

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

CRIMINAL APPEAL NO. 523 OF 2012

Mr. Santosh @ Shantilal Changdeo GalgundeAppellant
Versus
The State of Maharashtra & Anr.Respondents

Ms. Megha Bajoria, Advocate appointed for the appellant.
Mr. H.J. Dedhia, APP for the State.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 09th NOVEMBER, 2017***

JUDGMENT :-

1. The appellant herein was an accused no.2 in Sessions Case No. 67 of 2009 on the file of Additional Sessions Judge, Karad. By the impugned judgment dated 30th March, 2012, the learned Additional Sessions Judge, Karad has held the appellant guilty of offences punishable under Section 457, 392, 394 r/w. Section 34 of the Indian Penal Code. The appellant has been sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.1000/- in respect of each offence under Section 392 and 457 r/w. Section 34 of the Indian Penal Code. The appellant has also been sentenced to undergo rigorous imprisonment for six years and to pay fine of Rs.2,000/- in default to suffer simple imprisonment for four months in respect of offence under Section 394 r/w. Section 34 of the Indian Penal Code. The sentences are to run concurrently.

2. Heard Ms. Megha Bajoria, learned counsel appointed for the appellant and Mr.H.J. Dedhia, learned APP for the State. Perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The case of the prosecution in brief is that during the intervening night of 25th April, 2009 and 26th April, 2009, the appellant and the other co-accused criminally trespassed in the house of PW3-Vanita Jankar and PW4-Maina Budhawale and committed theft of household and other valuable articles. In this regard, the testimony of PW3 indicates that on 25th April, 2009 and 26th April, 2009 she was alone in the house. She had called her neighbour Sonali Tukaram Wadte to give her company. She had stated that at about 11:45 p.m., she heard some sound. When she woke up, she saw some persons outside the window. When she raised an alarm, one of the persons showed her a knife and threatened her not to shout. The person outside the house pelted a big stone on the door due to which the latch broke and the door opened. Immediately thereafter, three persons entered the house while one person waited outside. She had stated that these three persons took away her earrings and mangalsutra. One of the persons assaulted her and demanded keys of the cupboard. She had stated that she handed over the keys of the cupboard to the said person. They opened the cupboard and took away the gold ornaments of her child as well as cash of Rs. 15,000/-. She had stated that the said persons were in her house for about 15 minutes, thereafter they left the house and latched the door from outside. She had stated that she called out to her

neighbour by name Bhosale to open the door. When she came out of the house, she learnt that there was also theft in two to three neighbouring houses. She thereafter lodged a complaint which is at Exhibit-34. She had given description of these three persons who have entered her house.

4. PW3 had deposed that on 04th May, 2009, she was called to Tahsil office for identification parade. In the said identification parade, she had identified the appellant and the co-accused Anna Kale from amongst the twelve other persons. She denied the suggestion that she had not identified the appellant and the other accused in the said identification parade. She had denied the suggestion that the accused was not involved in house breaking or in committing robbery.

5. PW4-Maina Budhawale is the neighbour of the first informant. She has deposed that on 25th April, 2009 at about 12: 00 a.m., she heard some noise in the house. She noticed that the door of her house was broke open and some persons had entered the house. One of the persons told her to handover the mobile while the other two persons told her to handover the gold ornaments and money. She had stated that when she shouted for help, the said persons threatened to kill her and her father. One of the persons also slapped her and dragged her by her hair. They ransacked the house and thereafter, left the house and latched the door from outside. She has deposed that she had noticed that some persons had gathered outside the house. One of the persons opened the door and when she came out, she learnt about the robbery

in the neighbouring houses. She had given description of these persons who had entered the house. She also stated that on 04th May, 2009, she was called to Tahsil office, Karad for identification parade and she identified the appellant/accused and co-accused Anna Vikram Kale.

6. The testimony of PW3-Vanita Jankar and PW4-Maina Budhawale clearly indicates that during the intervening night of 25th April, 2009 & 26th April, 2009, some unknown persons had broke open the doors and entered their respective house. One of them was armed with a knife. They had assaulted PW3 and PW4 and had committed theft of gold ornaments as well as cash of Rs.15,000/-. Both these witnesses have stated that the lights in their houses were on. They had seen the said intruders and had given their detailed description. The testimony of these witnesses vis-a-vis the testimony of PW8 further reveals that the accused was identified in an identification parade. Nothing has been brought on record to impeach the credibility of these witnesses. Hence, there is no reason to disbelieve the testimony of these witnesses.

7. The testimony of PW7-Ramesh Baban Narsale reveals that on 28th April, 2009, the appellant herein had offered to sell to him gold ornaments stating that he was in need of money. This witness had stated that the appellant herein had sold to him one small necklace, two pairs of earrings, one pair of small earrings and some other ornaments total weight of which was 36 grams. He had paid to him sum of Rs.39, 470/- and had issued a receipt. He had stated that he had melted the said gold ornaments. Some days later, he read in the

newspaper that the appellant herein was involved in committing theft. He therefore, went to the police station and informed the police that he had purchased gold ornaments from the appellant.

8. It is to be noted that PW7 had specifically denied the suggestion that he was interested in purchasing the land from the appellant and that he was annoyed with the appellant for having sold the land to one Vithal Dhekle. Apart from this suggestion, there is nothing on record to indicate that PW7 was in inimical terms with the appellant or that he had any reason for his false implication.

9. The testimony of PW7 who is an independent witness amply proves that within a couple of days from the date of the incident, the appellant had sold to him gold ornaments. The appellant had not offered any explanation about the possession of gold ornaments. The testimony of PW7 coupled with the testimony of PW3 & PW4 amply proves that the appellant was involved in committing lurking house trespass and robbery. The prosecution has thus proved the guilt of the appellant beyond reasonable doubt. The findings of the trial court are based on evidence on records. I find no infirmity in the order.

10. Under the circumstances and in view of discussion supra, the appeal has no merits and is accordingly dismissed. The order of conviction and sentence is hereby confirmed.

(SMT. ANUJA PRABHUDESSAI, J.)