- from their possession?

In affirmative.

- 2 What order?

As per final order.

REASONS.

8. Prosecution rely on the evidence of P.W.1 Sukhdeo, P.W.2 Taramati w/o. Sukhdeo and P.W.3 Yamunabai w/o. Namdeo to prove the event of dacoity. Prosecution relies on the evidence of P.W.4 Jeevan, a panch witness and P.W.7 P.C. Mr. Tanpure to establish identification of two of the accused on the basis of footwear found near the house of Namdeo. Prosecution also relies on the evidence of P.W.5 Shivaji and P.W.9 P.I. Mr. Shejul to prove the seizure of footwear from near the house of Namdeo and to prove the facts collected on inspection of the place of incident. In order to prove the event of seizure of stolen property and weapons from the accused, the prosecution examined P.W.8 Shaikh Shafiq and P.W.10 Bapu, panch witnesses. Prosecution also examined API Mr. Lakade, who compelled the accused to surrender and who seized stolen articles and weapons from the possession of the accused.

9. Let us first consider the direct evidence about the incident which occurred at the house of victims. Informant Sukhdeo deposed that before about 11 months while he was sleeping in his house situated in the field, he heard barking of dogs from the house of his brother. He deposed that after some time he saw five persons entering his house premises. He deposed that there was

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darkness, so he was not able to see the faces of the offenders. As per him, one of them was armed with an axe and one or two of them were armed with sticks. He deposed that all of them were having torches. The dacoits threatened him by saying that they killed his brother and his family members and they threatened him that they will also kill him and his family members. The said persons compelled him to provide gold and cash. The said persons had taken away gold mangalsutra and silver anklets of his wife, gold ear-rings and silver anklets from the person of Kausalyabai. He deposed that accused also searched hidden amount of Rs.15,200/- from his house and they had taken away the said amount. He identified the gold pendent as the pendent belonging to him. He also identified pair of gold rings as the ornaments belonging to him. In his cross-examination he deposed that the ornaments identified by him as the property belonging to him, do not have any identification mark. He made it clear that he got these ornaments as a gift from sister of his wife during the marriage of his son. Some inconsistency about the utterances of the accused in his previous statement and statement before the Court are brought on record. However, these inconsistencies are not sufficient to disbelieve him about the occurrence of the incident. Learned Prosecutor pointed out observations in the case of **State of M.P. V. Mukund, [1987 Cri.L.J.534(MP)]** and argued that owner of the ornaments, who has opportunity to often see them, is a proper witness to identify them and his evidence cannot be discarded on the ground that there were no special identification marks on the ornaments. These observations supported the arguments of learned Prosecutor that the person using ornaments is the proper person to identify them. So, the evidence of P.W.1 is required to be believed that the seized gold pendent and ear rings belong to him. The evidence of P.W.1 Sukhdeo thus proved the fact that before about 11 months at about 1-00 A.M. five persons entered his house and they had taken away gold, silver ornaments and cash amount from his possession. He was, however, not able to identify the said persons or memorize details of their faces. His conduct to lodge the report immediately after the incident also support his evidence. Contents of the F.I.R. exh.13 reveal that the report was lodged collectively in respect of the incident which occurred at the house of Sukhdeo and his brother Namdeo. In the report the fact of assailants having weapons, is mentioned so also the fact that assailants put the informant and his family members as well as his brother and his family members under the threat is also mentioned and the description of the ornaments taken away by the assailants is also mentioned. The contents of F.I.R. are thus in consonance with the evidence of the prosecution.

10. P.W.2 Taramati w/o. Sukhdeo deposed the facts which were deposed by Sukhdeo. She specified that she will not be able to identify the accused persons, who are before the Court. She also specified that due to dark she was not able to identify the thieves, who entered their house. She identified the gold mangalsutra seized by police. In her cross-examination, she deposed that gold mangalsutra identified by her was received by her as a gift. In view of the proposition in the case of **State of Madhya Pradesh Vs. Mukund (cited supra)**, evidence of P.W.2 Taramati about identification of mangalsutra as an ornament belonging to her is to be believed as a lady who

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owns Mangalsutra all the while keeps mangalsutra on her person. In case of P.W.2 Taramati also it happened that she was wearing the mangalsutra when the assailants compelled her to part with it. So, the evidence of P.W.2 Taramati is useful to establish the fact that seized mangalsutra which is marked as article No.1 in M.P.No.6/2007 is the mangalsutra, which is taken away by the thieves by putting her under the threat of causing instant hurt.

