

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.1329 OF 2002
WITH
CRIMINAL APPLICATION NO.114 OF 2016
AND
CRIMINAL APPLICATION NO.406 OF 2016
IN
CRIMINAL APPEAL NO.1329 OF 2002**

ASHOK ANANDA KAMBLE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nasreen Ayubi, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : RESERVED ON 2nd MARCH 2017
PRONOUNCED ON 9th MARCH 2017.**

JUDGMENT :

1 This is an appeal by accused no.4 before the learned Additional Sessions Judge, Greater Bombay, Mumbai, challenging his conviction for offences punishable under Sections 399 and 402 of the IPC, for which offences he is sentenced to suffer rigorous

imprisonment for 3 years and 2 years respectively apart from payment of fine of Rs.1,000/- on both counts.

2 Briefly stated, the case of the prosecution is as follows :

(a) That accused persons along with their associates assembled at Chamarbaug Lane near Mahalaxmi Temple, Parel, Mumbai, for the purpose of committing dacoity while armed with weapons like choppers revolvers etc. and they were making preparations to commit dacoity at Nakoda Jewellers, Parel. Some of them were apprehended on the spot itself and were found in possession of fire arms and arms in contravention of the provisions of Indian Arms Act.

(b) It is the case of prosecution that PW4 Narayan Ingale, Senior Police Inspector of Bhoiwada Police Station received the telephonic message from his Informer to the effect that some persons would be assembling at Chamarbaug Lane, Parel, for the purpose of committing dacoity at the jewellery shop. PW4 Narayan Ingale then formed team of police

officers for apprehending robbers by laying a trap. They all then went to Chamarbaug Lane. One taxi came there from which three persons alighted and went near the Mahalaxmi Temple. Soon thereafter, a second taxi arrived from which four persons got down and joined the trio. Police suspected movements of those persons. Hence, PW2 Rajendra Ranmale, Police Officer, with one constable went near them and heard their conversation and found that they were making preparations and had assembled there for committing robbery on a jewellery shop. The police team was then signaled and five persons came to be apprehended from the spot where as two succeeded in fleeing from the spot. In presence of panchas, personal search of apprehended persons came to be taken. Accused Gopal Shetty (who absconded during the trial) was found to be possessing a chopper and a pager. Accused no.2 Suresh Shetty was found to be in possession of a country made revolver with live cartridges. Accused no.3 Raju Pujari was found to be in possession of one chopper. Nothing was found in possession

of the present appellant / accused. All weapons were then seized by preparing panchnama. Routine investigation followed and ultimately accused persons came to be charge-sheeted.

(c) During trial, the prosecution has examined in all five witnesses including panch witnesses and police officials. In rebuttal, the appellant / accused examined defence witness named Jitendra Koli. After hearing the parties, the learned trial court by the impugned judgment and order dated 4th September 2002 in Sessions Case No.375 of 2001 was pleased to convict accused nos.1 to 4 of offences punishable under Sections 399 and 402 of the IPC and they were sentenced as indicated in the opening paragraph of this judgment.

3 Heard Ms.Nasreen Ayubi, the learned advocate for the appellant / accused. She vehemently argued that nothing came to be seized from possession of the appellant / accused and as such it cannot be said that he was in company of co-accused after making

preparations to commit dacoity and had assembled with them for the purpose of committing dacoity, while armed with deadly weapons. As against this, the learned APP supported the impugned judgment and order of conviction by arguing that by examining necessary witnesses, offences are proved by the prosecution.

4 I have carefully considered rival submissions and have perused the record and proceedings.

5 PW4 Narayan Ingale, Senior Police Inspector of Bhoiwada Police Station, has deposed that on 30th September 1999, at about 19.00 hours, he received a telephonic message from his Informer to the effect that some persons would be assembling at Chamarbaug Lane, Parel, for the purpose of committing dacoity at a jewellery shop. PW4 Narayan Ingale further deposed that on receiving such information, he called his officers P.I.Waghmare, PW2 P.S.I.Ranmale, PW5 P.S.I.Katkar and other staff and shared the information received by him and

