

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1272 OF 2002

1 Suresh Ramaswamy Iyer
2 Salim Abdul Kadar
3 Ajaykumar Anil Shrivastav .. Appellants

Versus

The State of Maharashtra .. Respondent

Mr.D.G.Khamkar, Advocate for the appellants.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 5th MAY, 2015

JUDGMENT :

1 This Appeal is directed against the judgment and order dated 10th October 2002 delivered by the Addl. Sessions Judge for Greater Bombay in Sessions Case No.586 of 2000, convicting the appellants who were the accused in the said case, of offences punishable under sections 399 of the IPC read with section 34 of the IPC, and section 402 of the IPC read with section 34 of the IPC, as also of an offence punishable under section 135 of the Bombay Police Act. The Addl. Sessions Judge sentenced the appellants to suffer Rigorous Imprisonment for 4(four) years, and

to pay a fine of Rs.1,000/- each, with respect to the offence punishable under section 399 of the IPC, and Rigorous Imprisonment for 3(three) years and to pay a fine of Rs.500/- each with respect to the offence punishable under section 402 of the IPC. With respect to the offence punishable under section 135 of the Bombay Police Act, he sentenced the appellants to suffer SI for 3(three) months and to pay a fine of Rs.200/- each.

2 The case of the prosecution, as put forth before the trial court, can be best described by taking from the evidence of Ravindranath Deokar (PW 1). He is a Head Constable of Police who was attached to Santacruz Police Station at the material time. He received secret information on 12th June 1999 to the effect that 'Salim and his associates would be arriving at BKB Lunch Home, Sunder Kamala Nagar, Matunga in the evening, for making preparations of dacoity in Ayesha Apartments, Santacruz (West), and that for committing the offence of dacoity, they would be using stolen Maruti car and weapons'. That, pursuant to this secret information which was conveyed by Deokar to his superiors, 'a raid was arranged in the evening hours'. Deokar along with two police *naiks* and the informer, went to PKB Lunch home at about 6.00 p.m, and waited there for the arrival of 'Salim and his associates'. After some time, Salim (supposed to be the appellant no.2 herein) came there along with three persons and occupied chairs adjacent to the table at which Deokar and the police party were sitting. The informer pointed out towards Salim. Salim and his associates started discussions 'in a low tone' for 'committing dacoity in Ayesha Apartments, Multi Purpose shops, Santacruz (West)'. They were waiting for the arrival of rest of their

associates, but as they did not come there, Salim and three others left the hotel after deciding to gather at the same place again on the next day evening 'for the same purpose'. On the next day also, Deokar went to PKB Lunch Home at about 6.30 to 7.00 p.m, and kept a surveillance. After some time, Salim with one of his associates entered the Lunch Home. They were followed by three others. Thereafter, Deokar and the Police Naiks with him entered the Lunch Home one by one, and occupied chairs adjacent to the table of Salim and others (described as 'assailants' by the learned Judge in his judgment). Salim and the others again started discussion 'in lower tone' 'for working out the plan of dacoity to be effected at Ayesha Apartments, Santacruz (West)'. They decided to gather near Ayesha Apartments, Santacruz (West) on 14th June 1999 in evening hours and left the Lunch Home together in a Maruti car. On the next day, Deokar narrated the incident to his Senior Officer, and then a raid was arranged near Ayesha Apartment. The police party gathered near Ayesha Apartment at about 8.10 p.m. At about 8.20 p.m, an ash colour Maruti car came by the side of Ayesha Apartment, and two persons i.e. the appellant no.1 Suresh Iyer and appellant no.2 Salim (mentioned as 'Salil' in the notes of evidence) got down from the car. They started proceeding towards station road. Deokar, PSI Desai and Police Naiks followed them. After proceeding for some distance, they turned back towards the Maruti car, and started talking to the driver of the car. At that time, Deokar signalled API Kondalkar standing in front of Ayesha Apartments, whereafter the car was surrounded and the appellant nos.1 and 2 were apprehended. API Kondalkar disclosed the identity to both of them, and asked Deokar to call two panchas. Accordingly, Deokar brought two

panchas, and the personal search of the appellant nos.1 and 2 was taken in their presence. Each was found having a chopper with him. There were three others also in the said car, who were, thereafter, made to get down, and during their personal search, one chopper was found with one of them. Two more choppers were found in the car. All the five choppers were seized under a panchnama. The appellants and two others were arrested.

On completion of investigation, a charge-sheet alleging commission of offences punishable under section 399 of the IPC and 402 of the IPC came to be filed against the appellants and others, and as aforesaid, the appellants were found guilty by the Addl. Sessions Judge after holding a trial.

3 Totally, four witnesses were examined by the prosecution during the trial. The first witness, as aforesaid, is Deokar. The second witness – one Mohd. Nasir Akbar Shaikh – is a panch in respect of the search and seizure panchnama. The third witness Chandrakant Palve is a policeman who was examined to prove the promulgation of the prohibitory order as contemplated under section 37 of the Bombay Police Act issued by the Commissioner of Police. The fourth witness is one Anil Mahadeo Desai, a Police Officer who was attached to the Santacruz Police Station as a Sub Inspector of Police at the material time. He is said to be a member of the raiding police party which apprehended the appellants.

