

MHTH010000562018



Presented on : 27.12.2017
Registered on : 27.12.2017
Decided on : 23.03.2021
Duration 03Y02M 24D

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, THANE

AT : THANE

(Presided by R.V. Tamhanekar)

CRIMINAL APPEAL NO.01/2018

CNR No.MHTH010000562018

EXH. No. 21

Mr. Hamid Rashid Qureshi @ Ammo

Age 28 years, Occ : Driver,

R/at Ayesha Manzil, Ground Floor,

Kattal Kana Road, Kranti Nagar,

Thane

.. Appellants/Ori.

Accused

V/s.

The State of Maharashtra

Through Rabodi Police Station

... Respondent

Appeal under Section 374 of Cr.P.C against the Judgment and Order of conviction passed by Ld. Adhoc District Judge-2 and Assistant Sessions Judge, Thane in Sessions Case No. 402/2016.

Appearances: Ld.Advocate Shri.N.S. Khan for
Appellant.
Ld. APP Kum. S.H. Mhatre for Respondent.

: J U D G M E N T :

(Delivered on 23rd day of March, 2021)

1. This is an appeal under Section 374 of Code of Criminal Procedure filed against the impugned Judgment and Order of conviction passed by Ld. Adhoc District Judge-2 and Assistant Sessions Judge, Thane in Sessions Case no. 402/2016 dated 28.11.2017.

2. The brief facts which are necessary to decide present appeal are as under:-

As per informant on 29.8.2016 at about 11.50 pm she along with her cousin proceeded towards their house by motorcycle. As per informant, they reached at Abhiruchi hotel where accused came in front of their motorcycle and threatened with the help of knife stating that the informant become more wise and he will show her now. It is alleged on behalf of informant that the accused has snatched her gold chain of three grams from her person and fled away towards Castle Mill bus stop. According to informant she along with her cousin brother had been to Rabodi Police Station and filed complaint. According to prosecution, police officer Warangade called police Naik Shinde and informed the contents of F.I.R., directed detection squad to find out accused. As per prosecution the accused being history sheeter, the police officials were aware

about same and later on they have received information that accused is standing near Castle mill circle at A.T.M. of State Bank at Chinese stall, thereby police staff immediately reached on spot. Accused tried to flee away, but police have chased him and caught hold on the spot. It is further case of prosecution that during personal search of accused in presence of panchas one knife found in his possession and thereby seizure panchanama taken place.

3. According to prosecution, accused has given voluntary statement showing his willingness to produce gold chain out of robbery and later on he has given the same from his house. As per investigating officer he has shown seized gold chain to the informant who has identified the same and so after completion of investigation chargesheet came to be filed against the accused for the offences punishable under Section 392,397 of Indian Penal Code and under Section 142 of Maharashtra Police Act.

4. Since the offence under Section 397 of Indian Penal Code exclusively triable by Court of Sessions, Ld. Magistrate after compliance of Section 207 of Cr.P.C. has committed the matter for trial as per Section 209 of Cr.P.C. before the Court of Sessions.

5. The contents of charge were read over and explained to accused vide Exh.10 under Sections 392,397 of Indian Penal Code and Section 142 of Maharashtra Police Act. The accused pleaded not guilty and claimed to be tried.

6. In support of case the prosecution has examined PW 1 Pradip Jagannath Sinde (Exh.12), PW 2 Shabina Latif Kazi @ Pinky (Exh.13), PW 3 Keshav Janya Dhapshi (Exh.21), PW 4 Manilal Dattatraya Warangade (Exh.24), PW 5 Sagar Satish Wankhede (Exh.35), PW 6 Santosh Ganpat Dant (Exh.39), PW 7 Vishwas Subhash Jadhav (Exh.45), PW 8 Mahesh Mangaldash Bhadra (Exh.49), PW 9 Munawwar Abdul Salam Shaikh (Exh.54). So also prosecution has placed reliance on different documents including F.I.R. (Exh.14), muddemal receipts (Exh.25, Exh.46), spot panchanama (Exh.36), personal search panchanama (Exh.40), memorandum panchanama (Exh.50 and 51). The prosecution has closed its evidence by filing pursis at Exh.56. The Ld. Trial court has recorded the statement of accused under Section 313 of the Code of Criminal Procedure vide Exh.55. According to accused he has been falsely implicated in present crime. After going through the evidence on record, after hearing submissions of respective parties, Ld. Trial court has convicted the accused for the offence punishable U/sec.392 read with 397 of Indian Penal Code vide Section 235(2) of the Code of Criminal Procedure and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- , in default to suffer suffer simple imprisonment for two weeks. At the same time Ld. Trial court has acquitted the accused under Section 232 of the Code of Criminal Procedure for the offence punishable Under Section 142 of Maharashtra Police Act.

