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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.539 OF 2014

Ramsanjeevan Nirmal @ Sanjeev	]	
Chaudhary s/o Ramprasad Nirmal	]	
age: 40 years, Ocn. Washer-man	]	
residing at : Keshavji Naik Chawl	]	... <u>Appellant</u>
Ramprasad laundry, Kandewadi,	]	Orig. accused.
Khadilkar road,	]	
Girgaon, Churni Road (E)	]	
Mumbai	]	
at present lodged in Kolhapur Central Prison	]	
Kalamba, Kolhapur 416 007	]	

V/s.

The State of Maharashtra	]	 Respondent
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None for the Appellant.

Mrs. Sangeeta D. Shinde, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST APRIL, 2015.

P.C. :

1. The appellant, who stands convicted for the offence punishable under Section 452 of IPC and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.500/- in default of fine

simple imprisonment for two weeks, for offence punishable under Section 342 of IPC and sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.100/- in default to suffer further simple imprisonment for one week and for offence punishable under Section 397 of IPC and sentenced to suffer rigorous imprisonment for 7 years and to pay fine of Rs.1,000/- in default to suffer further simple imprisonment for three months, by Ad-hoc Assistant Sessions Judge, Sewree, Mumbai, by judgment dated 17th November, 2011, in Session Case No.558 of 2011, by this appeal challenges his conviction and sentence.

2. The facts, as are necessary, for deciding this appeal may be stated as follows :-

On 18th March, 2011, while P.W.11 Jagdish Kadam, was in-charge as Station House Officer at Andheri Police Station, around 12.00 noon, he received a phone message from Beat Marshal that there was robbery at Vidyanagari Housing Society and the said robbery was of gold ornaments committed by one laundry-man. On receipt of information, he immediately rushed to the spot. The spot of incident was in the residential flat of P.W.1 Ramkrishna Swaminathan. In the hall of the flat bundle of clothes was lying alongwith one piece of cello-tape. He also noticed the

door of the bathroom was broke open. He called two panchas and prepared detailed panchanama of the scene of offence (Exh.18). From the spot he collected the cello-tape and piece of cello tape. Then he returned to the police station alongwith P.W.1 Ramkrishnan and recorded his complaint Exh.10. On this complaint P.W.11 PSI Kadam registered C.R.No.120 of 2011 against the appellant, for the offence punishable under Sections 452, 397, 342 of IPC. Further investigation of the case was handed over by him to P.W.12 API Shankar Pakale.

3. During the course of investigation, API Walunj alongwith P.W.12 ASI Pakale, took search of the appellant at Rohit Power Laundry. The appellant was not found there. However, his clothes were found in the said laundry. On the basis of the name of tailor who stitched his shirt, the search of appellant was taken at Girgaon alongwith P.W.10 Umesh Nirmal. There in one shop, they found the appellant. His personal search was taken, in which appellant was found in possession of two gold mangalsutras and two gold bangles which came to be seized from him under panchanama (Exh.29). These gold ornaments were shown to P.W.1 Ramkrishnan and P.W. 2 Yamuna, his wife. They identified the said gold ornaments as belonging to them. Hence after arrest of the appellant and completing remaining part of investigation, chargesheet came to be

filed against the appellant.

4. On the case being committed to the Sessions Court, the trial Court framed charge against the appellant vide Exh. 4. The appellant pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined in all 12 witnesses and on appreciation of their evidence, the trial Court held guilt of the appellant to be proved beyond reasonable doubt and convicted and sentenced him, as aforesaid.

6. In this appeal, Adv. Mrs. Ameeta Kuttikrishnan, was appointed from the Legal Aid Panel to represent the appellant. However, since last about a week, when the matter is fixed for final hearing on weekly board and called out regularly, learned counsel for the appellant has consistently remained absent. As the appellant is in jail since 2011, which is for a period of more than half of the punishment to which he is sentenced by the trial Court, the appeal is taken up for final hearing. Hence with the assistance of learned APP Mrs. S.D.Shinde, I have perused the entire evidence on record and on the basis of the same, this appeal is decided.

7. The material evidence in this case is that P.W.1 Ramkrishnan

and P.W.2 his wife Yamuna, in whose house, robbery had taken place. Their evidence goes to prove that one Umeshbhai i.e. P.W. 10 was running laundry business in the name and style as “Rohit Power Laundry”. He used to collect the clothes from the house of P.W. 1 Ramkrishnan. Before 10 days of the incident P.W.10 Umeshbhai, had introduced the appellant and told that the appellant will come to the flat of P.W.1 Ramkrishnan to collect the clothes for laundry. Thereafter twice P.W.10 Umesh came to the flat of P.W.1 Ramkrishnan alongwith the appellant and collected clothes for laundry. Thus, P.W.1 Ramkrishnan and P.W.2 Yamuna were knowing the appellant through P.W.10 Umesh, who has also deposed that he has introduced the appellant to P.W.1 and P.W.2. According to him, as his mother was serious, he had to go his native place on 14th March, 2011. Hence he has assigned the job of collecting clothes for laundry from the house of P.W.1 Ramkrishnan, to the appellant.