11. P.W.3 Yamunabai, wife of Namdeo, deposed that before about 12 months at about 1-00 A.M. five persons entered in their house. She deposed that they had taken custody of her husband. They were having knives with them. She deposed that they had shown knives and said them to provide ornaments. She deposed to have provided silver anklets and mangalustra. She also provided gold nose ring of her daughter Kamal to the thieves. She identified silver anklets from the seized articles as the articles taken away by the thieves from her possession. Her evidence regarding identification of silver anklets which were in regular use of her is required to be believed. She also deposed that the accused present before the Court are the thieves. Her evidence about identification of the accused in the Court was challenged during her cross-examination. In her examination-in-chief she deposed that the dacoits were having torches with them and they were flashing the light of torches on the eyes of her and her family members. In cross-examination, however, it is brought on record that this fact was not stated by Yamunabai in her statement before police. So, this fact cannot be treated as admissible evidence. If the evidence of P.W.3 Yamunabai is considered after ignoring this fact, it seems that there was some source of light at the place of incident in the form of torches with the dacoits which may have assisted P.W.3 Yamunabai to memorize faces of the dacoits on the basis of which she identified the accused as the persons who had taken away ornaments and cash amount from her house by putting her and her family members under the threat of causing instant hurt. Ability of Yamunabai to identify the accused is not tested in test identification parade. So, her evidence about identification of the accused present before the Court as the dacoits is a weak piece of evidence. The evidence of P.W.3 Yamunabai established the fact that five dacoits entered their house, they put her and her family members under the threat of causing instant hurt and they had taken away silver anklets, nose ring and some cash amount. Her evidence is also sufficient to establish the fact that silver anklets preserved as M.P.No.6/2007 in the Court are the same which were taken away from her possession by the dacoits. Her evidence about identification of the accused as dacoits, however, requires corroboration.

12. The another set of evidence to establish the identity of the accused is produced by the prosecution by examining witness about seizure of two pair of footwear from near the place of incident and identification of two of the accused on the basis of smell of the said footwear by trained beach. The first link of this set of evidence comes from the mouth of P.W.5 Shivaji, a panch witness in whose presence footwear were seized. P.W.5 Shivaji deposed that on 30.6.2004 i.e., on the very day of the incident investigating officer examined the place of incident in his
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presence and in presence of another panch witness. He deposed that on inspection it was found that the articles in the house of Namdeo were scattered. He deposed that two pair of footwear were found behind the house of Namdeo. He also deposed that the articles in the house of Sukhdeo were also scattered. He deposed about recording of panchnama exh.22. He identified the panchnama as the document prepared by the investigating officer at the place of incident. He identified his signature thereon. He identified the seized footwears. In his cross-examination it is brought on record that footwears and stick were found lying in open field. Apart from this fact rest of the cross-examination consist of suggestions given to the witness and denied by the witness. Evidence of Shivaji about finding of two pair of footwear behind the house of Namdeo is not shattered during the course of examination.

13. Contents of spot panchnama exh.22 proved by the evidence of P.W.5 Shivaji reveal that one pair of footwear seized from the place of incident was having a name 'chillars' printed on it whereas the other pair of footwear was having a print as 'coaster' on it. The contents of spot panchnama and the evidence of Shivaji further support the evidence of P.W.1 Sukhdeo, P.W.2 Taramati and P.W.3 Yamunabai that the events described by these witnesses did occur at the house of Namdeo and Sukhdeo. The contents also reveal that the footwears were found in the proximity of the place of incident. Though the footwears were found in the open field but the footwears were so close to the place of incident and they were found after about 15 to 16 hours of the occurrence of the incident. All these facts go to show that the footwear had some link with the occurrence of the incident at the house of Namdeo and Sukhdeo.