7. Being aggrieved and dissatisfied with the Judgment and order of conviction, the accused i.e. the appellant herein has preferred present appeal by contending that the impugned Judgment is not legal, correct, proper and it is against the provisions of law. As per appellant the Ld. Trial court did not follow the proper procedure contemplated under the code of Criminal Procedure, Evidence Act, while conducting trial and thereby accused was materially prejudiced . It is contended on behalf of appellant that the Ld. Trial court has failed to appreciate the evidence on record and had not properly appreciated the evidence of witnesses, committed serious error while relying the evidence of witnesses. According to appellant the Ld. Trial court failed to appreciate the fact that there was material contradictions, omissions in the evidence of prosecution witnesses, the Ld. Trial Judge has wrongly put burden on the accused. As per appellant, the Ld. Trial court did not properly recorded the statement of accused under Section 313 of the Code of Criminal Procedure which resulted into serious prejudice. Lastly, it has been contended on behalf of appellant that the Ld. Trial court ought to have held that there is no sufficient evidence to convict the appellant and at the same time the order of conviction is harsh, oppose to law.

8. After going through the evidence on record, grounds raised in appeal memo, upon hearing rival submissions, following points arise for my determination and I have recorded my findings and reasons thereon as under.

<u>Sr.No</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the prosecution proves that on 29.8.2016 at about 11.50 pm near Hotel Abhiruchi on public road, accused committed robbery of Gold chain of three grams of informant and while committing robbery he has used deadly weapon i.e. knife?	.. Affirmative
2]	Whether the impugned Judgment and order of conviction requires interference at the hands of appellate court?	.. Negative
3]	What order ?	.. As per final order.

REASONS

POINT NO.1:-

9. So far as the case of prosecution is concerned, the informant came with specific allegations that when she proceeded through motorcycle along with cousin the accused came across their motorcycle, shown knife and then snatched away her gold chain from her person, fled away towards Castle Mill bus stop. So prosecution come with specific allegations as contemplated under Section 392 and 397 of Indian Penal Code. So far as evidence under Section 397 of Indian Penal Code is concerned, there are three basic ingredients i.e. (1) accused committed robbery, (2) while committing robbery or dacoity (i) accused used deadly weapon (ii) caused grievous hurt to any person or (iii) attempted to cause death or grievous hurt to any

person, (3) offender refers to only culprit who actually used deadly weapon. So in peculiar facts and circumstances it was necessary for prosecution to prove the conduct of accused as mentioned in F.I.R.

10. As mentioned supra, prosecution has examined in all nine witnesses. PW 2 is informant, PW 9 is brother of informant, PW 1, 3 are police personnel who caught the accused, PW 4 is PSO, PW 5,6,8 are panchas whereas PW 7 is investigating officer. It is relevant point to be noted that prosecution has examined necessary witnesses to unfold its case and so it is necessary to see the oral evidence and documents on which the prosecution has placed reliance.

11. After perusal of evidence of PW 2 i.e. informant it is seen that she has stated the consonance story as mentioned in F.I.R. at Exh.14. It is come on record in the evidence of PW 2 that “on 29.8.2016 I myself and my brother Munavar were returning by motorcycle at about 11.30 p.m. to medical stores for purchasing medicines. After purchasing medicines I myself and my brother Munavar were returning by motorcycle to my home. At that time accused Ammu was standing near hotel Abhiruchi. Then he came near our motorcycle and stopped our motorcycle and pointed knife to me and my brother. Accused kept knife on my throat, at that time accused threatened me by saying that “Tu bahot shani ho gai, tere ko dikhata hu”. Then accused snatched my gold chain from my neck and ran away towards Castle Mill circle”. So from perusal of evidence of PW 2

it is seen that she has narrated the exact incident which was occurred with her at the instance of accused. It is true that there are two improvements, but those are not material infirmities.