4 Mr.D.G. Khamkar, learned counsel for the appellants contended that there was no satisfactory evidence to hold the

appellants guilty of the alleged offences. He submitted that the evidence adduced by the prosecution was not at all reliable, and that there were a number of infirmities therein. He also submitted that there were material variations in the version of Deokar and that of Anil Desai. He contended that the appellants had been falsely involved.

5 The learned Addl. Public Prosecutor was unable to reply to these contentions and/or to support the order of conviction as recorded by the Addl. Sessions Judge.

6 I have carefully gone through the evidence adduced during the trial. I have gone through the impugned judgment.

7 It is not possible to hold that the prosecution had been successful in proving the charges against the appellant, or any of them. It is not possible to believe the evidence of Deokar, which, in my opinion, suffers from inherent improbabilities and absurdities.

8 In the first place, the story is unbelievable in itself. The way it has been narrated by Deokar, is indeed remarkable. According to Deokar, he received *reliable information* on 12th June 1999, but did not record it anywhere. He simply went to the PKB Lunch Home, observed the appellants and others, and in spite of hearing them speaking about a definite plan of committing dacoity, allowed them to go without doing anything. He did the same thing on the next day, and in spite of hearing them clearly – about planning to commit a dacoity at a specific place, allowed

them to go. He did not not make any entry in the station house diary at any time. Not only that he did not make any entry about the receipt of the secret information, but he also did not make any entry in respect of 'laying a trap' at the PKB Lunch Home on either of the days.

9 If Deokar's version is to be accepted, it would mean that in a crowded hotel full with customers and waiters etc, the appellants coolly discussed a plan of committing dacoity by giving detailed address of the place where the dacoity was to be committed. It would be absurd that anyone would plan dacoity in such a manner and that too, without being conscious of the persons sitting in the eating house, just touching their table and chairs.

10 Whether Ayesha Apartment was already known to Deokar and others, and how they went precisely to the same Apartment, is not clear. It is remarkable that the appellants discussed the details of the address of the place where the dacoity was to be committed in the lunch home itself though it was occupied by a number of persons, instead of discussing in the car by which they went together, where nobody else except them, was present.

11 Though Deokar had information about the appellants using a Maruti Car which was stolen, he did make any attempt to seize the said stolen property.

12 In the cross-examination, Deokar submitted that he had informed his superiors about the information received by him

on 12th June 1999. However, this is contradicted by Anil Desai who says that the information was conveyed to the superior Officers by Deokar only on 14th June 1999.

13 The trial courts are expected to appreciate the evidence in an intelligent manner for coming to a conclusion. The Court has to form an opinion on the basis of the evidence adduced before it as to whether the things as claimed by the prosecution had indeed taken place. While arriving at a conclusion, the Court has to consider how probable the story put forth is. In the instant case, the story put forth by the prosecution is itself unbelievable, and unacceptable. The things spoken by Deokar simply do not take place. Persons do not meet one another in busy lunch homes, – and that too repeatedly – and discuss a plan to commit dacoity in the midst of several people and within their hearing. The theory of the discussion being in 'lower tone' is put forward, perhaps, to make the story believable, but interestingly, in spite of such 'lower tone'. Deokar could hear even the most minute details of the conversation. The stories which are intrinsically improbable ought not to convince a Court merely because witnesses speak about it. It would be difficult to accept that a policeman receiving information, would not note it anywhere before acting upon it, and would keep a watch on the suspects on two consecutive dates, and further even after ascertaining that the suspects are indeed involved in the alleged offences, would permit them to go, as experience does not show that police act in such a manner.

14 Moreover, the testimonies of Deokar and Amit Desai who both were the members of the raiding party when the

appellants were allegedly apprehended near Ayesha Apartments, do not agree with each other. As per Deokar's version, it is only after the appellant nos.1 and 2 were searched and weapons were recovered from them that the others were asked to get down from the car. In fact, he does not even refer to three others being present till the point of time. However, according to Anil Desai, the remaining three were also asked to get down from the car before the appellant nos.1 and 2 were searched, and then all the persons were searched one by one.

15 According to Deokar, the signal – for apprehending the appellants – was given by him; but according to Desai, it was given by API Kondalkar.

16 The evidence of panch Mohd.Nasir Akbar Shaikh and Chandrakant Palve, Head Constable need not be discussed as nothing turns on their evidence.

17 No person from the staff of the PKB Lunch home was examined to show the presence of the appellants in the Lunch home.

18 As aforesaid, the story of the prosecution being inherently improbable, cannot be accepted. Indeed, one may observe that it must have taken a great deal of courage to put forward such an intrinsically improbable and absurd story which unfortunately could convince the learned Judge who held the appellants guilty.

18 This was a case where the story of the prosecution was clearly unbelievable. This is apart from the fact that the versions of Deokar and Desai are not uniform, and there are material and important variations. No independent witnesses – who could have been available were examined. The story is not backed by any entries in the police record. There is no proper explanation why no entries in any police record regarding the receipt of police information, report of trap etc. were made.

20 Clearly, this was a case where the appellants should have been acquitted. Unfortunately, the appellants, who appear to be from a lower strata of the society, and who were provided free legal aid during the trial, could not avail of the bail order and had to serve the full sentence awarded to them. The appellants have been released from prison after having undergone the full sentence.

21 Appeal is allowed.

22 The impugned judgment and order of conviction as also the sentences imposed upon the appellants, are set aside.

23 The appellants are acquitted.

24 Fine, if paid be refunded to them.

25 Appeal is disposed of accordingly.

(ABHAY M.THIPSAY, J)