14. P.W.9 P.I. Mr. Shejul deposed about recording of spot panchnama. His evidence reveals that during the course of investigation he received information that some persons are arrested with stolen property and the said persons are in custody of Gevrai Police Station. He deposed to have summoned dog squad for identification and instructed P.S.I. Mr. Kanwadge working under him to carry the footwear and proceed with identification of the persons who used the said footwear with the help of trained dog. His evidence regarding the above steps taken by him in the investigation is not shattered.

15. P.W.4 Jeevan Rathod is examined as a panch witness, who was present at the time of conduction of identification of accused by trained dog. He deposed that on 31.7.2007 he was called at police station Majalgaon and from there he was carried to Gevrai Police Station. He was informed that he is required to act as a panch for identification of the persons involved in the incident of dacoity at village Mali Pargaon. While deposing about the manner of conducting identification parade, he deposed that two persons were taken out from the lock-up. They were made to stand up in the open ground before police station. Police had given smell of footwear having name 'Chiller' to a beach, the beach had taken round of the open site and proceeded to a person by name Dhok Mohan. He deposed that after taking smell of said Dhok Mohan, the beach (Analysis at end of the Judgment)

started to bark at him. He deposed that pair of footwear was then provided to Dhok Mohan and it was properly fitting his feet. As per him, similar procedure was then followed in respect of accused Shahadeo. His evidence reveals that Shahadeo and Dhok Mohan were made to stand alone in the ground at the time of identification. He deposed that after identification, panchnama exh.17 was drawn by a policeman conducting the identification. In his cross-examination, it is brought on record that he was called to act as a panch by policeman from Majalgaon Police Station. He was asked to give details about the premises of Gevrai Police Station but he is not aware of the structures in the premises, location of lock-up and other details of the premises. The contents of panchnama exh.17 reveals that panch witnesses were called at police station, Gevrai. Contents therein further reveals that names of accused Dhok Mohan and Shahadeo were already made known to the panchas before recording of identification. Contents of spot panchnama and evidence of P.W.4 Jeevan reveals that the parade was conducted by keeping present only two of the accused.

16. Evidence of P.W.7 P.C. Mr. Tanpure reveals that while conducting identification parade, he mixed three local persons with the two persons taken out of lock up at police station, Gevrai. He then deposed that he had taken beach Kamala at a distance of 10 feet from the said person. He then gave smell of footwear having print 'chillers' mentioned on it. He deposed that he then took beach Kamala to the row of five persons and made her to smell toe of the said persons. He deposed that the beach started to bark after she had taken smell of Dhok Mohan Bhosale. He deposed that he has followed the same procedure to the footwear having print 'coaster' and on the basis of smell of footwear 'coaster' beach Kamala identified accused Shahadeo. In his cross-examination it is brought on record nothing is produced before the Court to show that beach used by him during identification parade was a trained beach having capacity to identify the person on smell of his things. It is also brought on record that normally an article preserves smell for 72 hours. He deposed that if the footwear remained in rain over night, it may lose smell of perspiration. He also admitted that no documents are filed on record to show that he is the handler of beach Kamala and the beach has capacity to obey his directions. All these facts brought on record in his cross-examination reveal that the required prerequisites to establish genuineness of identification parade by beach, are not complied with by the prosecution.

17. In the cross-examination of P.W.1 Sukhdeo it is brought on record that on the day of incident, it was raining. The footwear was seized as mentioned in the seizure panchnama memo exh.22 at 6-00 P.M. on 30.7.2006. The incident occurred at about 1-00 A.M. on 30.7.2006. Identification by dog squad was conducted on 31.7.2007 after 5-00 P.M. So, the identification was conducted after about 40 hours of separation of said footwear of its user. If it is assumed that the footwear was separated from the accused after the incident. Considering the fact on record that the footwear was lying in the field when it was raining, it is difficult to come to conclusion that such footwear may have retained smell of perspiration of its user for the period of 40 hours. From