12. After perusal of evidence of PW 2 it is seen that she claimed that they immediately went at Rabodi police station and lodged complaint against accused. It is material point to be noted that the prosecution has examined PW 4 who being PSO. After perusal of testimony of PW 4 it is seen that he has deposed that he was working as police station officer in between 9.00 p.m. of 29.8.2016 to 9.00 a.m. of 30.8.2016 at Rabodi Police Station. It is come on record from the evidence PW 4 that informant Shabina came at police station and lodged F.I.R. at Exh.14 regarding taking away her gold chain by present accused. On one hand PW 2 has referred F.I.R. Exh.14 and on other hand P.S.O. PW 4 has referred the signature of informant and of own signature bearing on Exh.14. So from perusal of evidence of PW 2, 4 it is crystal clear that on one hand they have stated about recording of FIR and on other hand referred knife which was seized at the instance of present accused.

13. As mentioned supra, the informant came with specific case that she was accompany with her cousin brother Munawar. So for bringing corroboration to the testimony of PW 2, prosecution examined Munawar (PW 9). After perusal of his evidence it is seen that he has deposed that he and informant proceeded through motorcycle bearing No. MH-04-HG-302 and while returning towards their house they reached at Abhiruchi

bus stop. As per PW 9 they have noticed quarrel taken place in between informant and Hamid. So there is corroboration from the mouth of PW 9 regarding presence of accused at Abhiruchi bus stop. Ld. Advocate for accused/appellant has vehemently argued that PW 9 is not eye witness and so the testimony of PW 2 can not be relied upon. It is material point to be noted that two suggestions have been put during cross-examination of PW 9 that quarrel never taken place in between accused and informant, accused was not in Thane, but PW 9 has denied both the suggestions and remain firm on his contention that there was quarrel in between informant and accused. It is significant to note that PW 2 and 9 have specifically stated the identification of accused. So prosecution has succeeded to bring on record material evidence regarding occurrence of incident narrated in F.I.R. at Exh.14.

14. As mentioned supra, on one hand PW 2 has deposed that she immediately rushed at Rabodi police station and lodged complaint at Exh.14. On the other and PW 4 i.e. Police Station Officer has referred F.I.R. at Exh.14 claiming that he has registered C.R. No. 220/2016. It is significant to note that PW 4 during his further evidence has deposed that he sent police Naik Shinde B.No. 2693, Police Naik Dhapshi B. No. 2858 to take search of accused. PW 4 has added that police personnel have brought the accused at police station and thereby he called two panchas, take personal search of accused whereby they have found one knife in right side pocket of the pant. PW 4 has referred recovery panchanama and muddemal receipt along

with knife at Article A.

15. So far as corroboration to the testimony of PW 4 the prosecution has examined PW 1 and 3. After perusal of evidence of PW 1 it is seen that PSO Warangade (PW 4) informed him that one Shabina Latif Kazi @ Pinky lodged complaint with him stating that on 29.8.2016 she was proceeding by motorcycle along with her brother Munnawar Shaikh to her house at that time at about 11.50 pm accused restrained their motorcycle, threatened them and snatched her gold chain from her neck, ran away towards Castle Mill Naka. PW 1 has added that as per direction of P.S.O. he along with police Naik Dhapshi, police constable Sonawane proceeded to take search of the accused and subsequently they have noticed present accused. As per PW 1 they all have chased accused and caught him near Castle Mill circle. As per PW1 they have brought accused at Rabodi police station and produced before A.S.I. Warangade (PW 4). As per PW 1 they have found one knife having length 9.5 inch in the possession of accused and ASI Warangad has seized the same. It is material point to be noted that already PW 4 has referred personal search panchanama and knife at article A. So from the evidence of PW 1 and 4 it is crystal clear that accused has been arrested and subsequently muddemal article A recovered at his instance. The prosecution has examined PW 3 claiming that he was present along with PW 1. After perusal of testimony of PW 3 it is crystal clear that his version is consonance to the testimony of PW 1. So also there is interse corroboration in between the evidence of PW 1, PW 3 and PW 4 as regard to

identification of accused, muddemal article A and personal search panchanama at Exh.40.

