

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**D.B: HON'BLE SHRI JUSTICE ALOK VERMA AND HON'BLE SHRI**  
**JUSTICE VED PRAKASH SHARMA**

**Cr.A. No.1084/2007**

**Guddu and others**

**Vs.**

**State of M.P.**

**Cr.A. No.68/2008**

**Sunil Singh**

**Vs.**

**State of M.P.**

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Ms. Vidhushri Sumanlata, learned counsel for the appellants in Cr.A. No.1084/2007.

Ms. Rekha Shrivastava, learned counsel for the appellant in Cr.A. No.68/2008.

Shri Milind Phadke, learned counsel for respondent/State.

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**JUDGMENT**

**(Delivered on 07/03/2017)**

**Per Alok Verma, J.**

This common order shall govern disposal of Cr.A. No.1084/2007 and Cr.A. No.68/2008.

**2.** These appeals arise out of judgment passed by the learned

Additional Sessions Judge, Sendhwa, District- Barwani in Session Trial No.233/2003 dated 07.09.2007 whereby the appellants in Cr.A. No.1084/2007 Guddu S/o Uttam Barela, Kalusingh S/o Vithal Barela, Saniya S/o Galjiya Barela, Ganpat @ Bhayala S/o Galjiya Barela, Mangilal S/o Gala Barela, Krishna S/o Dilsingh Barela and Jahadar S/o Gandas Barela were convicted under Sections 395 and 397 of IPC and they were sentenced to 10 years rigorous imprisonment and life imprisonment respectively with fine of Rs.300/- and Rs.500/- respectively with default stipulation. Similarly, the appellant in Cr.A. No.68/2008 Sunil Singh S/o Chatarsingh Rajput was convicted under Sections 395 and 396 of IPC. He was sentenced to 10 years rigorous imprisonment and life imprisonment with fine of Rs.300/- and Rs.500/- with default stipulation. Appellants- Sunil Singh, Ganpat and Mangilal were also convicted under Section 25/27 of Arms Act. They were also sentenced to 1 year R.I. and fine of Rs.2,000/-.

3. The trial Court acquitted accused Sildar S/o Bhagirath Barela, Tukaram S/o Jadhav and Rajesh S/o Madan Soni from all charges. Accused Bhagirath @ Kalia remain absconding till date. Accused Padmsingh S/o Natthu Pawra expired during the trial.

4. The story of prosecution in brief is that the complainant Arvind Kumar Shah was residing in a house situated in village Betakbadi, Khetia. On 12.05.2003 at about 1:15 am, when the

complainant Arvind Shah and his wife were sleeping in a room, his father-in-law Prafullchand was sleeping outside in a varandah. His father-in-law called his wife on which door was opened and on opening of the door, about 15-20 unknown persons entered into the house, two of them were having country made revolver and remaining persons were having swords and lathis. They started committing loot on all the family members of the complainant. They snatched chain from neck of the complainant, Kumudanibi, his wife Hansmukhi, daughter-in-law Ujjwala and they also looted other silver jewellery and cash of Rs.6,15,000/- which was kept in the house by the complainant as marriage of his daughter was to be solemnized shortly. When the miscreants were looting the family members, son of the complainant Sanju came out, he tried to stop them from looting the property and tried to catch two miscreants, on which two gun shots were fired on him, one narrowly missed him and created an abrasion on his head and another hit in his abdomen, due to which, he sustained fatal gun shot injuries and died subsequently in a hospital at Bombay.

5. During the investigation, the appellants were arrested. On their disclosure memo under Section 27 of Evidence Act, various properties recovered from their possession. Seven accused persons which are before this Court were identified by the complainant, during the test identification parade. The jewellery recovered from

their possession was also identified by the complainant and his family members.

6. The appellants faced trial for charges under Sections 395, 396, 397 of IPC and Section 25/27 of Arms Act and sentenced to rigorous imprisonment as aforesaid.

