**SUPREME COURT OF INDIA**

Vishnu Shiv Ram Bhoir

Vs.

State of Maharashtra

Crl.A.No.226 of 1972

(S. Murtaza Fazl Ali and A. D. Koshal, JJ.)

22.02.1979

**JUDGEMENT**

**S. M. FAZAL ALI, J.:-**

1. Fourteen persons were charged under Sections 147, 148, 302/149, 395 and 396 of Indian Penal Code and tried by the 3rd Additional Sessions Judge, Thana who acquitted all the accused persons holding that the prosecution case was not proved. Thereafter, the State filed an appeal in the High Court of Bombay against the acquittal of the accused. The High Court allowed the appeal and reversed the acquittal of accused Nos. 1, 2, 4, 6, 8 and 10 and convicted them as follows :

Accused 4 under Sections 147 and 148 I. P. C. sentenced to three years' rigorous imprisonment and a fine of Rs. 500 in default to three months' rigorous imprisonment.

Under Sections 147 and 148 I. P. C. sentenced to three years' rigorous imprisonment and a fine of

Rs. 1,000 in default three months' rigorous imprisonment.

Under Sections 395/149 I. P. C. sentenced to five years rigorous imprisonment and a fine of Rs. 1,000 in default six months' rigorous imprisonment.

Accused 6 and 10 sentenced under Section 147 and 148 I. P. C. to three years' rigorous imprisonment.

Under Sections 147 and 148 sentenced to three years' rigorous imprisonment and a fine of Rs. 1,000, in default three months' rigorous imprisonment.

Under Sections 395/149 I. P. C. sentenced to three years' rigorous imprisonment and a fine of Rs. 500, in default three months rigorous imprisonment.

Accused 1 and 2 sentenced under Sections 147 and 148 I. P. C. to three years' rigorous imprisonment and a fine of Rs. 1,000, in default three months' rigorous imprisonment.

2. All the substantive sentences of imprisonment were directed to run concurrently. The High Court also gave a direction that out of the fine, if realised, half of the amount was to be paid to P. W. Yakub and his father Umar, the victims of the crime, to be divided equally between them. The appellants have come up by special leave to this Court against the judgment of the High court referred to above. We have heard learned counsel for the appellant and Mr. Nain for the State. We have gone through the judgment of the High Court. The entire case rests on the evidence of P. W. Yakub whose evidence is sought to be corroborated by his brother Haji. We find that so far as the charge of dacoity is concerned there is no mention of the fact of any property having been looted by the accused in the evidence of Yakub which he gave in court although this fact was mentioned in the F. I. R. which he lodged about eight days after the occurrence. As the substantive evidence of Yakub does not at all refer to the allegations that the accused persons had looted away the articles or moveables of the victims, so the appellants cannot be convicted under Section 395/149. It is, however, clear from the evidence of Yakub as also of the statement in the F. I. R. that when the appellants surrounded Yakub and his party they extorted a sum of Rs. 300 as price for sparing them and that this amount was paid to the appellants. In these circumstances we would alter the conviction of the appellants from one under Section 395/149 to that under Section 384/149, maintaining the fine. The convictions under other counts are upheld. In the facts and circumstances of this case we reduce the sentences of the appellants under all the counts to the period already served, maintaining the respective fines. We further direct that out of the fine, if realized, the entire amount shall be paid to Yakub, P. W. and his father Umar in equal shares. After the fine is paid by the appellants, unless the same has not been paid already, the appellants will be discharged from

their bail bonds. With this modification the appeal is dismissed.

Order accordingly.