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comparison of the evidence of P.W.7 Mr. P.C. Tanpure and the contents of identification panchnama and evidence of panch witness P.W.4 Jeevan, suspicion arises about the authenticity of recording of identification parade. As I mentioned earlier, P.C. Mr. Tanpure tried to impress upon the Court that the identification parade was conducted in impartial manner by giving multiple choice to the trained beach. Contents of panchnama exh.17 and evidence of P.W.4 Jeevan reveals that only two of the accused were present when the identification parade was held. Contents of panchnama reveal that evidence of P.W.7 P.C. Tanpure is exaggerated about procedure adopted by him for conduction of identification parade. Contents of panchnama reveals that smell of footwear was given to the beach and beach proceeded to the accused and barked at him. As per contents of panchnama, nothing happened as deposed by P.C. Tanpure that he gave smell of footwear to beach and then he took the beach to row of five persons and directed beach to smell of those five persons. These contradictions thus reveal that P.C. Tanpure tried to impress upon the Court by his exaggerated evidence that test identification was done as per required norms. Learned Prosecutor relied on observations in the case of **Pandian Kanappan Nadar V. State of Maharashtra, [1993 Cri.L.J.3883]** wherein Their Lordships observed -

“Judicial notice must be taken of the fact that the training skills and the special qualities that are found in the Police Dogs are now universally being recognized as being of such a higher caliber that in cases such as detection of explosives, drugs etc. they are found superior and more effective than the most sophisticated instruments. In this background, one needs to take cognizance of the fact that for the purpose of tracking down a criminal, that special faculties, qualities and skills of the dog are aspects of which serious note must be taken. Where the Police rely on such evidence, Courts would be more than fully justified in accepting it provided that it passes the test of complete scrutiny”.

In the present case there is no evidence of preservation of seized footwear by properly wrapping them in a paper to preserve the same. As mentioned earlier, the seized footwears were lying in rain for several hours. The footwears were lying in open space for almost 16 to 17 hours before seizure and the parade was held after 40 hours. As I discussed earlier, there are inconsistencies in the contents of panchnama and manner of parade said to have been held by the Dog Squad Handler, which create suspicion about the fairness of parade. Considering all these aspects, the above relied observations do not assist the prosecution to prove the identification of accused. In view of the above reasons, the evidence about identification of accused by dog squad, cannot be accepted as cogent and reliable evidence. I, therefore, discard the whole set of evidence about identification by trained bitch. The prosecution thus fails to establish that pair of footwear found behind the house of Namdeo, were used by accused Dhok Mohan and Shahadeo.

18] Now let us consider the evidence about arrest of the accused with the ornaments which are identified as the ornaments taken away by the dacoits from the victim of the offence. This series of events opens with the evidence of P.W.6 Eknath. P.W.6 Eknath is from homeguard Cadre. It is a group of civilians, who are called to assist the police force to maintain law and order. As P.W.6 Eknath is acquainted with the job of policing, he appears to have developed a sense to (Analysis at end of the Judgment)

smell suspicious circumstances. He deposed that on 3.7.2006 at about 10-30 A.M. while he was near Shivneri Dhaba situated at Sirasdevi for taking Tea, he found 7 to 8 persons distributing cash amount and ornaments. He found this fact suspicious. He, therefore, contacted Talwada Police Station and Gevrai Police Station on phone and informed about said suspicious event. He deposed that he then stayed behind said Dhaba till API Mr. Jadhav from Gevrai Police Station and API Mr. Lakade from Talwada Police Station arrived there. He deposed that when the said persons noticed arrival of police, they started to run towards village Nipani Jawalka. He deposed that police officers, he himself and villagers chased the said persons. He deposed that two of them were caught and the other two were caught when they were trying to hide in sugarcane crop in the field of one Deelip Lonkar. He identified the accused as the persons, who were caught after the chase. In his cross-examination it is brought on record that informant Sukhdeo belongs to his community. It is also brought on record that his statement was not recorded by the police during the course of investigation. From the evidence of P.W.6 Eknath it does not appear that he is deposing falsely as the informant Sukhdeo belongs to his community. It is true that non recording of his statement under Sec.161 of the Code of Criminal Procedure, create some disadvantage for the defence because of non-availability of previous statement of the witness to test his veracity by pointing out some difference in his statement recorded immediately after the event about which he is deposing and his evidence about the said events in the Court. It is however, necessary to mention here that Section 161 of the Code of Criminal Procedure does not contemplate recording of statement of each and every witness by the investigating officer. Evidence of P.W.6 Eknath is very plain and natural. Nothing is brought in his cross-examination to reveal that there are reasons to disbelieve his testimony. So, non-recording of his statement is not sufficient to brush aside his testimony which appears natural, cogent and reliable. The fact that he is connected with the job of policing only requires that his testimony be scrutinized carefully treating him as an interested witness. Close scrutiny of his evidence, does not create any suspicion about credibility of his testimony. P.W.6 Eknath is from village Sirasdevi. Shivneri eatery where he noticed the accused and other companions of the accused is also at village Sirasdevi. So, presence of P.W.6 Eknath at the said eatery is quite natural. His conduct to inform the police is also quite natural as he is a homeguard, and he, therefore, might have found it necessary to inform suspicious circumstance of distribution of money and ornaments to the nearest police station. So, after scrutinizing evidence of P.W.6 Eknath carefully, I come to conclusion that after about 9 hours of the incident, P.W.6 Eknath noticed the accused distributing ornaments and cash amount amongst themselves and their companions. His evidence also establish that the accused started to run away when they saw police officers at the place of incident. This conduct of accused is also useful to support the prosecution case. Evidence of P.W.6 Eknath establishes that the accused were apprehended after a long chase.