instructed them accordingly. A team with abovementioned officials was formed and they all reached the spot i.e. Chamarbaug Lane by a police jeep for laying a trap for apprehending the robbers. PW4 Narayan Ingale further deposed that at about 19.40 hours, one taxi came there from Dadar side and halted near Bharat Petrol Pump. Three persons alighted from the said taxi and went near the Mahalaxmi Temple. Soon thereafter, a second taxi arrived and halted near the Nakoda Jewellers, from which four persons got down and joined the trio. PW4 Narayan Ingale suspected movements of those persons and therefore sent PW2 Rajendra Ranmale, Police Officer, and one constable near them, to hear their conversation. PW4 Narayan Ingale further deposed that, it was then that PW2 Ranmale signaled the police team and five persons came to be apprehended from the spot where as two succeeded in fleeing from the spot. In presence of panchas, personal search of apprehended persons came to be taken. As per his evidence, accused Gopal Shetty was found to be possessing a chopper and a pager, accused no.1 Ashok Shetty was found to be in possession of one chopper, accused no.2 Sukesh Shetty was

found to be in possession of a country made revolver with live cartridges and accused no.3 Raju Pujari was found to be in possession of one chopper. However, nothing was found in possession of the present appellant / accused. All weapons were then seized by preparing panchnama. Evidence of PW4 Narayan Ingale shows that he has duly identified all the above weapons.

6 PW2 Rajendra Ranmale and PW5 Ankush Katkar, at the relevant time, were attached to Bhoiwada Police Station as Detection Officers. Their evidence is consistent with evidence of PW4 Narayan Ingale, Senior Police Inspector. All these three witnesses have unanimously and congruously deposed the events regarding forming of the police party, laying a trap for apprehending accused persons and regarding assembling of the accused persons after making preparations to commit dacoity at Nakoda Jewellers, Parel, while armed with weapons like choppers revolvers etc. There is nothing in their cross-examination to disbelieve their evidence.

7 As can be seen from the prosecution evidence, panch witnesses – PW1 Pandurang Mahadik and PW5 has also deposed on the same lines as that of PW4 Narayan Ingale, PW2 Rajendra Ranmale and PW5 Ankush Katkar. Panch witness - PW1 Pandurang Mahadik has duly identified all the articles seized in his presence from the spot. Thus, it can be seen that evidence of all three police officials is corroborating with each other so also is consistent with the version of both panch witnesses and therefore can be said to be trustworthy to act upon.

8 It is also established from prosecution evidence that all the other accused persons, except the present appellant / accused, were found to be in possession of deadly weapons which were seized in presence of panchas. It is established by the evidence of the prosecution that the appellant / accused along with other accused persons had assembled at the Chamarbaug lane, Parel, for the purpose of making preparations and committing dacoity on a jewellery shop, while they were armed with deadly weapons like choppers revolvers etc.

9 As indicated earlier, in rebuttal, the appellant / accused no.4 examined one defence witness by name Jitendra Koli (DW1). Let us see what this witness has deposed.

10 DW1 Jitendra Koli deposed that he is acquainted with the appellant / accused as they were working together at Bhaucha Dhakka. As per his evidence, on 30th September 1999, he was on duty from 7 a.m. to 2 p.m. whereas the applicant / accused had reached at about 8.00 - 8.30 a.m. and left early at about 12 noon after taking permission from his employer. Except for admitting that he is known to the appellant / accused as they were working together and that on the day of incident i.e. on 30th September 1999, he was in his company up to 12 noon, he has denied all the suggestions given to him.

11 What was tried to put forth by examining defence witness was that the appellant / accused was very much on duty on the date of incident, but as it can be seen from the evidence of this defence witness, the appellant accused had left early from his

place of duty at about 12 noon. As seen from evidence of prosecution witnesses, after receiving the information, the raiding team reached the spot at 7.00 p.m. and on laying trap, PW2 signaled the raiding team at around 8 p.m. for apprehending accused persons. The appellant / accused came to be apprehended from the spot itself. Therefore, the presence of the appellant / accused along with other accused persons, on the spot, on the day of incident, cannot be doubted. Thus, evidence of DW1 Jitendra Koli is of no assistance to infer that the appellant / accused was not on the spot in company of the other accused persons.

12 In the light of above discussion, I hold that the prosecution has successfully proved the involvement of the appellant / accused along with other accused persons in assembling and making preparations for committing a dacoity on a jewellery shop. Merely because the appellant / accused was not found in possession of any weapon, it cannot be said that he was not in company of other accused persons or was not a party to assembly which was formed for making preparations and committing dacoity on a jewellery shop.

13 In this view of the matter, no case for interference with the conviction and sentence of the appellant / accused for offences punishable under Sections 399 and 402 of the IPC is made out.

14 In the result, the appeal is devoid of merit and the same is dismissed.

15 In view of disposal of the appeal, Criminal Applications bearing Nos.114 of 2016 and 406 of 2016 stand disposed of.

(A. M. BADAR, J.)