

Sarnobat

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

CRIMINAL REVISION APPLICATION NO. 141 OF 2002

1. Rais Yaseen Khan,)
Age 30 years, Occupation)
Service, Resident at)
Gaibbinngar, Kacheripada,)
Bhiwandi, District Thane.)
2. Shakir Nabalkhan Pathan,)
age 28 years Occupation)
Service, Resident at)
Shantinagar, Gausiya Masjid,)
Bhiwandi, District Thane.)... Applicants.
- Vs.
The State of Maharashtra,)... Respondent.

Mr. Sushil Inamdar, Appointed Advocate and Mr. Sagar Joshi h/f Mr. S. M. Oak, for the Applicants.
Ms. S. S. Kaushik, APP for the Respondent/State.

CORAM : SARANG V. KOTWAL, J.

DATE : OCTOBER 26, 2018.

JUDGMENT :

1. The applicants have challenged the judgment and order dated 28th February, 2002 passed by the Joint District Judge and Additional Sessions Judge, Thane in Criminal Appeal No. 17 of 1997. By the said judgment and order learned Additional Sessions Judge, Thane dismissed the Criminal appeal No. 17 of 1997 and confirmed the judgment and order dated 5th April, 1997 passed by IVth Asst.

Sessions Judge, Thane in Sessions Case No. 317 of 1996.

2. The Trial Court had convicted the applicant for the commission of offence punishable under Section 392 r/w 34 of Indian Penal Code. Both the applicants were sentenced to undergo R. I. For a period of two years and to pay a fine of Rs.500/- each and in default to suffer S.I. for one month. Both the applicants were further held guilty of the offence punishable under section 392 r/w 397 of the Indian Penal Code and were sentenced to suffer R. I. For a period of Seven years. The applicants were further held guilty for commission of offence punishable under Section 135 of Bombay Police Act and were sentenced to suffer S. I. For four months. All the substantive sentences were directed to run concurrently. Both of them were given set off for the period which they had undergone in jail. The Trial Court acquitted the applicants from the charges of committing offence punishable under Section 394 r.w 34 of Indian Penal Code and 25 (1)(a) of the Arms Act. The Appellate Court dismissed the Appeal by confirming the judgment and order passed by the Trial Court.

3. The prosecution case in brief is as follows :-

The first informant Govardhandas Patel had withdrawn Rs.35,000/- on 4th November, 1995 from Central Bank of India, Mandai Naka, Bhiwandi. At about 1.00 pm., he gave that amount to one Mr. Madhukar Shah. At about 1.30 pm when he was returning home, he

was carrying one plastic bag containing new cheque-book and pass-book of his wife, one cheque of dividend of Rs.56/-. He also had Rs.500/- consisting of 10 currency notes of Rs.50/-. When he came near Nagarik Bank, Bhiwandi, at that time four persons approached him. The applicant No. 1 held his collar and asked him to give money. The first informant caught applicant No.1's shirt. Applicant No. 2 slapped on the first informant's left cheek. The applicant No. 1 showed him revolver and the applicant No. 2 showed him a knife. The applicant No. 2 removed Rs.500/- forcibly from the first informant's pocket. The applicants snatched his bag and ran away from the spot. The first informant started shouting. Some persons who had gathered there caught the applicants. By that time one police van had arrived there. The applicants were taken in custody by the police and were taken to the Police Station. The first informant went to the Bhiwandi Police Station and lodged his F. I. R. The investigation was carried out. The applicants were searched in presence of panchas. Their search showed that the applicant No. 1 was carrying a revolver and a cartridge and applicant No. 2 was carrying a knife. The said articles were seized. The revolver was sent for Chemical Analysis. Statements of witnesses were recorded and on completion of investigation, the charge-sheet was filed. The case was committed to the Court of Assistant Sessions Judge, Thane.

