

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.677 OF 2013
WITH
CRIMINAL APPLICATION NO.523 OF 2017
IN
CRIMINAL APPEAL NO.677 OF 2013**

RAJU @ RONI RATAN PRADHAN)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

**CRIMINAL APPEAL NO.1263 of 2013
WITH
CRIMINAL APPLICATION NO.627 OF 2014
AND
CRIMINAL APPLICATION NO.961 OF 2014
AND
CRIMINAL APPLICATION NO.522 OF 2017
AND
CRIMINAL APPLICATION NO.876 OF 2017
IN
CRIMINAL APPEAL NO.1263 OF 2013**

AMIN FARUKH MORDIYA)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL APPEAL NO.700 OF 2014

AZHARUDDIN ZAHIRUDDIN SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.S.D.Kavathekar i/b. Mr.Pankaj Kavale, Advocate for the Appellant in Criminal Appeal No.1263 of 2013.

Ms.Nasreen S.K.Ayubi, appointed Advocate for Appellants in Criminal Appeal Nos.677 of 2013 and 700 of 2014.

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

CORAM : A. M. BADAR, J.

RESERVED ON : 22nd SEPTEMBER 2017

PRONOUNCED ON : 25th SEPTEMBER 2017

ORAL JUDGMENT :

1 Criminal Appeal bearing no.677 of 2013 is filed by the original accused no.1 Raju Pradhan, Criminal Appeal bearing No.1263 of 2013 is filed by the original accused no.2 Amin Mordiya, whereas, Criminal Appeal bearing no.700 of 2014 is filed by original accused no.3 Azharuddin Shaikh. By these appeals,

they are challenging the judgment and order passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, in Sessions Case No.50 of 2012, thereby convicting all of them of offences punishable under Sections 341 read with 34, 392 and 397 of the Indian Penal Code (IPC). For the offence punishable under Section 341 read with 34 of the IPC, they all are sentenced to suffer simple imprisonment for 1 month apart from direction to pay fine of Rs.500/- and in default, to suffer further simple imprisonment for 8 days, by each of them. For the offence punishable under Section 392 of the IPC, appellants / accused are sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for 2 years. Similar punishment is imposed on all of them for the offence punishable under Section 397 of the IPC. The learned Additional Sessions Judge has directed that substantive sentences shall run concurrently.

2 Brief facts leading to the institution of these appeals can be summarized thus :

(a) PW1 Mahendra Malvia is the First Informant. On the day of the incident i.e. on 25th January 2012 itself, he lodged a report which resulted in registration of Crime No.23 of 2012 for offences punishable under Sections 399, 397 read with 34 of the IPC as well as under Section 135 of the Maharashtra Police Act with Kasturba Marg Police Station, Mumbai. According to the prosecution case, PW1 Mahendra Malvia along with his friend PW4 Mansi Sawant were chitchatting near the wall of Sanjay Gandhi National Park at Borivali. At that time, all appellants / accused by threatening them with a deadly weapon indulged in commission of robbery. At the point of knife, informant PW1 Mahendra Malvia was robbed off his cell phone, cash amounting to Rs.300/- as well as ear ring. Similarly, the cell phone of PW4 Mansi Sawant is also robbed in the incident in question. According to the prosecution case, accused persons have also taken documents such as identity card etc. from First Informant Mahendra Malvia.

(b) Immediately after the incident of robbing themselves, PW1 Mahendra Malvia and PW4 Mansi Sawant raised hue and cry,

thereby attracting the public at large. The mob which gathered on the spot started chasing accused persons who were attempting to flee from the spot. Accused persons started pelting stones at the mob and threatening them with knives. At that time itself, police arrived at the spot in the patrolling van. The incident was made known to PW2 Mohd. Majawar, Assistant Sub Inspector from the police van. By that time, the mob had encircled accused persons. Police took them in custody. Personal search of accused persons came to be conducted and looted articles came to be recovered. Routine investigation followed which ultimately resulted in filing of the charge-sheet.

