

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

CRIMINAL APPEAL NO. 486 OF 2007

Sanjeev Udhav Murkute,
aged 23 years, R/o.
Garden near King Circle Rly. Stn,
Matung (East),
Mumbai,
at present Kolhapur Jail

..Appellant

v/s.

The State of Maharashtra
(At the instance of Borivali
Police Station C.R.No. 150/05)

..Respondents

Mr. Satyavrat Joshi for the Appellant.
Mr. H.J.Dedhia, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : DECEMBER 14, 2017.**

ORAL JUDGMENT.

1. By this appeal the appellant has challenged the judgment dated 25th October, 2005 in Sessions Case No. 581 of 2005.

2. The brief facts leading to this appeal are as under:-

The appellant herein was the accused no.1 in Sessions Case No. 581 of 2005. The appellant, along with two other co-accused and one absconding accused were prosecuted for offence under Section 394, 342, 397, 398 r/w. 34 of the Indian Penal Code and Section 3/

25 of the Indian Arms Act and 37(i)(a) of Bombay Police Act. The case of the prosecution in brief is that on 11th April, 2005 between 12 to 12.15 p.m. PW1 Vishal who was working as a Sales Executive in Vijay Sales was proceeding towards the bank to deposit cash of Rs.8,01,710/-. He was accompanied by Raj Mahale-PW6. When they came out of the showroom, four persons came toward them and snatched away the bag containing cash of Rs.8,01,710/- from the hands of PW1 Vishal and ran away from the spot of the incident. The first informant and some of the employees from Vijay Sales chased the said persons and with the help of some other by standers, they managed to apprehend the three persons, but the fourth accused managed to run away with cash.

3. Police were called to the spot and informed about the incident. PW7- PSI Manohar Shinde recorded the statement of the first informant and registered the crime. He conducted the scene of offence panchanama, and took personal search of the accused persons in presence of the panchas. He recovered two country made revolvers from the appellant i.e. accused nos.1 and from accused no.3. Further investigation was carried out by PW8 PI Bagul. Upon completion of investigation, chargesheet was filed.

4. The case being Sessions triable, the same was committed to the Sessions Court, Gr. Mumbai, Sewree. Charge was framed and explained to the accused. The appellant pleaded not guilty. The defence of the accused was of total denial.

5. The prosecution examined in all eight witnesses, statement of accused was recorded under Section 313 of Cr.PC. Upon considering the evidence on record, the learned Sessions Judge acquitted the appellant and the accused no.3 for offence under Section 394, 342 r/w. 34 of IPC and under section 3, 25 of Arms Act as well as 37(i)(a) of the Bombay Police Act. The Sessions Judge also acquitted the accused no.2 Jehangir of offence under Section 398 r/w. 34 of Indian Penal Code. The learned Sessions Judge has held the appellant-accused no.1 and the accused no.3 Vinod guilty of the offence under Section 398 of Indian Penal Code and sentenced them to undergo imprisonment for a period of seven years. Being aggrieved by the said conviction and sentence, the appellant accused no.1 has preferred this appeal.

6. Heard Shri Joshi, the learned Counsel for the appellant. He has submitted that there is discrepancy as regards the date on which

the incident had occurred. He has further submitted that the amount which was allegedly stolen was not recovered from the appellant. He therefore claims that the appellant is entitled for benefit of doubt.

7. Shri Dedhia, the learned APP submits that the appellant and the other co-accused were arrested on the spot. He has submitted that the amount could not be recovered since one of the co-accused had taken away the bag and as he was absconding and not apprehended, the stolen amount could not be recovered. He has submitted that the evidence of the first informant which is duly corroborated by the other eye witness amply proves that the appellant herein was involved in snatching the bag containing Rs.8,01,710/-. He has submitted that the evidence adduced proves guilt of accused no.1 beyond reasonable doubt. He has submitted that the findings of the learned Sessions Judge are based on the evidence on record and does not warrant any interference.

8. I have perused the records. It is to be noted that the allegations levelled against the appellant are that on the relevant date, he along with others had snatched the bag containing the amount of Rs.8,01,710/- from the hands of PW1. In this regard, the evidence

of PW1 Vishal clearly indicates that he was working in Vijay Sales as Sales Executive. The said showroom is situated at Borivali. He has stated that on 10th April 2005, he and Raj Mahale were proceeding towards the bank to deposit the amount. He has stated that as soon as they came out of the showroom, three persons came to the spot, they pointed out a countrymade revolver at him and snatched the bag from his hands and fled away from the spot. He stated that he chased the said person, who had snatched the bag and caught him. Lateron, police came to the spot and he handed over the custody of the said persons to the police. He had lodged the FIR which is at Exhibit 10. He has confirmed the contents of the First Information Report at Exhibit 10. In the cross examination he has stated that the incident had taken place in a crowded locality. He has denied that no such incident had taken place on the date of the incident.