16. So far as independent corroboration to the testimonies of PW 1, 3 and 4 is concerned the prosecution has examined PW 6 being panch. After perusal of evidence of independent witness it is seen that on one hand he has referred personal search panchanama at Exh.40, seizure of knife at article A and on other hand referred the label on knife being marked at Exh.41. So also he has stated about identification of present accused. Resultantly there is specific corroboration in between the evidence of PW 1,3 and 4 and 6 to prove recovery of knife at the instance of present accused. So also there is corroborative evidence regarding incident from the mouth of PW 2, 9, PSO PW 4 to connect chain of different circumstances.

17. So far as spot of incident is concerned, on one hand the prosecution has examined independent witness i.e. PW 5 to prove the spot of incident and on other hand there is evidence of investigating officer i.e. PW 7 that he has received F.I.R., spot panchanama, knife seizure panchanama, muddemal receipt, arrest panchanama. So there is specific evidence to prove spot. After perusal of evidence of PW 5 it is seen that he has claimed that one Pinki has shown spot of incident and officer Warangade has prepared spot panchanama which is situated on the road proceeded from Castle Mill circle to Marks Nagar. PW 5 has referred said panchanama at Exh.36 and specifically stated the location of spot.

18. The material witness of prosecution is nothing but Investigating Officer i.e. PW 7. After perusal of his chief examination it is seen that he has referred the voluntary statement of accused by stating that accused has shown his willingness to produce stolen gold chain concealed by him in one place. PW 7 has referred memorandum statement of the accused and claimed that accused took them at his house, knocked the door, it was opened by one male person who is father of accused. According to PW 7 accused has produced one gold chain from open shelf of said cupboard before him confessing that he has snatched said gold chain from the person of informant Pinki by threatening her with knife. So there is direct incriminating evidence against accused from the mouth of PW 7. So far as independent corroboration is concerned, prosecution has examined PW 8 i.e. panch witness. After perusal of his evidence it is seen that the accused has informed that police should come with him and then he will produce said gold chain before police. As per PW 8 the police have reduced in writing statement of the accused at Exh.50 and then accused led them towards old Rabodi village. PW 8 has deposed that “at that time accused stated that there is one Urdu school and vehicle should be taken ahead of said Urdu School”. As per PW 8 accused instructed to stop the vehicle and then shown one house, accused knocked the door of house where one male person open the same. Lastly PW 8 has claimed that accused has produced gold chain from wooden cupboard and thereby panchanama at Exh.51 has been prepared. So from the evidence

of PW 7 and 8 it is crystal clear that circumstantial evidence brought on record that accused has given voluntary statement and recovery of gold chain out of robbery has been done at the instance of present accused.

19. As mentioned supra, the prosecution has examined in all nine witnesses. After perusal of F.I.R. and line of investigation it is seen that the claim of prosecution is based on direct and circumstantial evidence. So far as direct evidence is concerned, prosecution has examined PW 2 and 9. To prove the nature of offence i.e. snatching away gold chain by showing knife to the informant, to bring on record the fact regarding arrest of accused, prosecution has examined PW 1 and 3. So also PW 4 being PSO on one hand has referred F.I.R. at Exh.14 and on other hand placed reliance on knife recovery panchanama at Exh.40.

20. So far as circumstantial evidence is concerned prosecution has succeeded to prove the spot by examining PW 5 and furthermore PW 7 and 8 has referred voluntary statement of accused at Exh.50 and recovery of gold chain vide panchanama Exh.51. So the prosecution has succeeded to bring on record direct as well as circumstantial evidence.

