

**(2014) 04 AHC CK 0045****Allahabad High Court****Case No:** Criminal Appeal Nos. 2697 of 1982

Golhai

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** April 11, 2014**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 395, 412

**Citation:** (2014) 3 ACR 2805 : (2014) 86 ALLCC 196**Hon'ble Judges:** Vinod Prasad, J**Bench:** Single Bench**Advocate:** V.C. Tiwari, Namit Srivastava, Vikas Singh and B.M. Tripathi, Advocate for the Appellant**Final Decision:** Partly Allowed

### **Judgement**

Vinod Prasad, J.

This appeal by the solitary appellant Golhai is directed against impugned judgment of his conviction and order of his sentence dated 14.12.1982 recorded by IIInd Additional Sessions Judge, Mirzapur in S.T. No. 306 of 1981 by which appellant has been convicted u/s 395 I.P.C. and sentenced to four years R.I. Eschewing unnecessarily details, prosecution case against the appellant is that on the intervening night between 10/11.8.1980 at about 1 a.m. appellant and his socio criminises Sheomuni, Rajendra, Shanker Ram and 3/4 other dacoits armed with lathi and danda, committed dacoity in the house of informant Panna Lal/PW1, resident of Marihan, district Mirzapur after breaking open the entrance door. The named dacoits they were identified in the lights of earthen lamp and flashing of torches by both, the witnesses as well as by bandits. On hue and cry raised by the informant victim/PW1, co-villagers Dayaram, Sheo Sewak Singh, Paras Nath, Kalloo Singh and many others arrived at the incident scene forcing the dacoits to flee from the spot who decamped along with looted articles towards north. A chase was laid and at a distance of about 25-30 paces, two of the dacoits Sheomuni and Rajendra threw the

looted articles and sprinted towards west. Sheomuni was carrying a box. Informant and his brother Vakil along with Powalal another co-villager chased the dacoits Sheomuni and Rajendra. After chasing for some more strides, Rajendra and Sheomuni started assaulting the informant and the villagers with danda. In retaliation, informant and the villagers also launched an attack on the dacoits with lathi and gadasa. In that brawl and retaliatory attack, Rajendra, however, made his escape good but Sheomuni was lynched by the villagers who died at the spot. Jagdish, Lale and two others were named as members of that gang. The bag which Sheomuni had looted and had decamped with contained silver ornaments and muslin.

2. Incident FIR, Ext. Ka-1, was scribed by Vakil Singh and informant Panna Lal/PW1 signed on it and then he covered six miles distance to the police station Marihan where he lodged the FIR on 11.8.1980 at 2.35 a.m. which was slated down as crime No. 59 of 1980, under sections 395/412 I.P.C. by HC Ram Baricha Singh, PW6, Usual investigation was conducted by S.O. Surya Bali Singh, PW4 and S.O. Ram Bali Dubey, PW5 which culminated in charge-sheeting the appellant only.

3. In the incident, Vakil, Panna Lal and Powalal had sustained injuries. Their injury reports are Ext. Ka-1, Ka-2 and Ka-3 and their injuries are described herein under:

Ka-1--(1) Abrasion 20 cm. x 2 cm. on the right side of chest 6 cm away from the mid line.

(2) Abrasion 1.5 cm. x 0.5 cm. on the dorsum of left elbow joint.

(3) Contusion 6 cm. x 1.5 cm. on the top of the left shoulder joint.

(4) Abrasion 2.5 cm. x 0.5 cm. on the dorsum of the left hand at root of the left ring finger.

(5) Contusion 1 cm. x 1 cm. on the top of the right shoulder joint.

(6) Contusion 1.5 cm. x 1 cm. on the outer side of the right shoulder joint

(7) Abrasion 1.5 cm. x 0.5 cm. in the centre of the right palm.

(8) Abrasion 1 cm. x 0.5 cm. on the dorsum of the right hand at the root of right thumb.

(9) Abrasion 2 cm. x 0.5 cm. on the extensor (dorsum) of lower 1/2 cm of the left thigh.

c/o.....in right knee joint.

Nature:--All are simple

Duration:--Fresh, caused by blunt weapon.

Ka-2--(1) Lacerated wound 2.5 cm. x 0.5 cm. x skin deep on the right side of scalp just above the forehead.

(2) Abrasion 1 cm. x 0.5 cm. just on the root of nose.

(3) Abrasion 2 cm. x 0.5 cm. on the dorsum of the left elbow joint.

(4) Abrasion 8 cm. x 0.5 cm. on the dorsum of the left forearm.

(5) Abrasion 2.5 cm. x 1 cm. on the lower part of the left scapula.

(6) Abrasion 7.5 cm. x 1 cm. on the upper part of left scapula.

(7) Abrasion 1.5 cm. x 0.5 cm. on the upper part of right scapula.

(8) Abrasion 3.5 cm. x 0.5 cm. on the lower part of right scapula.