19] Evidence of P.W.11 API Mr. Lakade, who was in charge of Talwada Police Station on 30.7.2006 reveal that on 30.7.2006 at about 9-45 a.m. he received information of an assembly

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of suspicious persons with property at Shivneri eatery at village Sirasdevi. He deposed that he collected staff members and proceeded to the eatery. He deposed to have conversation with API Mr. Jadhav of Gevrai Police Station while on the way as he wanted assistance of Gevrai Police Station to apprehend the suspected persons. He deposed that when he reached at Sirasdevi, he came to know that the suspected persons fled away towards village Nipani Jawalka. He deposed that he came to know that villagers are chasing the suspected persons. As per him, when he reached to the field of one Lonkar, he came to know that suspected persons are hiding in the field. He deposed that the said field was surrounded by villagers and police staff. He deposed that sugarcane crop was standing in the field. It was, therefore, difficult to locate the said persons. He deposed to have given warning to the suspected persons to come out. As per him, at about 12.45 P.M. four persons rushed towards him from the said field with sword, Gupti and knives. As per him, one of them assaulted him with sword but he saved himself. He deposed to have sustained injury on his left palm. He deposed that he was required to fire on the leg of a person, who attacked him with sword. As per him, he fired five rounds and one of the people sustained injury on his leg. Separate trial in respect of assault by accused Nos. 1 to 4 on API Mr. Lakade was held vide Sessions Case No.102/2006 by Ad hoc Additional Sessions Judge-1, Beed, in which the accused were tried of the offence punishable under Sec.307, 332, 353 r/w. 34 of the Indian Penal Code and Sec.25(1) of the Arms Act.

20] API Mr. Lakade deposed that after arresting the accused, he conducted search of the accused in presence of panchas. He deposed to have seized the sword, two pairs of silver chains and 20 gold beads from accused Akash. He deposed to have seized a Gupti, heart shaped pendent and cash amount of Rs.50/- from accused Badri, a Rampuri knife and cash amount of Rs.100/- from accused Dhok Mohan. He deposed to have seized pair of gold tops, a nose ring and knife from accused Shahadeo. He identified the accused present before the Court as the persons who were caught by him and from whom he seized the ornaments. In his cross-examination some procedural irregularities were brought on record. It is brought on record that village Nipani Jawalka where the accused were finally found is the place within the territorial jurisdiction of Gevrai Police Station. It is brought on record that at that time police station in charge of Gevrai Police Station, API Jadhav was present when the seizure memo was recorded by Mr. Lakade. It is also brought on record that though the seizure memo was recorded on 30.7.2006, they were shown to have been arrested in connection with crime No. 149/2006 of Gevrai Police Station on 3.8.2006 and 5.8.2006. It is brought on record that seizure memo drawn by API Mr. Lakade do not bear signature or thumb impression of accused Suresh alias Badri. Some of the irregularities are explainable. The record of Sessions Case No.102/2006 before this Court reveals that accused Dhok Mohan and Shahadeo alias Shahadya were arrested in crime No.149/2006 on 30.7.2006 at about 2-20 P.M. Accused Suresh alias Badri appear to have sustained injury during the process of his arrest. Accused Akash, who was arrested on 5.8.2006 also appear to have sustained injury during the process of his arrest. Accused Akash is the person, who sustained

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injury by fire arm triggered by API Mr. Lakade. The papers show that after they were apprehended, they were hospitalized. They were arrested after they were treated at the hospital. Considering such explanation, it cannot be said that as the two of the accused were arrested on later date, there is suspicion about their presence at the place where they were apprehended.

