# Reechchoo Hemraj and another Vs State of M.P.

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** Aug. 12, 1980

**Acts Referred:** Penal Code, 1860 (IPC) â€" Section 395, 412

**Citation:** (1981) JLJ 183

**Hon'ble Judges:** A.R. Navkar, J

**Bench:** Single Bench

**Advocate:** R.C. Lahoti, for the Appellant; P.D. Agarwal, Panel Lawyer, for the Respondent

**Final Decision:** Allowed

## Judgement

A.R. Navkar, J.
This judgment will also govern disposal of Criminal Appeals No. 296 of 1979 (Jagga v. State of M.P.); 297 of 1979

(Sirdar v. State of M.P.) and 298 of 1979 (Richhu v. State of M.P.) as they arise out of the same judgment.

2. These four appeals arise out of the judgment dated 12-10-1979 passed in Session Trial No. 98 of 1979 by the Sessions Judge, Guna, holding

the three accused-appellants guilty of an offence punishable u/s 395 of the Indian Penal Code. They have accordingly been convicted and

sentenced to four years'' rigorous imprisonment each.

3. The accused Gulabsingh, Chhagan, Sajan Singh, Richhu, Sirdar, Kunwarsingh and Jagga were charged of an offence punishable u/s 395, Indian

Penal Code for committing dacoity. Accused Sudabai, who is the wife of appellant Richhu, was charged of an offence punishable u/s 412 of the

Indian Penal Code for dishonestly receiving property, i.e., a pair of silver kadta between 29-10-1978 and 14-11-1978, stolen in the commission

of dacoity. The story, as alleged by the prosecution, is that on 28-10-1978 at about 5 P.M. in between villages Pattan and Suatore the accused

persons looted Dhanki, Gomti, Jadi and Dongar Singh, who are residents of village Suatore.

4. The incident, as described, is as follows:-- Dongarsingh (P. W. 1) and his wife Jadi (P. W. 3) are residents of village Suatore, P. S. Bamori.

Dhanki (P. W. 2) and her daughter Gomti (P. W. 4) also reside in the same village. Dhanki (P. W. 2) is the maternal aunt of Dongarsingh (P. W.

1). They were residents, in the beginning, of village Mudi, district Jhabua. For the last 7 or 8 years, they have been residing in village Suatore. On

28-10-1978 all the four persons, mentioned above, went to the bazar at Pattan for purchasing articles of daily use. Between villages Suatore and

Pattan there is a jungle. At about 6 P.M. when they were returning from village Pattan to their own village Suatore, they were surrounded by

dacoits in the jungle and they were looted. The looted property included articles they purchased in the bazar of Pattan. They were jaggery, battery

cells, bidi bundles, etc. Besides this, from Gomti (P. W. 4) a silver khagwari, from Dhanki (P. W. 2) a silver kadia and one atke, also made of

silver, were taken per force. A silver kadia was taken by force from Jadi (P. W. 3). Dhanki (P. W. 2) and Jadi (P. W. 3) were also beaten by the

dacoits. After the departure of the dacoits, all the aforesaid four persons reached village Suatore and on 30-10-1978 Dongarsingh (P. W. 1) tried

to lodge a first information report and, while he was proceeding to police station Bamori, he met S. O. Arun Kumar Dube, and he took down

Dehati Nalishi (Ex. P-1) and, thereafter, Dongarsingh was sent to the police station. After returning to the police station, the S. O. recorded the

report (Ex. P-28). On the basis of the report, Arun Kumar Dube, the S. O. visited the spot on 30-10-1978 and prepared spot map (Ex. P. 29).

He also recorded the statement of Dongarsingh (P. W. 1), Dhanki (P. W. 2), Gomti (P. W. 4), Fatehsingh (P. W. 5) and Gaisingh, and sent

Dhanki and Jadi to the doctor for examination of their injuries. The accused Gulabsingh was arrested on 31-10-1978. On 15-11-1978 accused

Sajansingh was arrested near village Badkachh. On the same day accused Sudabai was called for interrogation and she told the investigating

officer that she and her husband had pledged one pair of silver kadia with Kailash (P. W. 16) of village Tanda for Rs. 600. At the instance of

accused Sudabai, the pair of kadia (Art. p-2) was recovered from Kailash and seized vide seizure memo (Ex. P-12).