9. The prosecution has also examine PW 6 Raj Mahale, who had accompanied the first informant. At the relevant time PW6 was working as a Salesman in Vijay Sales. The testimoney of PW6 indicates that on the date of incident, he was instructed by the Manager to go to the bank along with PW1 Vishal. He has stated that PW1 Vishal was carrying a bag containing cash and they were

proceeding towards the bank to deposit the said amount. He has stated that just as they crossed the road, one auto-rickshaw stopped and 2-3 persons alighted from an auto-rickshaw. One person pointed out a revolver at them and snatched the bag from the hands of PW1. In the meantime, the security guard and others caught the three persons. The police were called and the custody of the said three persons were handed over to the police. He has identified the appellant-accused no.1 as one of the person who was caught at the spot.

10. PW4, Jyoti, was working as Manager in Vijay Sales. She has deposed that PW1 was serving as Salesman. She has stated that on 10th April, 2005 at about 11.45 PW1 Vishal and PW6 Raj Mahale had left the showroom to deposit the cash in Saraswat Bank. Just as they crossed the road in front of the showroom, four people went towards them. One of the persons tried to assault PW1 Vishal. Sensing something was amiss, she informed the security guard to look into the matter. She too rushed to the spot of the incident, and saw that three persons were caught. She called the police by dialing 100. The police came to the place of the incident and thereafter took the said three persons into custody. She has identified the appellant as one

of the persons who was caught by PW1 Vishal.

11. PW5 Javed has deposed that on 12.4.2005 at about 12.00 pm he was on the first floor of Vijay Sales show room. He noticed that some people had gathered outside the show room. When he went outside the showroom he saw that some people who were trying to snatch the amount were arrested. He has identified the appellant-accused no.1 as one of the persons who was caught. He has stated that later the police came to the spot of the incident, recorded their statements and took custody of the accused, including the appellant herein.

12. PW7 Manohar Shinde was the PSI attached to Borivali Police Station. He has deposed that on 12.4.2005 at about 12.30 hours while he was on duty at the police station, he received a call that there was robbery at Vijay Sales. He alongwith his colleagues went to the spot. He saw that a wireless van and the beat marshal were already present at the spot, and the persons involved in the robbery were already arrested. He recorded the first information report lodged by the first informant. He registered the crime. He also conducted the arrest panchanama and the scene of offence

panchanama. This witness has also identified the appellant-accused no.1 as one of the persons whose custody was taken from the place of the incident.

13. The evidence of PW1 which is duly corroborated by PW6 amply proves that at the relevant date he was proceeding to Saraswat Bank to deposit the cash. When they crossed the road infront of Vijay Sales, some persons got down from the rickshaw and one of them snatched away the bag and they ran away from the place of the incident. The evidence of this witness further indicates that they along with the staff of Vijay Sales and members of public had chased the said persons and caught the appellant-accused no.1. He was subsequently handed over him to the police. The testimony of PW1 and PW6 is also duly corroborated by PW4, PW5 and PW7. The evidence of these witnesses reveals that the appellant-accused no.1 was one of the persons who was involved in snatching the bag and that he was caught while trying to run away from the spot of incident. Apart from the discrepancy in the date, nothing much has been brought on record to impeach the credibility of this witness. The testimony of this witness which otherwise inspires confidence cannot be discarded only on the basis of discrepancy in the date. Even

otherwise, the discrepancy as regards the date of the incident is too trivial to discard the evidence of the eye witnesses.

14. It is also pertinent to note that the FIR was lodged immediately after the accused were caught. The custody of the accused was handed over on the same day. Prompt lodging of the FIR and arrest of the appellant-accused at the spot of the incident rules out the possibility of false implication.

15. Having considered the entire evidence on record, in my considered view, the learned Sessions Judge has rightly convicted the appellant-accused of offence under Section 398 of Indian Penal Code. The finding recorded by the learned Sessions Judge are based on the evidence on record. The findings do not suffer from any infirmity. The appeal has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)