21] The act of inflicting injuries to API Mr. Lakade occurred within the territorial jurisdiction of Gevrai Police Station, so offence in this regard was registered at Gevrai. API Mr. Lakade was chasing the accused on receiving information that they are possessing some property. He apprehended them and seized the property from them when they evaded their arrest. Considering the provisions of Chapter V of the Code of Criminal Procedure, API Mr. Lakade, who was chasing the accused on the information received by him that they are possessing some property which is suspected to be stolen property, was having every right to arrest the accused and seize the property in their possession. So, act of API Mr. Lakade to search the person of the accused apprehended by him and seized the property found in their possession beyond the territory of his police station, cannot be said to be an inappropriate act.

22] There are some inconsistencies in the evidence of P.W.6 Eknath and P.W.11 API Mr. Lakade. P.W.6 Eknath deposed that API Mr. Lakade reached at the eatery and started chase of the accused from there. API Mr. Lakade, however, deposed that when he reached Sirsadevi, he came to know that the suspected persons proceeded towards village Nipani Jawalka. The inconsistency is not very material. Evidence of both these witnesses reveal that the suspected persons were chased and some of the suspected persons hide themselves in sugarcane crop standing in the field. The said persons were, however, arrested by common efforts of policemen and villagers.

23] API Mr. Lakade deposed about the presence of two witnesses at the time of conducting search of the accused. One of the witnesses named in the panchnama is Shaikh Shafiq and another is Bapu Kale. Prosecution examined both these witnesses. P.W.8 Shaikh Shafiq admitted his presence in the mob which was chasing 5 to 6 persons but he denied his presence at the time of search of the accused apprehended by policemen and villagers. He was cross examined by learned APP; however, nothing is brought on record to show that he was present at the time of search and seizure. P.W.10 Bapu Kale deposed about his presence at the time of search and seizure. He gave description of the articles seized from the accused. In his cross-examination, however, he deposed that when he reached the place of incident, gold ornaments were already kept on the floor. This fact goes to show that his evidence, about search and seizure of ornaments from the accused, cannot be believed. His evidence reveals that he was present in the mob which was at the place of incident after the accused were apprehended. He, however, identified seized property as the property which was found at the place where the accused were apprehended. He also identified the accused, as the persons, who were apprehended by the policemen and villagers.

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24] Above discussed evidence of panch witnesses P.W.8 Shaikh Shafiq and P.W.10 Bapu is not in consonance with the evidence of API Mr. Lakade, who deposed about search of the accused in presence of these two witnesses. Seizure memo exh.48, original of which is placed with record on Sessions Case No.102/2006 and copy of which is exhibited in this matter, reveals that P.W.8 Shaikh Shafiq and P.W.10 Bapu signed the seizure memo. It is also marked by thumb impression by three of the accused. Evidence of P.W.6 Eknath, P.W.10 Bapu and P.W.11 API Mr. Lakade establish the fact of apprehending the accused after a long chase. Considering all these factors I come to conclusion that evidence of API Mr. Lakade about seizure of ornaments from the accused is required to be believed though it is not supported by one panch witness P.W.8 Shaikh Shafiq and which is not materially supported by other panch witness P.W.10 Bapu. In view of these reasons, I come to conclusion that the evidence adduced by the prosecution established the fact that accused were found distributing ornaments and cash amount amongst themselves and their companions. They started to run away to avoid their arrest when they saw police. They were chased and were compelled to surrender by police officers, police staff and the villagers, two of them sustained injuries during the process and one of them sustained injury by fire arm. After the arrest, two pairs of silver chain, 20 gold beads were seized from accused Akash, one heart shaped pendent and cash amount of Rs.50/- were found with accused Badri, cash amount of Rs.100/- was found with accused Dhok Mohan, pair of gold tops and nose ring were found with accused Shahadeo.