5. On 15-11-1978 accused Sajansingh gave information that he along with accused Kunwarsingh and appellants Sirdar, Richhu and Jagga, had

sold one pair of silver kadia, one silver atka and one silver Tagdi for Rs. 1412 to Mishrilal Rathore (P. W. 7) of village Tanda. On the basis of this

information given by Sajansingh, Panchanama (Ex. P-10) was prepared. On the same day, from Mishrilal (P. W. 7) vide seizure memo (Ex. P. 4),

khagwari (Art. P-1), kadia (Arts. P-5 and P-6) and atka (Art. P-4) were recovered and seized. Ex. P. 2 is the cash memo and Ex. P-3 is the

copy of the rokad entry. The appellants Richhu, Sirdar and accused Kunwarsingh were arrested on 15-11-1978 and their arrest memo is Ex. P-

24. The prosecution then on 612-1978 before M. M. Khare (P. W. 13), Naib-Tahsildar, Bamori conducted an identification parade of the articles

recovered at the instance of the accused. Mishrilal (P. W. 7), Dhanki (P.W. 2), Jadi (P. W. 3) and Gomti (P. W. 4) identified the articles in the

identification parade and they said that the articles belonged to them. The identification memo is Ex. P-19. On 15-11-1978 in Guna Sub-Jail, B. S.

Sisodia (P. W. 14), Naib Tahsildar Guna, held identification parade of accused Sajan Singh and Gulabsingh. In the test identification parade,

Dongarsingh (P. W. 1) identified accused Gulabsingh correctly as the person who had taken part in the commission of the crime. On the said date,

D. S. Sharma (P. W. 15), Naib Tahsildar, Guna, held another test identification parade in which Gomti (P. W. 4) identified appellant Sirdar, and

accused Kunwarsingh and Sajansingh, while Dongarsingh (P. W. 1) and Jadi (P. W. 3) identified accused-appellant Richchu as the persons who

had taken part in the commission of the crime. After completing all these formalities, a charge-sheet was filed against them.

6. The defence of appellant Sirdar is that he had sold ornaments belonging to his mother to Mishrilal (P. W. 7), while the defence of appellant

accused Richhu and his wife accused Sudabai is that they sold the ornaments to Kailash (P. W 16) because they needed money for performing the

marriage ceremony of their son. In support of their defence, however, nobody was examined by them nor any document was produced. After

taking into consideration the evidence adduced at the trial, the learned Sessions Judge has come to the conclusion that accused-appellant Richhu,

Sirdar and Jagga had committed dacoity, an offence punishable u/s 395 of the Indian Penal Code, and they were accordingly convicted and

sentenced to undergo rigorous imprisonment for four years each. The learned Sessions Judge, however, acquitted accused Gulabsingh, Sajan

Singh, Chhagan, Kunwarsingh and Sudabai, because no offence has been found proved against them. No appeal has been filed by the State

against the acquittal of these accused. Against the said conviction, these appeals are filed.

7. Before going to the merits of the case, I would like to see as to what is the reasoning given by the learned Sessions Judge for convicting the

appellants. The learned Sessions Judge has acquitted Sudabai saying that there is no evidence led by the prosecution to come to a conclusion that

she had committed any offence. The trial Court has also come to the conclusion that there is no evidence against accused Kunwarsingh to prove

that he had participated in the commission of the dacoity and, therefore, he has also been acquitted of the charge u/s 395, Indian Penal Code.

Similar is the view taken by the learned Sessions Judge in respect of the charge u/s 395 against accused Chhagan, Gulab Singh and Sajan Singh,

and they too were accordingly acquitted. Therefore, I have to see whether the conviction of appellants Richhu, Sirdar and Jagga u/s 395, Indian

Penal Code can be sustained or not.

8. I may mention that after going through the judgment of the learned Sessions Judge, I do not find any finding that five or more persons conjointly

committed, or attempted to commit, or aided in the commission of, robbery. The definition of dacoity is as below:

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing

or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so

committing, attempting or aiding, is said to commit ""dacoity.

The word "conjointly" mentioned in the said definition is the most important word bearing on the liability of persons accused of an offence of

dacoity. Mere presence of an accused amongst the robbers is not sufficient. The accused must be shown to have conjointly committed robbery or

aided such commission. I may refer to a couple of decisions in this connection. In Atum Lengmel v. Manipur Administration 1962 (1) Cri.LJ 168 it

has been held,

Mere presence of the accused among the raiders who visited the village at night is not sufficient. It is necessary that the accused must be shown to

have conjointly committed the robbery or aided such commission. Unless, therefore, it was shown that the accused were in the body of persons

who actually went to the houses of persons concerned and extorted money or at least aided in extorting the money, they could not be said to be

guilty of dacoity.

