

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.385 OF 1995

Prakash Dashrath Yadav,
Hindu Age 25 years,
21, Hizvi Park, S.V.Road,
Santacruz, Bombay – 400 054. ... **Appellant**
V/s.

The State of Maharashtra
(At the instance of Sr.Inspector
Santacruz Police Station) ... **Respondent**

.....

None for the Appellant.
Mrs.S.Gajare-Dhumal, APP for the Respondent/State.
Mr.Rohan Nahar, Advocate as Amicus Curiae.

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CORAM : ABHAY M. THIPSAY J.

DATED : 19TH AUGUST 2015

ORAL JUDGMENT :

1. The appellant and two others were prosecuted on the allegation of their having committed offences punishable under Sections 451 of the Indian Penal Code (For short, “the IPC”) read with Section 34 thereof, 392 of the IPC read with Section 34 thereof, 394 of the IPC read with Section 34 thereof and the offence punishable under Section 135 of the Bombay Police Act. The learned Additional Sessions Judge, Greater Bombay, after

holding a trial, found the accused No.1 - one Vijay Zagade - and the present applicant, who was accused No.2 in the said case, guilty of the offences punishable under Sections 451 of the IPC read with Section 34 of the IPC, 392 of the IPC read with Section 34 of the IPC and 394 of the IPC read with Section 34 of the IPC. The said accused No.1-Vijay Zagade and the appellant were accordingly sentenced in respect of the said offences. The appellant was sentenced to suffer Rigorous Imprisonment for two years and to pay a fine of Rs.500/- with respect to the offence punishable under Section 451 of the IPC read with Section 34 of the IPC, Rigorous Imprisonment for five years and to pay a fine of Rs.1500/- with respect to the offence punishable under Section 392 of the IPC read with Section 34 of the IPC, and Rigorous Imprisonment for six years and to pay a fine of Rs.1500/- with respect to the offence punishable under Section 394 of the IPC read with Section 34 of the IPC.

Being aggrieved by his conviction and the sentences imposed upon him, the appellant has approached this Court, praying that he be acquitted.

2. At the time of admission of the appeal, the appellant was released on bail. When the appeal was listed for final hearing, none remained present on behalf of the appellant to argue the appeal. A number of efforts were made to secure the presence of the appellant even by issuing coercive process, but the appellant

could not be traced. Under these circumstances, it was thought proper to decide the appeal after hearing the learned Additional Public Prosecutor, and after examining the record of the trial in which the appellant was held guilty. In order that the Court should be properly assisted, Mr.Rohan Nahar Advocate was appointed as *Amicus Curie*.

3. I have heard Mr.Rohan Nahar, the learned *Amicus Curiae*, who appears to have meticulously gone through the record. He has taken me through the evidence. I have gone through the impugned Judgment.

4. The prosecution case, as put forth before the trial Court, may, in brief, be stated thus :

On 05/06/1990, when Smt.Kusumben (PW1) was alone in her residential flat at about 7.00 p.m., two persons, who are said to be accused No.1 and the present appellant, forced their entry into the flat. Kusumben was threatened not to shout. One of the said two persons put his hands on the mouth of Kusumben to ensure that she would not shout. Then a robbery was committed by the said two. Among other things, the gold chain which Kusumben was wearing was robbed. When the robbery was going on, Neeta (PW3) - the daughter of Kusumben (PW1) - came to the flat and gave a call for the mother. Since the culprits faced

with this unexpected happening, replied that Kusumben was not at home, the daughter became suspicious and raised cries 'चोर, चोर'. The culprits then came out of the flat and started running away. One of them i.e. the accused No.1 was caught by some boys, who were playing cricket on the road outside the flat. The appellant managed to escape, but was seen by Jay Shah (PW2), who was one of the persons playing cricket on the road outside the flat of Kusumben. The appellant was arrested on the same day in the night. When he was arrested, his personal search was taken and part of the robbed property i.e. gold chain of Kusumben, which has been snatched from the person of Kusumben, was found with him.

5. The evidence adduced against the appellant and the accused No.1 consisted of their identification as the culprits by three persons i.e. Kusumben (PW1), Jay (PW2) and Neeta (PW3), and the recovery of the robbed property from them, or at their instance.

6. The Investigating Agency had held the Test Identification Parade in the course of investigation. In the Test Identification Parade, all the aforesaid three persons i.e. Kusumben, Jay and Neeta had identified the appellant as one of the culprits.

7. I have been taken through the evidence of Kusumben and I find the same reliable. Though certain contentions appear to have been raised before the trial Court regarding the shortcomings in the Test Identification Parade, I do not find any substance therein. Moreover, what is significant is that the incident of robbery appears to have lasted for quite some time. Kusumben had proper and sufficient opportunity to observe the culprits. Similarly, Neeta also had an opportunity to view the culprits. Even Jay had seen one of the culprits running away and it is not possible to discard his evidence easily about the identity of the appellant as the person, who had run away.

8. That a broken gold chain was found on the person of the appellant, when he was apprehended, was satisfactorily proved. The identity of the chain as the one that was robbed was also satisfactorily established.

9. While appreciating the evidence, it cannot be overlooked that one of the culprits – accused No.1 - was apprehended immediately after the incident while attempting to run away. The name of the appellant was revealed to the Investigating Agency immediately and he was apprehended within a few hours. This creates a circumstantial guarantee about the correctness of the claim of the identity of the appellant as one of the culprits, made by the identifying witnesses.

10. Since the appellant has not chosen to appear before the Court and make submissions in support of the appeal, it is not necessary to write an elaborate judgment or discuss the appreciation of evidence, as done by the learned trial Judge, in details. What needs to be mentioned is, however, that the evidence adduced during the trial has been considered by me. I have also gone through the reasoning of the learned trial Judge, and I find that the appreciation of evidence, as done by him, is proper. It does not suffer from any infirmity. The conclusion arrived at by the learned trial Judge that the appellant was guilty of the aforesaid offences, appears to be correct and arrived at in accordance with law.

11. There is no merit in the appeal.

12. The appeal is dismissed.

(ABHAY M. THIPSAY J.)