4. During trial the prosecution examined six witnesses. P. W. 1 Goverdhanbhai Patel was the first informant. PW 2 Irfan Ansari had caught the applicant, PW 3 Ratilal Shah was a panch in whose presence articles were seized from the applicants. PW 4 Sagar Vishnu was police constable attached to Bhiwandi Police Station who had chased the applicants. PW 5 Mohamad Aslam Mohamad Yusuf Ansari had caught the applicant with the help of PW 2. PW 6 PI Bhaskar Bhangale was the investigation officer who drew seizure panchanama.

5. PW 1 Governdhanbhai Patel deposed as to how at about 1.30 pm near Nagrik Bank at Bhiwandi when he was returning home four persons intercepted him. The applicant No. 1 showed revolver and applicant No. 2 showed knife to him and snatched his plastic bag. The applicant No. 2 had removed Rs.500/- from his shirt pocket. He has identified the weapons in the Court. He has further deposed that after the applicants started running away from the spot he started shouting. Members of the public chased the applicants and caught them. In the meantime, the police van came there and both the applicants were taken into custody. PW 1 went to the Police Station and lodged his FIR. It is produced at Exh. 12. In the cross examination, he has deposed that he went to the police station in a police Van. He had seen only two persons out of the four persons who had come there. He has further deposed that he became frightened when knife and pistol were shown

to him and he started shouting only after the applicants had started running. He has further deposed that about 15 to 20 persons chased the applicants. He denied the suggestion that while running the culprits opened fire. The entire incident lasted for about 10 minutes. He had categorically deposed that police had not chased those four persons.

6. PW 2 Irfan Abdul Hanan was one of the persons who had chased and caught the applicant. He has deposed that about 1.30 pm at the time of incident he was sitting in the pandal as he was attending the marriage ceremony of his friend Jamaluddin. He has deposed that the applicants were running on the road and the first informant was shouting. He then caught both the accused near pandal and handed them over to the police. In the cross examination he has deposed that he had not gone to the police station, neither police had taken him to the police station. He has deposed that police had not noted down his name and name of PW 4 Aslam Ansari.

7. PW 3 Ratilal Shah is the panch witness in whose presence police took search of the applicants. He has deposed that the police seized revolver from the applicant No. 1. The police seized the knife and Rs.500/- from the applicant No.2. The articles were seized under panchanama. The panchanama is produced on record at Exh. 17. In the cross examination, he has deposed that the police informed him that the accused were running with the bag and they were caught. He

has admitted that the complainant was known to him. He has further deposed in the cross examination that he was with the police for about 15/20 minutes in Ajantha compound.

8. PW 4 was a police constable attached to Bhiwandi police station. He has deposed that on 4th November, 1995 at about 12.30 pm he along with PSI Bhangale came near Dhamankar Naka, near Nagari Sahakari Bank at Bhiwandi. At that time he saw two persons were running and they were chased by public. PI Bhangale directed him to chase those persons. They were caught by public. When police reached near the accused, they were handed over by the public. He has deposed about search of the applicants.

9. PW 5 Mohammad Aslam Ansari has deposed on the similar lines as deposed by PW 2 Irfan. This witness had helped PW 2 in apprehending the accused. PW 6 PI Bhaskar Bhangale had conducted the investigation. He has deposed that, at about 1.30 pm they came near Ajantha compound. He saw four persons were running and they were chased by the public. Two persons were caught. He called panchas and conducted their search. The articles mentioned earlier were recovered from both the applicants. The first informant was present there who informed about the incident. All of them were taken to Bhiwandi Police Station. The first informant lodged his FIR and after completion of investigation charge-sheet was filed against the

applicants.

10. After recording of evidence, learned Judge recorded the statement of the applicants under Section 313 of Cr. P.C. Accused No. 1 has stated that there was fire near the Naka. Due to apprehension, both of them started running and then police had caught them. The accused No. 2 has stated that he was going to watch a movie in a theater and while he was purchasing tickets, he was caught by the police and was taken to the police station. He was arrested and was implicated in the offence.