In Naththu Tulsi Vs. Anok Singh and Others, it has been laid down as under:

Under section 391, where the whole number of persons conjointly committing a robbery, and persons present and aiding such commission, amount

to five or more, every person so committing or aiding is said to commit dacoity. If one person commits robbery and 4 persons aid such

commission the offence of dacoity is committed. But these 4 persons should aid the person committing dacoity. That they must do intentionally by

any act or illegal omission.

It is therefore necessary that all the persons should share the common intention of committing robbery.

9. Even the first information report which was lodged by Dongar Singh (P. W. 1) does not say that the accused had a common intention to loot the

ladies. Therefore, in my opinion, the charge against the appellants u/s 395, Indian Penal Code cannot be said to have been proved. Thus, relying

on the aforesaid two decisions, I will have to hold that an offence u/s 395, Indian Penal Code is not proved against any of the appellants.

Consequently, the finding of the learned Sessions Judge in para 31 of his judgment, that against appellants Richhu, Sirdar and Jagga an offence u/s

395, Indian Penal Code has been proved, cannot be maintained. Therefore, I set aside the conviction of appellants Richhu, Sirdar and Jagga u/s

395, Indian Penal Code. But, even if the conviction u/s 395, Indian Penal Code is set aside, they can be convicted for their individual role they had

played in the incident under consideration. Therefore, I have to see as to what part they had played individually and under what section, if any, of

the Penal Code they can be convicted.

10. Now, the question is whether the appellants can be convicted of any other offence. First of all, I will take up the case of appellant Jagga. The

submission of Shri Raghuvir Singh, learned counsel appearing for appellant Jagga is that the learned Sessions Judge has applied different standards

in convicting Jagga, while on the same evidence he has acquitted the other accused Gulab Singh, Chhagan, Sajan Singh and Kunwar Singh. The

learned counsel has taken me through para 25 of the judgment of the trial Court. In the said para, the learned Sessions Judge has observed that on

3-11-1978 accused Gulab Singh was arrested, but his identification parade was not held immediately. It was held after a long period and there is

no explanation for this delay. Further, he has observed that on the basis of his identification by only one witness it will not be safe to hold Gulab

Singlr guilty any offence. In the case of appellant Jagga, his identification parade was held after a long delay and he has been identified by only one

witness. Therefore, so far as the guilt of appellant Jagga is concerned, I will have to apply the same standard which the learned Sessions Judge has

applied with respect to Gulab Singh.

11. The result is that appellant Jagga cannot be convicted either u/s 395, Indian Penal Code or of any other offence. The appeal preferred by

Jagga succeeds and is allowed. His conviction u/s 395, Indian Penal Code and the sentence of four years'' rigorous imprisonment are set aside and

he is acquitted. He be set at liberty forthwith, unless required in connection with any other offences.

12. Shri Raghuvir Singh, advocate, was requested to appear for appellant Jagga, because Jagga was not in a position to engage an advocate at his

costs, Shri Raghuvir Singh readily accepted the request and argued the appeal ably and all the points which can be put forward in favour of Jagga

were ably put by the learned counsel. I must express my thanks for the work he has done.

13. Now, I come to the case of appellant Richhu. So far as Richhu is concerned, Dongar Singh (P.W. 1), Dhanki (P. W. 2), Jadi (P. W. 3) and

Gomti (P. W. 4) have stated that they were looted by him. Before D. S. Sharma (P. W. 15), Naib Tahsildar, Guna, Jadi and Gomti identified the

appellant correctly. It has also come in the evidence of Dongar Singh that Dhanki and Jadi were belaboured by the persons who took part in the

alleged incident. Dongar Singh in his statement has, however, stated that he is not definite as to whether it was appellant Richhu who gave lathi

blows to the ladies or took away the ornaments. The statement of Dhanki (P. W. 2) corroborates the statement of Dongar Singh. She says that the

appellant was present at the place of incident and the ornaments were taken by force by the persons who took part in the incident. Jadi (P. W. 3)

also supports the statement of Dhanki (P. W. 2) by saying that the appellant was present on the spot, when the incident took place, and that he

took part in taking out the ornaments from her, Dhanki and Gomti (P. W. 4). Therefore, taking into consideration the evidence of identification of

the appellant and the identification of the articles, coupled with the evidence of Dongar Singh (P. W. 1), Dhanki (P. W. 2) and Jadi (P. W. 3), I

have no doubt in my mind that appellant Richhu took part in the alleged incident and by force and against the consent of the ladies, he took away

the ornaments from their person. It was submitted before me by the learned counsel for appellants Richhu and Sirdar that the ornaments recovered

had no special marks of identification on them and, therefore, the identification of the ornaments made by Jadi (P. W. 3), Dhanki (P. W. 2) and