7. Aggrieved by the order of conviction and sentence, these appeals are filed on the following grounds :- (i) from the prosecution evidence, it is not clear who were having country made revolver, who were having lathis and who were having swords. (ii) the deceased Sanjay died due to septicemia and infection, and therefore, the sentence awarded on them is erroneous. (iii) there was no other injury was found on body of the deceased, and therefore, it was clear that no other weapon was used during commission of the crime. (iv) the test identification parade of the accused persons was held after two months of the incident, and therefore, such identification is doubtful. (v) the test identification was conducted in two parts, and therefore, it lost its authenticity and cannot be relied upon. (vi) the identification was done by one single witness though there were as many as six prosecution witnesses present in the house at the time of commission of the crime. (vii) there were material contradiction and omission in various prosecution witnesses. The trial Court erred in ignoring them and believing the oral evidence of these

witnesses. (viii) the test identification of property recovered was also conducted very late, and therefore, it is not very reliable. (ix) the First Information Report appears to be ante-dated. This fact was not taken into consideration by the trial Court. (x) the trial court did not found proved the charge under Section 397 of IPC then how it found the charge proved in other sections, was not clear by the impugned judgment. (xi) there is no evidence available to connect the present appellants with the crime, the chain of events is not complete and on the basis of these grounds, the appellants pray that the appeal be accepted and the conviction and sentence passed on them be set aside.

8. Learned counsel for the State supports the impugned judgment and prays that the conviction and sentence passed on the present appellants be confirmed.

9. So far as the facts stated in the prosecution story are concerned, Bhupendra Shah (P.W.-1) is son of the complainant. Arvind Kumar (P.W.-2) is the complainant himself, Bharti Shah (P.W.-3) is wife of the complainant, Ujjwala is wife of Bhupendra Shah and daughter-in-law of Arvind Kumar, the complainant. Kumudanibi (P.W.-5) is sister-in-law of the complainant, who came to the house of the complainant to attend marriage of his daughter Rakhi, which was scheduled to be performed on 22.05.2003 and P.W.-6, Prafullchand is father-in-law of the

complainant, who was sleeping outside in Varanda when the incident took place. They all support the prosecution story that on 12.05.2013 at about 1:15 a.m., about 15-20 persons entered into the house of complainant and committed loot. They snatched jewellery from all the family members and also took cash of Rs.6,15,000/-. In relation to gun shots fire on deceased Sanjay, they all stated that in all two gun shots were fired on him by one of the miscreants who entered into their house.

**10.** Learned counsel appearing for the defence submits that in the First Information Report Exhibit (P-50), it was not mentioned that two gun shots were fired and it was only mentioned that only one gun shot was fired. However, the statements of prosecution witnesses were recorded by the Investigating Officer on 12.05.2003 itself. In their statements, it was specifically mentioned that two gun shots were fired. This could not be called a material improvement because after such a traumatic experience which they must have undergone during the incident, such minor lapse was natural and possible.

**11.** Apart from this minor discrepancy, no other major contradictions and omissions were pointed out during cross-examination of these witnesses, and therefore, their statements can be relied on.

**12.** The next point raised by the defence is regarding

identification. According to learned counsel for the defence only single witness, the complainant himself, identified about 7 accused persons. They were not identified by other prosecution witnesses though they were all present in the house and they all saw the incident and also the accused persons. However, this argument cannot be accepted. It is to be seen whether the identification by one single prosecution witness was reliable or it creates some doubt in the mind of the Court. Arvind Shah (P.W.-2), who identified the seven witnesses during the Test Identification Parade, in para 14 of his statement, he specifically stated that he was not knowing the miscreants prior to the incident and he never saw them after the incident till Test Identification Parade was held. Anil Sabkale is the Executive Magistrate, who conducted the test identification parade. He was cross-examined in detailed and in his cross-examination not a single discrepancy was found to make the test identification doubtful or unreliable. And therefore, the test identification parade held during the investigation was reliable upon in this case, and therefore, the identification of seven accused persons is beyond doubt.