25] The accused had not offered any explanation about possession of ornaments and cash amount with them. As I mentioned earlier, P.W.1 Sukhdeo identified gold pendent and pair of gold rings, as the property which was taken away by the dacoits from his possession when said articles were shown to him in the Court. P.W.2 Taramati identified mangalsutra seized from the accused as the property taken away by them from her possession. P.W.3 Yamunabai also identified silver anklets seized from the accused as the property taken away by the dacoits from her house. The evidence of these witnesses thus established that most of the ornaments found with the accused, are the ornaments taken away during the event of dacoity from the house of Sukhdeo and Namdeo. The series of events described above reveal that after the incident accused were noticed with the ornaments at about 10-30 a.m. by P.W.6 Eknath. So, the accused were found with the property taken away from the event of dacoity within nine hours of the event of dacoity. From the map of Beed District (Published by K.B. Educational Traders, S-3, West Patel Nagar, New Delhi). It appears that village Mali Pargaon is few kilometers away from High Way connecting Majalgaon and Gevrai. Sirasdevi is the village situated abiding to Majalgaon-Gevrai road. Village Nipani Jawalka is situated on the south-western side of village Sirasdevi at a distance of few kilometers. This geographical situation of the villages reveals that the accused were found in close proximity of the occurrence of incident within few hours of the occurrence of incident with property taken away during the event of dacoity. From the circumstances it can be said that the property taken away during the event of dacoity was still in the hands of dacoits. Considering common course of natural events and human conduct and considering the established facts on record presumption arises that the accused, who were found in possession of stolen ornaments are the persons who had taken these articles from the possession of Sukhdeo and Namdeo during the event of dacoity at their house. In the case of **Shivappa and others V. The State of Mysore [AIR 1971 Supreme Court 196]** Hon'ble Apex Court laid down following

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proposition about raising presumption under Sec.114 of the Indian Evidence Act. As per Their Lordships -

" If there is other evidence to connect an accused with the crime of dacoity itself, however small, the finding of the stolen property with him is a piece of evidence which connects him further with the crime. There is then no question of presumption. The evidence strengthens the other evidence already against him. It is only when the accused cannot be connected with the crime except by reason of possession of the fruits of crime that the presumption may be drawn. In what circumstances the one presumption or the other may be drawn depends upon the circumstances under which the discovery of the fruits of crime are made with a particular accused. If the gap of time is too large, the presumption that the accused was concerned with the crime itself gets weakened. The presumption is stronger when the discovery of the fruits of crime is made immediately after the crime is committed. The reason is obvious. Disposal of the fruits of crime requires the finding of a person ready to receive them and the shortness of time, the nature of the property which is disposed of, that is to say, its quantity and its character determine whether the person who had the goods in his possession received them from another or was himself the thief or the dacoit. In some cases, there may be other elements which may point to the way as to how the presumption may be drawn. They differ from case to case".

In the present case the accused are not only found in possession of the ornaments which are identified as the ornaments taken away during the event of dacoity, the prosecution also proved the conduct of the accused to abscond, which reveal their involvement in a crime. The prosecution established that the possession is so recent that there are no reasons to believe that the accused received possession of these stolen articles from some other person. With this evidence and the evidence of the conduct of the accused, now we can consider the evidence of P.W.3 Yamunabai about identification of the accused in the Court. All the evidence on record indicate that the accused are the persons, who entered house of Namdeo and Sukhdeo and they had taken away gold ornaments and cash amount by putting Namdeo, Sukhdeo and their family members under the threat of causing instant hurt. The cogent and reliable evidence of these witnesses reveal that the persons involved in the incident were more than five. In the charge-sheet names of two persons are mentioned as absconding accused. So, the offence of robbery is committed by the accused alongwith their companions. As the persons committing robbery was more than five, the act of accused comes under the definition of dacoity punishable under Sec.395 of the Indian Penal Code. I, therefore, hold the accused guilty of offence punishable under Sec.395 of the Indian Penal Code.