21. Ld. Advocate for appellant/accused by referring testimonies of PW 2 and 9 has claimed that there are material contradictions and so their testimonies could not be relied upon. So also he has submitted that PW 9 is not the eye witness as

well as he has not supported the version of PW 2 and so the evidence of informant required to be discarded. It is material point to be noted that even though certain discrepancies and minor omissions noticed in the evidence of PW2, those are not fatal to the prosecution as evidence of all police officials and PW 9 found otherwise reliable to support the circumstances about role of present accused.

22. Ld. Advocate for appellant/accused tried to convince the court that panch witnesses have not supported the prosecution and so reliance cannot be placed on testimonies of police witnesses. There is no law which speaks that the evidence of police witnesses should be thrown away completely merely on the fact that independent witnesses not examined. So also, in present case independent witnesses and police witnesses have been examined to prove different kind of circumstances which have been claimed by PW 7 i.e. the Investigating officer while submitting chargesheet. Resultantly I do not find force in the submission that panch witnesses have not supported the prosecution.

23. Ld. Advocate for appellant/accused has argued that there is tendency of informant to lodge false complaint and her version should not be relied upon. After perusal of cross-examination of PW 2 it is seen certain suggestions have been given about false implication of present accused. However, the informant in para 6 of her cross-examination remained firm on the claim that accused has stopped their motorcycle, threatened

her with knife and snatched her gold chain. So also she has deposed that accused has threatened her by stating that “Tu bahut Shani ho gai hai. Abhi tumko dikhata hu”. So I do not find any substance in the submission of Ld. Advocate for appellant for discarding reliable testimony of PW 2 which has received corroboration from the mouth of PW 9. It is true that PW 9 has not specifically stated actual nature of incident happened in between accused and informant, but at the same time he has categorically deposed about presence of accused. So testimonies of PW 2 and 9 can be relied upon for connecting the accused with the crime in hand. At the same time prosecution has examined PW 1,3,4 & 5 to prove arrest of accused along with recovery of knife at Article A and spot panchanama prepared in between 3.35 to 4.05 am of 30.8.2016.

24. Lastly it has been submitted on behalf of accused that on perusal of evidence of material witnesses it is crystal clear that alleged incident taken place at residential place having crowded locality and so unless there is independent corroboration to the testimony of PW 2, her evidence cannot be relied upon. It is material point to be noted that incident taken place at 11.50 pm of 29.8.2016 and therefore unless specific circumstances come on record showing presence of independent witness during night time there is no force in the submission that in absence of other independent witness, the version of PW 2 required to be discarded. In other words when I do find reliable testimonies of nine witnesses there is no question of conclusion that prosecution has not proved its case.

25. Ld. Advocate for appellant accused has submitted that the prosecution has not proved threatening by showing knife to the informant and offence under section 397 of Indian Penal Code is not attracted. However, as per Section 397 of Indian Penal Code, if at the time of committing of robbery or dacoity offender used any deadly weapon, or causing grievous hurt to any person, offence under Section 397 of Indian Penal Code made out. So mere use of deadly weapon is sufficient, there is no necessity to cause grievous injury or attempt to cause death. Resultantly in view of evidence came on record it is crystal clear that prosecution has succeeded to bring on record required evidence to prove various circumstances claimed by investigating officer.

26. Ld. Advocate for appellant by referring cross-examination of different witnesses tried to convince the court that there are material infirmities in the testimonies of all witnesses and thereby accused is entitled for acquittal. So far as cross-examination of PW 1 is concerned, certain questions have been asked regarding location on spot from where accused has been arrested by encircling him and certain suggestions have been given that knife never recovered at the instance of accused, accused never snatched gold chain of informant. However, PW 1 remained firm on his claim that during personal search of accused knife at Article A found and she has stated that accused has taken away her gold chain from her neck, ran away towards Castle Mill Naka. During the course of cross-examination of PW 2, 3, 6, certain questions have been asked

regarding different timings as regard to panchanama. However, it revealed from entire circumstances that incident taken place at 11.50 pm, F.I.R. registered at 3.01 am of 30.8.2016, spot panchanama prepared in between 3.35 to 4.05 am of 30.8.2016, knife recovery panchanama done in between 4.30 pm to 4.45 am of 30.8.2016. It reveals from memorandum panchanama at Exh.50, Exh.51 that those have been prepared in between 11.05 am to 11.30 am of 31.8.2016 and 11.40 am to 12.40 pm of same date. So I do not find any material infirmity or falsity in the testimonies of witnesses. So upon perusal of evidence of all witnesses it is crystal clear that prosecution has succeeded to bring on record required evidence to prove offence under Section 392,397 of Indian Penal Code. So I have answered this point no.1 in the affirmative.