(c) The accused persons, after hearing the charge, pleaded not guilty and claimed trial. In support of the charge, prosecution has examined in all five witnesses and ultimately the learned Additional Sessions Judge was pleased to convict all appellants / accused persons and they were sentenced as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Nasreen Ayubi, the learned advocate appointed to represent appellants / accused in Criminal Appeal Nos.677 of 2013 and 700 of 2014. Similarly, I have heard Shri S.D.Kavathekar, the learned advocate appearing for appellant / accused no.2 Amin Mordiya in Criminal Appeal No.1263 of 2013. In submission of learned advocates appearing for appellants / accused, evidence of prosecution witnesses is discrepant and inconsistent. PW1 Mahendra Malvia has narrated the incident to police in the van and then accused persons came to be arrested. As against this, PW2 Mohd. Majawar, A.S.I., has deposed that initially personal search of accused persons was taken as they were already apprehended and thereafter PW1 Mahendra Malvia and PW4 Mansi Sawant had disclosed the incident to police. PW1 Mahendra Malvia is deposing about personal search of the accused resulting in recovery of mobile. The spot cum seizure panchnama as well as arrest panchnama is not properly proved by the prosecution and no documentary evidence of ownership of looted articles is placed on record by the prosecution. As against this, the learned

APP justified the impugned judgment and order of conviction by stating that with the help of consistent evidence, guilt of the accused persons is proved by the prosecution.

4 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of witnesses and documentary evidence adduced by the prosecution. Let us now examine whether the prosecution has established that appellants / accused, on 25th January 2012, had wrongfully restrained PW1 Mahendra Malvia and PW4 Mansi Sawant in furtherance of their common intention and whether there upon appellants / accused had robbed cell phones / cash amounting to Rs.300/-, gold ear ring and other articles from them by using deadly weapon like knife in commission of robbery.

5 Considering the case set up against appellants / accused persons, evidence of victims of the crime in question is of great importance. Let us, therefore, first put on record what PW1 Mahendra Malvia and PW4 Mansi Sawant are stating about the

incident in question. Both of them, in unison, have deposed that on 25th January 2012, they were chitchatting near the wall of Sanjay Gandhi National Park. At that time, as per version of both these witnesses, appellant / accused no.1 Raju had slapped PW1 Mahendra Malvia and pointed a knife at his neck. PW1 Mahendra Malvia was threatened and then appellant / accused no.1 Raju relieved him of his cell phone as well as cash amounting to Rs.300/-, and identity card kept in his wallet. Both these witnesses congruously deposed that at the same time, appellant / accused no.2 Amin Mordiya pointed a knife at the neck of PW4 Mansi Sawant and snatched her cell phone. So far as third accused i.e. appellant / accused Azharuddin Shaikh is concerned, both these witnesses have stated that he gave a fist blow on the abdomen of PW1 Mahendra Malvia and snatched his gold ear ring.

6 PW1 Mahendra Malvia and PW4 Mansi Sawant have stated that after committing this daring robbery, appellants / accused attempted to flee from the spot and therefore, both of

them raised hue and cry for help. As per version of both these witnesses, then public from the vicinity gathered and attempted to apprehend culprits. However, accused persons started pelting stones towards the crowd gathered there and threatened the crowd by pointing a knife at them.

7 PW1 Mahendra Malvia and PW4 Mansi Sawant consistently deposed that then police jeep came there and police apprehended all three accused persons.

8 Both these victims of crime namely PW1 Mahendra Malvia and PW4 Mansi Sawant were cross-examined at length but nothing could be brought on record from their cross-examination to disbelieve their version about the incident in question. The incident lasted for few minutes enabling them to have every opportunity to identify appellants / accused persons, who were apprehended on the spot itself by the police. Evidence of First Informant Mahendra is gaining corroboration from the First Information Report (FIR) lodged by him with promptitude. The

FIR at Exhibit 19 lodged by PW1 Mahendra Malvia soon after the incident is fully supporting his version about the incident in question. Except a few insignificant variations, entire evidence of PW1 Mahendra Malvia and that of PW4 Mansi Sawant is in tune with the prosecution case.