(9) Contusion 10 cm. x 1.5 cm. on the left side of middle 1/3 of back.

(10) Contusion 12 cm. x 2 cm. on the left side of the middle 1/3 of the back.

(11) Abrasion 1.5 cm. x 1 cm. on the neutral aspect of right elbow joint.

(12) Abrasion 1 cm. x 0.5 cm. on the top of the right shoulder joint.

Nature:--All are simple

Duration:--Fresh, caused by blunt weapon.

Ka-3--(1) Lacerated wound 1.5 cm. x 1 cm. x skin deep on the neutral aspect of left little finger of left hand along with swelling around the wound and nail of the very finger is turned blueish.

(2) C/o.....neck region.

(3).....in the left.....muscles of left leg.

Nature:--All are simple.

Duration:--Fresh, caused by tooth bite (prints of teeth present)

4. Sheomuni the dacoit, who was lynched during the incident, was subjected to autopsy examination on 12.11.1980. According to the doctor, he had sustained following injuries;

(1) Incised wound 14 cm. x 6 cm. x bone deep on back front side back.

5. After committal of the case, S.T. No. 306 of 1981, State v. Golhai was registered before Sessions Court and was transferred to IIInd Additional Sessions Judge/Mirzapur for trial.

6. Appellant was charged u/s 395 I.P.C. but he abjured it, pleaded not guilty and claimed to be tried.

7. To bring home the charge and establish the guilt, prosecution examined six witnesses, Panna Lal P.W. 1, Powalal P.W. 2, Shiv Sewak P.W. 3, S.O. Suryabali P.W. 4, SO Ram Lalit Dubey P.W. 5 and Ram Briksha Singh P.W. 6.

8. By the impugned judgment, learned Trial Judge found the guilt of the appellant established beyond all reasonable doubt and, therefore, convicted and sentenced him as aforesaid by the impugned judgment and order, which is now the subject matter of this appeal as being challenged by the appellant.

9. I have heard Sri Namit Srivastava, learned Counsel for the appellant and Sri Rama Shanker Yadav, learned AGA for the State and have vetted through the entire record including oral and documentary evidences.

10. Learned Counsel for the appellant at the very outset conceded that so far as conviction part of the appellant is concerned, the opinion by the learned Trial Judge does not suffer from any error. No witness had any animus with the appellant and there was no reason for them to falsely implicate him. Guilt of the appellant therefore, is established beyond all reasonable doubt and, therefore, learned Counsel for the appellant did not harp much so far as conviction of the appellant u/s 395 I.P.C. is concerned. However, he submitted that no recovery has been made from the possession of the appellant and on the incident date, appellant was 55 years of age. 32 years have gone by and, therefore, as on date, appellant is 87 years of age and he has already undergone more than seven and half months of imprisonment and, therefore, while maintaining his conviction, his sentence be mollified and palliated to do substantial justice to the period of imprisonment already undergone.

11. Since, learned Counsel for the appellant did not harp on the question of conviction, the detailed examination of the evidences is hereby eschewed. The main thrust of the argument of the learned Counsel for the appellant is that the sentence be reduced.

12. Sri Rama Shanker Yadav, learned AGA also had no serious argument on the said score as he also conceded to the fact that once the appellant is found to be an octogenarian, being 87 years of age, to send him to jail after three decades will not be in the interest of justice but he urged that the informant be suitably compensated.

13. I have given a thoughtful consideration on the overall facts and circumstances. Appellant does not have any criminal history. This seems to be his first crime. After the incident he has not committed any other crime and for near about three decades has led a life not of a recidivist but of a law abiding person. Prosecution has failed to bring on record any material which disqualifies the appellant from his sentence being mollified. During the incident also no specific overt act aggravating the crime of the appellant was deposed by the witnesses. Three decades have passed by and for reasons beyond the control of the appellant his appeal could not

be decided. At this age appellant must be very fragile having a tottered physic. He was the only person, who was apprehended and tried for the crime and no other.

14. On an overall consideration of above and other attending facts and circumstances I am of the view that since appellant has already served seven and half months of imprisonment, the period of imprisonment already undergone by him with fine of Rs. 25,000/-, out of which Rs. 20,000/- as compensation to the informant will serve the cause of justice.

15. In view of aforesaid, appeal is allowed in part. Whereas conviction of the appellant by impugned judgment and order is hereby maintained, his sentence is reduced to the period of imprisonment already undergone by him with fine of Rs. 25,000/-, out of which Rs. 20,000/- is awarded as compensation to the informant or his heirs. Appellant is permitted to deposit fine imposed within a period of two months from today, failing which it is directed to be realized from the estate of the appellant as arrears of land revenue and/or as is provided in Cr.P.C. by the Trial Court who, thereafter shall summon the informant or his heirs and shall pay the compensation to them as mentioned above. Appeal is allowed in part as above.

Let a copy of this order be certified to the Trial Court for necessary action.