Point no.2 :-

27. This is nothing but appeal under Section 374 of Cr.P.C. against the impugned Judgment and order of conviction passed by Assistant Sessions Judge and so unless and otherwise there is either infirmity or illegality while assessing evidence, interference at the hands of appellate court is not warranted. Ld. Advocate for accused has argued that Ld. Trial court has given moral conviction and thereby it required to be set aside. However, after perusal of impugned Judgment it is seen that Ld. Trial court has referred the Judgment of Hon'ble Apex Court and come to the conclusion that minor discrepancies in the evidence of PW 2 cannot sufficient for discarding her evidence. So also the Ld. Trial court by referring the Judgment of Hon'ble

Apex Court in the case of Aher Raja Khima V/s. State of Saurashtra reported in 1956 AIR 217, 1955 SCR (2) page 1285 has quoted the observations that “the presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefore. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration”. While observing above noted observations the Ld. Trial court has properly placed reliance on testimonies of police witnesses. So also, there are independent witnesses to support the claim of prosecution. So I do not find any substance in the submission that Ld. Trial court has granted moral conviction. After minute reading of the impugned Judgment and assessing the evidence on record it is crystal clear that prosecution has proved offence on merit and interference is not required.

28. So far as quantum of punishment is concerned, the accused has been prosecuted for the offence punishable Under Section 392, 397 of Indian Penal Code and Ld. Trial court by referring the Judgment in the case of Mohan Giridhari Singh V/s. State of Maharashtra reported in 2007 Cri.L.J. 3855 has concluded that accused is required to be punished for the offence punishable U/sec.392 read with 397 of Indian Penal Code and not under Section 392 of Indian Penal Code independently. So it is necessary to see the provision contemplated under Section 392 of Indian Penal Code while deciding the quantum of sentence.

29. So far as offence under Section 392 of Indian Penal Code is concerned, punishment provided is nothing but rigorous imprisonment for a term which may extend to 10 years and fine, whereas as per Section 397 of Indian Penal Code the punishment shall not be less than 7 years. So I do not find any illegality while awarding rigorous imprisonment of seven years and fine of Rs.1,000/-, in default to suffer simple imprisonment for two weeks. So from both angles interference is not required. Hence, I have answered this point no.2 in the negative.

30. In view of my observations and findings recorded on above points, present appeal calls no interference. So I proceed to pass following order.

ORDER

1. Appeal is hereby dismissed.
2. Appellant/accused is required to surrender his bail and be required to undergone remaining substantive sentence in view of Judgment and Order passed by Ld. Ad-hoc District Judge-2 and Assistant Sessions Judge, Thane in Sessions Case No. 402/2016 dated 28.11.2017, but it has been reported vide application at Exh.20 that accused is in jail in C.R. No. I-50/2021 of Rabodi Police Station. So in the circumstances conviction warrant required to be issued immediately for undergoing remaining substantive sentence in view of above referred Judgment and order of conviction. So issue conviction warrant accordingly by mentioning his previous detention period as permissible

under Section 428 of Cr.P.C. Operative part of Judgment of Ld. Ad-hoc District Judge-2 and Assistant Sessions Judge, Thane in Sessions Case No. 402/2016 dated 28.11.2017 be attached to conviction warrant.

3. Record and proceeding be sent to Learned Trial Court by informing that conviction warrant has been sent to Jail where accused is presently under detention in C.R. No. I- 50/2021 of Rabodi Police Station.

4. Copy of this Judgment be sent to learned Trial Court.

(Judgment delivered and pronounced in open Court by dictation.)

Thane.
Dt:-23.3.2021.

(R.V. Tamhanekar)
Additional Sessions Judge, Thane.