9 The prosecution has also adduced evidence regarding post event happenings on the scene of occurrence. PW3 Sandeep Bij is a witness, who is a resident of Sanjay Gandhi National Park. On 25th January 2012, he had been to darshan of Gaondevi Mandir and while returning he witnessed the post event happenings. As per version of this witness, three thieves were running and persons from adivasipada were chasing them. This witness has stated that those thieves were threatening the mob by pelting stones. This witness had also joined the mob for attempting to apprehend appellants / accused. As per version of this witness, then police came and with the help of people, police apprehended appellants / accused persons. This witness has also deposed about personal search of accused persons and recovery of looted articles from them.

10 PW1 Mahendra Malvia, PW4 Mansi Sawant as well as PW3 Sandeep Bij have categorically identified appellants / accused persons. PW1 Mahendra Malvia and PW4 Mansi Sawant have, on identification of appellants / accused in dock, categorically ascribed role played by each of them in the incident of robbery with deadly weapons. Both of them have stated that appellant / accused no.1 Raju by pointing a knife at the neck of PW1 Mahendra Malvia had snatched a cell phone, cash amounting to Rs.300/- and identity card from PW1 Mahendra Malvia. Both these witnesses have stated that appellant / accused no.2 Amin Mordiya by pointing out a knife at the neck of PW4 Mansi Sawant, had snatched a cell phone from her whereas, appellant / accused no.3 Azharuddin by giving a fist blow on abdomen of PW1 Mahendra Malvia had snatched a gold ear ring from him.

11 Seizure has been effected by PW2 Mohd. Majawar A.S.I., who had also witnessed post event happenings in this crime. As per his version, during the course of patrolling, he along with Mhaiskar, driver of the patrolling vehicle, reached Sanjay

Gandhi National Park at Borivali and found that three persons were threatening the crowd by pointing knife and pelting stones. As per version of this witness, then PW1 Mahendra Malvia and PW4 Mansi Sawant approached him and disclosed the incident of robbing them, after he as well as other staff apprehended appellants / accused persons. PW2 Mohd. Majawar, A.S.I., stated that then personal search of appellants / accused was conducted on the spot itself in the presence of panch witnesses. Evidence of this witness reveals that apart from one knife, during personal search of appellant /accused no.1, a cell phone, cash amounting to Rs.300/- and identity card of PW1 Mahendra Malvia came to be recovered. From appellant /accused no.2 Amin Mordiya, cell phone of PW4 Mansi Sawant came to be recovered whereas, from appellant / accused no.3 Azharuddin, gold ear ring of PW1 Mahendra Malvia came to be recovered. Evidence of this witness is fully corroborated by contemporaneous seizure panchnama. There is nothing in his cross-examination to disbelieve his version about the incident in question. Articles recovered from appellants /accused persons were duly identified by PW1

Mahendra Malvia and PW4 Mansi Sawant. Articles robbed where articles of day to day use, and as such, their identification cannot be doubted, nor it is necessary that documents about ownership should have been produced before the trial court. Such argument is devoid of merit. Similarly, in the light of foregoing discussion, I do not find evidence of prosecution in the case to be inconsistent and contradictory. All prosecution witnesses are deposing in the line of prosecution case against appellants / accused persons and therefore, evidence is fully corroborating and supporting the prosecution case. Insignificant inconsistencies and variations is of no assistance to appellants / accused.

12 In the light of foregoing discussion, the prosecution has established that on 25th January 2012, at Sanjay Gandhi National Park, Borivali, appellants / accused had wrongfully restrained PW1 Mahendra Malvia and PW4 Mansi Sawant and threatening them with deadly weapon, committed robbery of their belongings. Sentence imposed on them for proved offences is also in consonance with offences held to be proved against them.

13 Resultantly, the appeals are devoid of merit and therefore the order :

ORDER

- i) Appeals are dismissed.
- ii) In view of dismissal of appeals, pending applications also stand disposed of.

(A. M. BADAR, J.)