8. The evidence of P.W.1 Ramkrishnan further goes to reveal that on 18th March, 2011, the appellant came to his house at about 11.00 a.m. for collecting the clothes for laundry. P.W.1 Ramkrishnan handed him the clothes and the appellant under the pretext of counting the clothes which were to be given for the press, removed cello-tape from his pocket on the pretext to tie the clothes. However, instead of tying the clothes with

the cello-tape, he affixed the piece of cello-tape to the mouth of P.W.1 Ramkrishnan. P.W.1 Ramkrishnan tried to resist, but appellant took out knife from his pocket and also one toy pistol and threatened to kill the P.W.1 Ramkrishnan if he raises alarm for help. P.W.1 Ramkrishnan, however, raised shouts and hearing his shouts, his wife P.W.2 Yamuna who was sitting in the prayer room came towards him. She was wearing two gold Mangalsturas and two gold bangles. As the appellant tried to snatch those ornaments, P.W. 2 Yamuna told him not to cause any harm to her and her husband and she would hand over all jewellery. Accordingly she gave gold bangles and gold Mangalsturas to the appellant. P.W.1 Ramkrishnan at that time, went behind some feet towards balcony for seeking help from neighbour. However, the appellant dragged him from balcony in the room and again threatened him at the point of knife. Then appellant pushed him in the bathroom and closed bathroom from outside. The appellant then left the house with the booty and ran away. P.W.1 Ramkrishnan, raised alarm for help. Then the P.W. 7 Uransingh, the watchman of the building came there and rescued him. Thereafter the police were called and his complaint came to be recorded vide exh.10 in detail in which the description of incident as happened alongwith description of the stolen gold articles was given.

9. There is corresponding evidence of P.W.2 Yamuna, who has also deposed about the appellant being introduced by P.W.10 Umesh. She deposed that on the day of incident, the appellant came to their flat and threatened to kill her and her husband and taken away two gold mangalsutras and two gold bangles. In evidence before the Court, these ornaments were shown to her and she has identified them as belonging to her as they were of her regular wearing.

10. Both these witnesses are cross examined at length, but nothing substantive is elicited in their cross examination to disbelieve them. Their evidence also gets complete support and corroboration from the complaint Exh.10, which is given by P.W.1 Ramkrishnan immediately after the incident and also from the evidence of P.W.10 Umesh and P.W.7 Uransing, who was working as watchman in the said society. According to his evidence, on 18th March, 2011 at about 11.00 a.m. the appellant had come to the building for collecting clothes for laundry. Within 10 minutes the appellant returned back. Meanwhile one of the flat owner, P.W.1 Ramkrishnan was shouting. Hence he went to the said flat and there he was informed about the theft committed in the house of P.W.1.

11. Then there is evidence of P.W.11 PSI Kadam, who on the

receipt of phone call from the Beat Marshal, about the robbery in the flat of P.W.1 rushed there and made spot panchanama (Exh.18.). At the spot he found one cello tape and piece of tape which he seized under panchanama Exh.18 in presence of panch P.W.5 Shridhar.

12. In the evidence of P.W.12 ASI Pakhale, it has come on record that on the same day, he and API Walunj took search of the appellant. Initially they went to the laundry of P.W.10 Umesh. From there they went to Girgaon, where they found the appellant. The appellant was found in possession of two gold mangalsutras and two gold bangles which were seized under panchanama Exh.29. There is corroborating evidence of panch witness as to the seizure of gold ornaments from the possession of the appellant. The evidence of panch P.W.3 Sayyad Ali also goes to prove that thereafter at the instance of appellant u/s 27 of the Evidence Act, knife and toy revolver also came to be seized under panchnama Exh.15. Thus, in this case there is recovery of stolen articles from the possession of appellant within few hours of the incident. Naturally the burden was shifted on the appellant to explain the recent possession of the stolen articles. The appellant neither offered such explanation nor claimed those ornaments as belonging to him. Therefore, presumption under Section 114(a) of the Evidence Act is clearly attracted in the instant case.

13. Thus, in this case the prosecution has proved the theft of gold ornaments, under the threat of knife from the house of P.W.1 Ramkrishnan and recovery of those gold articles and knife from the possession of the appellant within few hours of incident. Hence it has to be held that the trial Court has rightly held the guilt of the appellant to be proved for the offence under section 397, 452 and 342 of the IPC beyond reasonable doubt. The punishment awarded by the trial Court also being just and reasonable, no interference is warranted on that score also. The appeal, therefore, holds no merit and consequently it stands dismissed confirming conviction and sentence of appellant.

14. This order be communicated to the appellant who is in jail.

[DR. SHALINI PHANSALKAR-JOSHI, J.]