26] I heard the accused and the prosecutor on the point of sentence. Accused No.1 Suresh submitted that he hails from poor family. He submitted that he is suffering from epileptic attacks. He also submitted that he has aged blind mother, who is dependent on him. He requested to show leniency while passing sentence. Accused No.2 Dhok Mohan submitted that he is brother of accused No.1 and he is undergoing same financial restrains and he is sharing burden to maintain blind mother. He also requested to show leniency while passing sentence. Accused No.3 (Analysis at end of the Judgment)

Akash submitted that he also hails from poor family. He submitted that his mother is blind and she is dependent on him. He also requested to show leniency while passing sentence. Accused No.4 also submitted that his widowed mother is dependent on his earnings. He, therefore, requested to take lenient view while passing sentence. The Prosecutor submitted to punish the accused with maximum sentence as the offence committed by them created terror in the vicinity of the place of offence. The above-mentioned facts established by the evidence adduced by the prosecution reveal that the accused committed a serious crime by entering isolated house of agriculturists and compelled them to part with the ornaments on the person of their family members. Considering the nature of offence committed by the accused and the submissions of the accused, I take balanced view while passing sentence. I, therefore, pass following order.

ORDER.

- 1) All the accused are convicted of the offence punishable under Sec.395 of the Indian Penal Code vide Sec. 235(1) of the Code of Criminal Procedure. Each of the accused is sentenced to undergo Rigorous Imprisonment for three years. Each of the accused is sentenced to pay fine of Rs.1000/- (Rs. one thousand). In default of payment of fine, each of the accused to undergo R.I. for three months.
- 2) Accused to surrender to their bail bonds.
- 3) Seized ornaments i.e., Heart shaped pendent, pair of God ear rings, gold mangalsutra and cash amount from M.P.No.6/2007 be provided to informant Sukhdeo after the appeal period is over.
- 4) Silver anklets from M.P.No.6/2007 be provided to P.W.3 Yamunabai, after the appeal period is over.
- 5) Rest of the ornaments be auctioned and sale proceeds be forfeited to the State after the appeal period is over.
- 6) The accused were in custody since the date of their arrest. Set off is given to them in their substantive sentence for the period already undergone.

Majalgaon,

Date: 12.09.2007

(Ajay Nathani,)

Additional Sessions Judge-2,

(Analysis at end of the Judgment)

Analysis

The defence generally succeeds in getting the benefit of doubt by pointing out discrepancies in the evidence of the prosecution case and the mistakes made by the police officer during the investigation. If we go to the provisions of the Indian Evidence Act, we find that the framers of the law were aware that it is difficult to bring direct and unblemished evidence regarding every fact required to be proved before the Court, and therefore there is a scheme of shifting the burden of proof by raising presumptions, rebuttable and non-rebuttable. It is true that in a criminal trial, the burden lies with the prosecution unless it proves the facts to raise a presumption. It is also true that inconsistencies in the prosecution case may create doubt about the authenticity of the prosecution case; however, all the inconsistencies and all mistakes during the investigation may not be considered to favour the accused. In the present case, where the dacoits have taken precautions to keep their faces in dark ruling out the possibility of their identification by the victims whether it would have been appropriate to give benefit of non-identification of culprits by the victims? Whether it would have been appropriate to give the accused the benefit of the doubt despite the fact that they were discovered with stolen property within a few kilometres of the scene of the incident after only a few hours? Whether it would have been appropriate to give the benefit of doubt to them when their conduct was to be in possession of stolen articles, distributing stolen articles amongst themselves, absconding at the sight of police, hiding themselves from the police and villagers, and when they were not left with any option to move away from the place of hiding and attack the police officer with lethal weapons to rescue themselves? In my judgment, I have mentioned that some discrepancies and lacuna can be reasonably explained and excused. These shortcomings in the prosecution case does not create any benefit of doubt in respect of the prosecution case in which the dacoits were found in possession of stolen property without having any reasonable explanation either about the possession of stolen property or about their conduct to abscond and attack the police. The defence provided no compelling explanations to explain all of the proven facts, and the defence attempted to profit solely from the discrepancies in the prosecution case, but that is never a proper defence guaranteeing acquittal. Every piece of evidence has been considered minutely, and reasons are assigned to believe or disbelieve the evidence.

(Analysis at end of the Judgment)