

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 365 OF 1997**

Sameer Janardhan Dabhade ..Appellant/
(Org. Accused No.1)

v/s.

The Sate of Maharashtra ..Respondents

**WITH
CRIMINAL APPEAL NO. 484 OF 1997**

Deepak Somnath Sharma ..Appellant/
(Org. Accused No.2)

v/s.

The Sate of Maharashtra ..Respondents

**WITH
CRIMINAL APPEAL NO. 491 OF 1997**

Vinod Ramchandra Menon ..Appellant/
(Org. Accused No.3)

v/s.

The Sate of Maharashtra ..Respondents

Mr. Sumeet Kate i/b. Uday Warunjikar for the Appellant
Mrs. N.S.Jain, APP for the respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON: JUNE 07, 2018.
PRONOUNCED ON: JUNE 08, 2018.**

JUDGMENT.

1. The appellants herein who were the accused nos.1, 2 and 3 in Sessions Case No. 121 of 1996, have challenged the judgment and Order dated 26th May, 1997, whereby the learned Addl. Sessions Judge, Raigad-Alibag has convicted and sentenced them for the offences under Section 392, 397 r/w. 34 of the Indian Penal Code.

2. The case of the prosecution in brief is that on 9th August, 1995 PW1-Bhanu Pratap Singh who was working as a Manager in Mysore Amonia Private Limited had withdrawn cash of Rs.65,000/- from Dena Bank, MIDC Area, Talaja Branch. While he was proceeding towards his office, the accused who were armed with knives and gupti stopped his cycle. They took away the money under the threat of causing his death and fled away from the scene of offence. PW1 went to Talaja Police Station and narrated the incident to PW8-PI Eknath Shinde. Under instructions of PI Shinde, the Head Constable Patil recorded the first information report dated 9th August, 1995 (Exhibit 13) and registered Crime No. 151 of 1995 for offences

punishable under Section 397 and 341 r/w. Section 34 of the Indian Penal Code lodged by PW1 Bhanupratap Singh.

3. PW8 and the other police personnel of Taloja Police Station went in search of the accused persons. They saw several persons gathered near Bhel Company. They were informed that three persons had jumped over the compound wall of the company premises. With the help of the security guard and the other police personnel, PW8 apprehended three persons. He recovered some bundle of notes having Dena Bank slips from the possession of the said three persons. The said notes were seized under panchanama. PW1 Bhanu Pratap Singh, identified accused no.2 Deepak and accused no.3 Vinod as the persons involved in the crime. He recorded statements of the witnesses, and upon completion of investigation filed a chargesheet against the accused for offences under Section 392, 397 r/w. 34 of IPC.

4. The offence under Section 397 being Sessions triable, the case was committed to the Sessions Court., Upon committal of the case,

the charge was framed and explained to the accused. They pleaded not guilty and claimed to be tried. The prosecution, in support of its case, examined 8 witnesses. The statements of the accused were recorded under Section 313 of Criminal Procedure Code. The defence of the accused was of total denial.

5. Upon appreciating the evidence on record, the learned Addl. Sessions Judge held the accused no.1 Sameer guilty of the offence under Section 392 of IPC and sentenced him to undergo imprisonment for five years with fine of Rs.3000/- in default to undergo further rigorous imprisonment for six months, The accused no.2-Deepak and Accused No.3-Vinod were convicted for offences under Section 392 and 397 of IPC and sentenced to undergo rigorous imprisonment for seven years. The period of detention already undergone was ordered to be set off in terms of Section 428 of Cr.PC. Being aggrieved by the conviction and sentence, the accused have preferred these appeals.

6. Heard learned Counsel Mr. Sumeet Kate for the appellants and

Mrs.Jain learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the appellant/accused and the learned APP for the State.

7. The evidence of PW1-Bhanu Pratap Singh, who was the Manager in Mysore Amonia Pvt. Ltd.and PW4-Rajib Chaubal, the Cashier at Dena Bank proves that Mysore Amonia Pvt. Ltd. Company had its account with Dena Bank, Taloja branch, MIDC Area. PW1 used to operate the said account on behalf of the company. On 9th August, 1995 at about 11.45 a.m. PW1 had withdrawn cash of Rs.65000/- from the companies account with Dena Bank for effecting payment to the employees.

8. The testimony of PW1 indicates that while he was proceeding towards the company premises, he saw one stationary auto-ricksaw a few meters away from the company premises. Two persons got down from the rickshaw. One of them was wearing a yellow shirt and the other was wearing a blue checks shirt. The person wearing yellow shirt called out to him and told him that he had some work. Since he did not stop the cycle, the person wearing a blue shirt took out a

Gupti and threatened him to stop. At the same time the other person in the yellow shirt, who was carrying a knife, caught the cycle from behind. They told him to hand over the money or else threatened to cause his death. He cried for help, but there was no one on the road. He has stated that the person wearing the yellow shirt inflicted a blow of knife on his leg. The said two persons took away the cash of Rs.60,000/- and fled away from the scene by rickshaw bearing No. MH-06-D-710. He went to Taloja Police Station and lodged the report (Exhibit 13). He was referred to the Central Hospital for medical examination.

9. The testimony of PW7 Dr. Anand Upadhyay, the Medical Officer, attached to Central Hospital reveals that he had examined PW1 on 9.8.1995. The testimony of PW7, vis-a-vis the injury certificate at exh.24 reveals that PW1 had a contusion over right side chest wall, incised wounds over left tibia, and a contused wound over right thigh. PW7 has opined that the said incised wounds could have been caused by a sharp weapon akin to a knife.

