

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.306 OF 2012

Ramesh Ladkya Hadal,	]	
Age : 22 Yrs., Occu.: Farmer,	]	
R/at Vadavali, P.O. Navpada,	]	 Appellant/
Tal. Talasari, Dist. Thane.	]	(Org. Accused
At present in Nasik Jail	]	No.6)

Versus

The State of Maharashtra	]	 Respondent
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Smt. Gladys Pereira for the Appellant.

Smt. S.D. Shinde, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND JANUARY, 2015.

ORAL JUDGMENT :

1. The Appellant/Original Accused No.6, who stands convicted for the offence punishable under Section 392 of the IPC and sentenced to suffer R.I. for six years and to pay fine of Rs.2,000/-, in default to suffer further R.I. for three months, by the Special Judge (M.C.O.C.) at Thane by Judgment dated 30th October, 2010 in M.C.O.C. Case No.2 of 2005, by this Appeal challenges his conviction and sentence.

2. Facts, as are necessary, for the decision of this Appeal may briefly be stated thus :

On the night intervening between 25th and 26th November, 2003, around 1:30 a.m. to 3 a.m., while PW-2 Shantaram Sankhe was sleeping in his house, along with his wife PW-5 Subhadra and Maid Servant PW-6 Pramila, he heard the sound of breaking of lock of the door. He and his wife woke up. Three unknown persons entered into the house by breaking open the lock and by threatening them with knife and crow bar, committed the theft of the cash amount of Rs.2,000/- to Rs.3,000/- and gold ornaments weighing about 88 Gms. From the first floor of the house, they also committed the theft of revolver belonging to PW-3 Shantaram's son Janardan and some silver utensils. After committing the theft, these three persons fled away.

3. PW-3 Shantaram then lodged the report of the incident at Bhoisar Police Station vide Exhibit 65. During the course of investigation, six Accused persons were arrested. Their test identification parade was conducted on 24th August, 2008, in which the present Appellant/Accused was not identified. As a part of further investigation, in custodial interrogation of the present Appellant, the crow bar was recovered at his

instance under Section 27 of the Evidence Act from his house in the field. Some gold nuggets came to be recovered from Original Accused No.10 Goldsmith. As in the course of investigation, it was further revealed that these Accused were the members of the crime syndicate and the offence was committed as an organized crime, after completion of investigation, Charge-Sheet came to be filed in the Court of Special Judge under M.C.O.C. Act for the offences punishable under Sections 395, 452, 342 and 412 r/w. Section 34 of the IPC and Sections 3(1)(i) and (ii) and 3(2) and (4) of the M.C.O.C. Act, 1999.

4. The Trial Court framed charge against ten Accused for all the above said offences vide Exhibit-39. All the Accused pleaded not guilty and claimed trial.

5. In support of its case, Prosecution has examined all together 32 witnesses, majority of them are Investigating Officers of other crimes, some of them are the Panch Witnesses and the formal witnesses like Tahasildar Madhukar Patil, who conducted the test identification parade of the Accused. The Prosecution has mainly relied on the evidence of PW-2 Shantaram and his wife PW-5 Subhadra to prove the identity of the Accused.

6. On appreciation of evidence, the Trial Court acquitted all the Accused for the offences punishable under Sections 395, 452 and 342 r/w. Section 34 of the IPC and for the offences punishable under Sections 3(1)(i) and (ii) and 3(2) and (4) of the M.C.O.C. Act, 1999. However, the Trial Court convicted Original Accused No.4 Navsha Laxman Kolhe and the present Appellant/Original Accused No.6 Ramesh Hadal for the offence punishable under Section 392 of the IPC and sentenced them as stated above.

7. As regards Original Accused No.4 Navsha Kolhe, it is submitted at the Bar that he has already undergone the punishment imposed on him. Hence, he is released from the Jail. He has not preferred any Appeal challenging his conviction.

8. On behalf of the present Appellant i.e. Original Accused No.6 Ramesh Hadal, the Judgment of the Trial Court convicting him for the offence punishable under Section 392 of the IPC, is being assailed by his learned Counsel by submitting that there is absolutely no iota of evidence to implicate the Appellant with the alleged offence.

9. This Court finds substance in the said submission, as the only incriminating material alleged against the Appellant is that of the recovery of the crow bar. The Panch Witness to the recovery of the crow bar PW-4 Avinash Parab has not supported the Prosecution case. Hence, he is declared hostile. But, nothing worthwhile is elicited in his cross-examination by the learned A.P.P. to prove the Memorandum and Seizure Panchanama or the recovery of crow bar at the instance of the present Appellant. Hence, the Trial Court has relied upon the evidence of the Investigating Officer PW-13 API Hanumant Pawar, who has deposed that on 16th August, 2005, the Appellant gave a disclosing statement that he will produce the crow bar concealed at his residence and thereafter the Appellant led him and the Panch to his house at Village Wadavali. From his house, he produced the crow bar, which was seized under Panchanama (Exhibit-145),

10. This witness has, however, categorically admitted in cross-examination that *Katawani* is just like a small crow bar and it is used by the agriculturists of the said area for agricultural activities. He has further admitted that no property pertaining to the crime in question was recovered during investigation at the instance of the present Appellant.

11. Thus, except for the recovery of the crow bar, which is not having any identification mark and which is a common agricultural tool used in the village, there is nothing to link the Appellant to the offence.

12. Even as regards his identification, PW-2 Shantaram has stated that only three unknown persons had entered into the house. However, he has not identified the present Appellant in the test identification parade held by PW-13 Tahasildar Madhukar Patil. PW-2 Shantaram was the only witness called for identification of the Accused in the test identification parade, which was held about nine to ten months after the incident and in the said test identification parade also, this witness has not identified the present Appellant. When, admittedly, the Accused, who had come to his house were unknown and he has not given the description of the accused persons in his report (Exhibit-65), the evidence of test identification parade of the Accused which was important, is not forthcoming in the case. Further, he has admitted that, at the relevant time, Accused were shown to him by Police and hence he has identified them. In such situation, his identification of the present Appellant in the Court and that too by name Haresh Sutar, instead of the real name of the Appellant as Ramesh Hadal, is absolutely of no significance to implicate the Appellant in the offence.

13. As regards the evidence of PW-5 Subhadra and PW-6 Pramila, both of them have admitted that they cannot identify any of the Accused.

14. In this fact situation, it has to be held that there is absolutely no evidence on record to prove the involvement of the present Appellant in the offence of robbery, for which he is held guilty. The Judgment of the Trial Court, therefore, needs to be set aside.

15. Accordingly, the Criminal Appeal No.306 of 2012 is allowed and the conviction and sentence of the Appellant for the offence punishable under Section 392 of the IPC is hereby quashed and set aside. The Appellant is acquitted of the offence punishable under Section 392 of the IPC, for which he was charged and convicted. Fine amount, if paid by the Appellant, be refunded to him. Since the Appellant is in Jail, he be released forthwith, if not required in any other case.

[DR. SHALINI PHANSALKAR-JOSHI, J.]