**13.** Learned counsel appearing for the appellant Sunil in Cr.A. No.68/2008 has vehemently argued and challenged the seizure made from his possession. Firstly, she submits that a scooter was seized from his possession though no prosecution witness saw

them coming on a scooter. It was also according to her, no case of prosecution that all the miscreants came on the scooter. She further pointed out that place from where a seizure made, was about 160 kms. from the place of incident, and therefore, it must have taken about 3 hours by road to reach that place, and therefore, according to her, the time mentioned in the seizure memo indicates that they were not prepared on the spot where they were purported to have been prepared, but they were prepared at the police station. The seizure witness Rajesh (P.W.-8) stated in his examination-in-chief in para 3, according to this witness, seizure memos Ex.P-41 to P-44 were prepared before him. By this seizure memo, one country made revolver, three live cartridges and Rs.5,500/- were recovered from his possession. Subsequently, a scooter, one lathi and one piece of golden chain were also recovered from his possession.

**14.** Learned counsel for the State pointed out that these seizure memos were prepared at two different places. First the country made revolver and live cartridges were recovered from a field which was situated near the scene of crime. Ex.P-40 was made at 21:15 hours and one piece of golden chain, Rs.5,500/- recovered from his residence. Ex.P-41 was prepared at 18:25 hours and one country made revolver and three live cartridges were recovered from village Dongada under a Mahua Tree. Ex.P-42 was prepared



again at 21:30 and by this memo a Bajaj Scooter was seized from his residence. It is apparent that the country made revolver was recovered from village Dongada while other properties were recovered from his house. As per his arrest memo, he was a resident of Motihari Mohalla, Village Darsoni, Police Station-Motihari, and therefore, it is apparent that the properties were recovered from two different places, and therefore, the timings entered on such memo cannot be doubted, at this stage. Further, the appellant Sunil was arrested by arrest memo Ex.P-11, the timing of his arrest was 22.03.2003 at 11:15 a.m. and in this view of the matter, recovery on the basis of facts disclosed by him in his disclosure memo under Section 27 of Evidence Act cannot be doubted.

**15.** Seizure of scooter can also be explained by the disclosure memo given by the accused Sunil in Cr.A. No.68/2008 under Section 27 of Evidence Act, as in such memo, he informed the police that he came from his village to the scene of crime on scooter. It may be true that nobody in the village saw him coming on that scooter. However, this does not make the recovery of scooter irrelevant, as it was recovered and seized by the police on an information given by the appellant himself.

**16.** So far as the medical evidence is concerned, there were two wounds found on the body of the deceased Sanjay. One was in

his abdomen which was a gun shot injury and the bullet was found embedded in his shoulder. The another wound was found on his temporal region which was having blackening all around. This also confirms the statement given by all the prosecution witnesses that two gun shots were fired during the incident.

**17.** Learned counsel appearing for the appellant- Sunil further submits that the death of the deceased was due to removal of spleen and resultant infection, in his body. However, removal spleen and all the infection etc. was a result of gun shot injury, and therefore, it cannot be said that his death was not a result of gunshot injury, he sustained during the incident.

**18.** The learned trial Court observed that it is not clear as to who used the gun, however, the trial Court did not take into consideration the FSL report in respect of country made revolver seized from possession of the accused persons. In all there were three country made revolver seized which were marked as Ex.A-1 to A-3. Ex.A-3 was seized from possession of Ganpat. The police seized one empty cartridge from the spot and the bullet was extracted from body of the deceased Sanjay during the postmortem. Impressions found on empty cartridge and the bullet were matched with the gun marked as Ex.A-3, which was seized from possession of Ganpat and this also indicates presence of Ganpat on the spot and confirmed his identity by (P.W-2) Arvind

Kumar Shah.

**19.** Accordingly, in our considered opinion, the learned trial Court did not commit any irregularity or illegality in convicting the present appellants under the aforementioned sections. Both the appeals filed by the appellants are devoid of any force and liable to be dismissed and dismissed accordingly.

**20.** Accordingly, the conviction of the appellants under Sections 395 and 396 of IPC is confirmed. The sentence of life imprisonment awarded on them and sentence of 10 years each under Section 395 of IPC is also confirmed. The seized jewellery and cash may be returned back to the complainant- Arvind Kumar Shah. The country made revolver may be sent to District Magistrate, Barwani for their disposal according to law. The remaining properties may be destroyed.

The record of the case may be preserved as one accused Bhagirath @ Kalia is still absconding.

**(Alok Verma)**  
**Judge**

**(Ved Prakash Sharma)**  
**Judge**