

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.955 OF 2011

Sayyad Musadik Wahiuddin Kadri

@ Musadik Moiddik Kadri

.. Appellant

Versus

The State of Maharashtra

.. Respondent

Mrs.Nasreen S.K.Ayubi, Advocate appointed for the appellant.

Mr.V.B.Konde Deshmukh, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 8th JANUARY 2016

ORAL JUDGMENT :-

1 This Appeal is directed against the judgment and order dated 5th March 2011 passed by the Addl. Sessions Judge, Greater Mumbai in Sessions Case No.767/01 convicting the appellant of an offence punishable under Section 392 IPC r/w section 397 IPC r/w Section 34 IPC and sentencing him to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.5,000/- each.

2 The prosecution case, as put before the trial Court, in brief, be stated thus :

The First Informant Kalpesh Shah, a business man doing business in general supplies in the name of '*Pankaj Enterprises*', was in his office on 21st April 2001 as usual. At about 5.30 p.m, while he was working in his cabin, two persons came there. One of them showed a pistol and asked Kalpesh to take out money and threatened that, or else he would be killed. Kalpesh took out an amount of Rs.11,000/- from the cupboard and gave it to the said person. The other person kept the amount in a blue colour plastic bag. Kalpesh was threatened to sit quietly. There were two others – supposed to have accompanied these two persons – who were standing outside the cabin. When, after committing the robbery, the offenders were leaving the building, Kalpesh and some others shouted '*chor chor*'. The four offenders were running from Nagdevi street. They were followed by Kalpesh and others. Some persons in the street caught hold of one of them and started beating him. This apprehended offender is said to be the appellant. A police van of Pydhonie police station was there. The appellant who had been apprehended, was handed over to the police. The blue colour plastic bag having pistol, two iron balls and cash of Rs. 8,250/- were taken charge of. Kalpesh and others

identified the appellant as one of the four offenders who had robbed them.

3 Though the matter was investigated into, the other offenders could not be traced out. The appellant alone, therefore, was prosecuted in respect of the said offences.

4 The prosecution examined seven witnesses during the trial. Kalpesh Shah – the First Informant, is the first witness. Kishanlal Shetty (PW 2) is a panch in respect of the personal search of the appellant, that was taken after his apprehension. Daleep Harchandrai (PW 3) and Mrs.Felcy Gyani (PW 4) are the eye witnesses to the incident of Robbery. K.S. Waghmare (PW 5) Inspector of Police, is the one who recorded the First Information Report. PW 6 – Mehboob Abbas Inamdar is the police Officer who was on duty at Pydhonie Police Station at the material time. PW 7 – Ramchandra Jadhav is a policeman who was on duty on the mobile van of the Pydhonie Police Station.

5 I have heard Mrs.Nasreen S.K.Ayubi, learned Appointed Advocate for the appellant. I have heard Mr.V.B. Konde Deshmukh, learned APP for the State. With the assistance of the learned counsel, I have gone through the entire evidence adduced

during the trial. I have carefully gone through the impugned judgment.

6 The learned counsel for the appellant submitted that though the case was projected as one where the appellant was caught on the spot and red-handed, none of the persons who had actually apprehended him, was examined as a witness. She also submitted that the First Informant Kalpesh did not identify the appellant in the Court, and as a matter of fact, was declared hostile by the prosecution. She also submitted that even the evidence of eye witnesses Daleep (PW 3) and Mrs. Felcy Gyani (PW 4) was not sufficient to establish the identity of the appellant as the same who was caught on the spot by the mob.

7 I have carefully considered this aspect of the matter.

8 Indeed, it would have been desirable to have the evidence of the persons or the members of public, who apprehended the appellant while he was running away after the incident. It is also true that since the First Informant Kalpesh has not identified the appellant, and since he did not even claim to have apprehended him, which seems to be the case of the prosecution, the prosecution case is affected to a certain extent.

9 However, in the matter of appreciation of evidence, it is a well accepted principle that first the undisputed or satisfactorily proved facts should be ascertained, and then the evidence regarding other facts which are in dispute, should be examined to see whether the same is consistent or fits in properly with the undisputed facts. In this case, there is absolutely no doubt that the appellant was apprehended at a place about 100 ft away from the place where the robbery took place, and it is also evident that he was apprehended at about the time when the robbery took place. The apprehension appears to have taken place in the presence of Daleep (PW 3). In fact, Daleep claimed that the appellant was apprehended by him and others, but since his omission to state so before the police was brought out on record, even if the part of his evidence – which goes to the extent of saying that he himself apprehended the appellant – is disbelieved, still, it is clear that the appellant was apprehended by the members of public *in his presence*. The appellant was continuously within his view from the time of his committing the offence, his apprehension by members of public and the handing over of the appellant to the police. What is further significant is that though Kalpesh (PW 1) has not identified the appellant, he has

categorically stated about the manner in which the incident took place. That the cash that was robbed by the offenders, was kept in a blue colour plastic bag, has been stated even by the prosecution witnesses whose evidence about the identity of the appellant as one of the offenders may not be accepted. There is sufficient and satisfactory evidence to show that when the appellant was apprehended, he was having a blue colour plastic bag with him. Also, a pistol was found in the said bag.

10 Thus, that a robbery indeed took place as per the prosecution case, was satisfactorily established. That, one of the offenders was apprehended while running away after the robbery was also satisfactorily established, and that the person apprehended is the appellant, was also satisfactorily established.

11 A perusal of the impugned judgment shows that the appreciation of evidence, as done by the Addl. Sessions Judge, is proper and does not suffer from any infirmity. The learned Addl. Sessions Judge has considered all the relevant aspects of the matter and has come to a proper conclusion.

12 The Appeal is dismissed.

13 The professional fees payable to the learned
Appointed Counsel, are quantified to Rs.3,000/-.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**