10. PW2 is the driver of the auto-rickshaw bearing No. MH-06-D-710. He has stated that on the relevant date, while he was waiting at Naka No.2 in MIDC area at Taloja, three boys hired his rickshaw and told him to proceed towards Bharat Electronics. When he reached near Apcotex Company, one of the boys told him to stop the rickshaw. Two boys got down from the rickshaw and ran behind a person who was riding a cycle. They caught him and removed the money from the cyclist and returned to the rickshaw. One of the boys pointed a knife at his neck and told him to proceed towards Ambernath. He has stated that when he reached near Bharat Electronics, all the three boys got down from the rickshaw and ran towards the company premises. He shouted for help. He stated that he and some other rickshaw drivers tried to chase the said boys. The said boys climbed over the compound wall of Bharat Electronics and entered the company premises. He has stated that two police personnel had arrived at the spot and he informed them about the incident and the said police personnel went in search of the said boys.

11. The evidence of PW8-PSI Shinde indicates that on receipt of the

information, he along with other police personnel went in search of the accused. He saw many people gathered near the premises of BHEL Company. A rickshaw bearing No. MH-06-D-710 was also parked outside the company gate. He was informed that three persons had entered the premises by jumping over the compound wall. He searched for the said three persons with the help of the security guards and other police personnel and managed to apprehend the three persons.

12. The PW3, PW5 and PW6 are the employees of Bhel Company. The testimony of these witnesses corroborates that they were informed that three persons had entered the company premises and they had helped the police in tracing those three persons.

13. The aforesaid evidence clearly indicates that PW1 had withdrawn sum of Rs.65,000/- from the account of the company and that while he was proceeding towards the company premises, two boys had stopped his cycle. The said boys were armed with knife and gupti. They threatened him, inflicted injuries on his leg and snatched the money from his hands and fled away from the place of the incident by a rickshaw bearing no.MH-06-D-710. The testimony

of PW2, the rickshaw driver also proves that three boys had hired his rickshaw and when the rickshaw had reached near Apcotex Company, two boys got down, caught hold of one cyclist, snatched money from his hand and thereafter sat in his rickshaw and told him to proceed towards Ambernath. The testimony of this witness proves that these boys had got down near Bhel Electronics, jumped near the compound and entered the premises of BHEL company. The police personnel who had reached the spot had searched the premises with the help of PW3, 5 and 6 and apprehended three boys.

14. It is to be noted that the first informant had identified the accused nos.2 and 3 as the persons involved in stopping his cycle, threatening and causing him injuries and committing theft of cash of Rs.65000/- which was withdrawn by him from Dena Bank. It is to be noted that PW1 had not seen the third person who had accompanied these two accused. PW2, the rickshaw driver who is the only person who had seen the said third person had not identified the accused no.1 as the person involved in the said incident. Thus, the testimony of PW1 and PW2 does not conclusively prove that the accused no.1

was involved in the alleged incident.

15. It is pertinent to note that PW8 claimed that after the arrest of the three accused, he had taken their search and recovered cash of Rs.5000/- from the accused no.1 and cash of Rs.,15000/- each from the accused nos.2 and 3. The testimony of PW8 and the arrest panchanama at Exh.20 indicates that there was a label of Dena Bank on the two bundles of Rs.15000/- which were recovered from the accused nos.2 and 3. No such label was found on the bundle of Rs.5000/- allegedly recovered from the possession of the accused no.1.

16. PW4, the cashier of Dena Bank has also confirmed that the said bundles of Rs.15,000/- recovered from the accused nos.2 and 3 had slips of Dena Bank. He has identified his signature on the said slips and has further stated that he had signed the said slips while accepting the money from the Chief Cashier. The evidence adduced by the prosecution therefore proves that the accused nos.2 and 3 were found in possession of money which was withdrawn by PW1 from Dena Bank. This is yet another circumstance which proves the

involvement of the accused nos.2 and 3 in commission of the said offence.

17. The testimony of PW8 further indicates that he had recovered Rs.5000/- each as per the disclosure statements made by the accused nos.1 and 3 and Rs.4650/- as per the disclosure statement made by the Accused no.2. The testimony of PW8 is not corroborated by PW6 Farook Sk, who was the witness to the said recovery panchanama. The testimony of this witness indicates that some money was recovered at the instance of one of the three persons. The testimony of this witness does not indicate that part of the stolen money was recovered at the instance of the accused no.1. He has also not given the details of the person at whose instance the money was recovered. The recovery panchanama therefore does not have any evidentiary value.

18. To sum up, the prosecution has established beyond reasonable doubt, that the accused nos.2 and 3 were involved in committing the said crime. Hence, the learned Sessions Judge was perfectly justified in holding them guilty of the offence under Section 392 and 397 r/w.

34 of I.P.C. Hence, I do not find any reason to interfere with the conviction or sentence imposed against the accused nos.2 and 3.

19. In my considered view, there is no cogent and conclusive evidence to prove the guilt of the accused no.1. Under the circumstances, the accused no.1 is entitled for benefit of doubt.

20. Hence, I pass the following order:-

i) Appeal No.365 of 1997 is allowed. The conviction and sentence imposed against Accused No.1-Sameer Dabhade is hereby quashed and set aside. He is acquitted of the offence under Section 392 r/w. 34 I.P.C.

ii) The appeals filed by accused nos.2-Deepak Sharma and accused no.3-Vinod Menon, being Appeal Nos.484 of 1997 and 491 of 1997 are hereby dismissed. It is reported that the accused nos.2 and 3 have already undergone the sentence. Hence no further order as regards their custody.

(ANUJA PRABHUDESSAI, J.)