Gomti (P. W. 4) should have no evidentiary value. What importance should be given to identification of things of daily use having no special

identification marks was considered by a Division Bench of this Court in Sarveshwar Prasad v. State of M.P. 1977 MPLJ 620 : 1977 J L J 583,

wherein it was held:

As regards absence of particular identifying marks on the articles, we may point out, that in advancing this criticism it is forgotten that small and

even nice points of difference distinguishing one thing from others of the same kind may merely by the frequent sight of them and without any

special attention to them make an impression on the mind. They are component parts of the thing and go on to make the whole of which the mind

receives an impression. In this case the impression is the general appearance of the thing. This sort of impression is exceedingly common, a

workman has it of his tools and most people have it of their clothes, ornaments and other things they are frequently seeing, handling or using. It

occurs every day that by remembrance of their general appearance a person recognizes his tools, dress, ornaments and other property.

Observation teaches that such identification may be safely relied upon. At the same time, a witness would not be able to formulate his reasons for

the identification since it is based upon general untranslatable impressions of the mind. It would, therefore, be fatuous to discredit such identification

on the ground that reasons are not being formulated for them.

Therefore, as already stated by me in para 8 above, the appellant Richhu''s conviction u/s 395, Indian Penal Code cannot be maintained and is

accordingly set aside. He is, however, found guilty of an offence of robbery, punishable u/s 392, Indian Penal Code. He is accordingly convicted

u/s 392, Indian Penal Code and sentenced to undergo rigorous imprisonment for three years.

14. Now, I have to consider the appeal of appellant Sirdar. As I have already stated above, appellant Sirdar also cannot be convicted u/s 395

Indian Penal Code. Therefore, his conviction and sentence passed by the trial Court are set aside. Now, I have to see whether he is liable for

conviction under any other offencc. Against the appellant, there-is evidence that the articles which were looted in the incident were recovered

immediately, i. e., within 6 days of the commission of the offence. The articles were sold by him to Mishrilal (P. W. 7), a ''Saraf'' in village Tanda,

district Dhar. Therefore, taking into consideration these two facts, the learned Sessions Judge came to the conclusion that he was present on the

spot when the incident took place and that the articles which were looted from the person of the ladies, were recovered and seized on the basis of

the information given by him. Dongar Singh (P. W. 1) has stated that accused-appellant Sirdar had a lathi in his hand. Dhanki (P. W. 2) stated in

her deposition that appellant Sirdar took out the kadia which she was wearing at the relevant time. The kadia recovered is Art. 3. Therefore, it is

proved beyond doubt that appellant Sirdar took part in the incident and by show of force he took out the ornaments which the ladies were wearing

at the time of the incident without their consent. Added to this, he sold the ornaments to Mishrilal (P. W. 7). Therefore, the cumulative effect is that

even though he cannot be convicted u/s 395 Indian Penal Code, he can be convicted u/s 392 Indian Penal Code. Accordingly, appellant Sirdar is

found guilty of an offence of robbery, punishable u/s 392 of the Indian Penal Code. He is convicted thereunder and is sentenced to suffer rigorous

imprisonment for three years.

15. Before parting with the case, I may mention some submissions made by the learned counsel for the appellants. Much stress was laid before me

that the appellants are ''Bhilaras'' and not ''Bhils''. Similarly, it was submitted that they are of tender age, while, in fact, it has come in evidence that

they are not of tender age but are grown-up young men. But I do not see how these submissions can help the appellants. Only the witnesses say

that the appellants are not ''Bhilaras'' but are ''Bhils''. In my opinion, this will make no difference so far as the crime in question is concerned. It will

not affect their test identification parade nor it will affect the evidence regarding identification of the articles. Therefore, in my opinion, these

submissions have no force, and I reject the same.

16. The result, therefore, is that:

(i) the appeal of Jagga is allowed. His conviction u/s 395 Indian Penal Code and the sentence of four years'' rigorous imprisonment passed by the

trial Court are set aside and he is acquitted. He be set at liberty forthwith unless required in connection with any other offences.

(ii) The appeals of appellants Sirdar and Richhu are partly allowed to the extent that their conviction u/s 395 Indian Penal Code is set aside, but

they are convicted u/s 392 Indian Penal Code and each of them is sentenced to undergo rigorous imprisonment for three years. Sirdar and Richhu

are on bail. Their bail bonds are cancelled. They be taken into custody to undergo the remaining part of the sentence.