11. After recording the deposition of the witnesses and the statement of the accused, the learned Trial Judge heard the arguments. At the conclusion of the trial, he gave his finding that the applicants had committed the offences as mentioned in his judgment. The Trial court accepted the version of the eye witnesses which was consistent. The applicants were caught at the spot.

12. The applicants preferred an Appeal against the judgment and order of the Trial Court. The Appeal was decided by the learned Joint District Judge and Additional Sessions Judge, Thane and vide his order dated 28th February, 2002 dismissed the Appeal by confirming the judgment and order passed by the Trial Court.

13. I have heard learned counsel Shri Sushil Inamdar who was appointed and Mr. Sagar Joshi holding for Mr. S. M. Oak, for the

applicants and learned APP Ms. Kaushik for the State of Maharashtra.

14. It was argued on behalf of the applicants that identification parade was not held and therefore, identity of the applicants was not established. It was further submitted that there is no evidence to show that the deadly weapons were actually used by either of the applicants and therefore, the conviction under Section 397 of I.P.C. was not proper. It was further submitted that the applicants were apprehended on suspicion and the real culprits had ran away. It was further argued that there was no consistency in the versions given by the first informant PW 1 and PW 5.

15. On the other hand, the learned APP submitted that the applicants were caught at the spot with the property and the prosecution was successful in proving the case against the applicants beyond reasonable doubt. With the assistance of the counsel appearing for the parties I have read the evidence and have gone through the record and proceedings. I also considered the reasoning recorded by both the Courts below. After considering all the material, I am of the opinion that there is no error committed by either of the lower Courts in passing the impugned judgments.

16. The main argument on behalf of applicants that no identification parade was held and no description was mentioned in the FIR is not a sound argument in view of the fact that, the applicants

were caught at the spot itself. Both of them were chased after the first informant started shouting. The members of the public had caught them. After the applicants were apprehended when they were searched the amount of Rs.500/- in the denomination of 10 currency notes of Rs.50/- were found with the applicant No. 2. This was entirely consistent with the complaint of the first informant.

17. The PW 2 and PW 5 were independent witnesses and they had nothing to do either with the first informant or with the applicant. Both the witnesses had chased the applicants and had caught them. The applicants were immediately given in custody of the police who came to the spot almost immediately. The incident of chase and subsequent catching of the applicants was also witnessed by PW 4 the police constable. Since the applicants were caught at the spot, it was not necessary to hold any identification parade because, the identity of the applicants was clearly established as they were caught on the spot. Thus, I find that the entire evidence is quite consistent. PW 3 the pancha has also corroborated the prosecution version in respect of search of the applicants.

18. The CA report in respect of the revolver is produced on record at Exhibit 22. The report shows that the weapon recovered from the applicant No. 1 was a single barrel breach loading country made handgun. Along with the said weapon one 8.00 mm rifle cartridge was

also seized from the applicant No. 1. The CA report shows that the handgun was fired earlier and the cartridge was a live cartridge .

19. The defence taken by the applicants was inconsistent with each other. The applicant has taken a defence that he and applicant No. 2 were going together and they started running after hearing shots and thereafter they were caught. However, applicant No. 2 had taken a defence that he had gone to watch a movie and when he was purchasing a ticket, he was caught by police. False defence taken by the accused is an additional circumstance against them. In the instant case, the prosecution has successfully proved that the offence was committed by the applicants. The prosecution case is proved beyond reasonable doubt.

20. It was argued on behalf of the applicants that the offence of section 397 of I.P.C. was not made out because the accused had not used the deadly weapons, though they were found with the weapons. In this context if the evidence of PW 1 perused, it can be seen that the revolver was shown to PW 1 by applicant No.1. In the cross-examination it is revealed that he had got frightened because applicant had showed him the revolver. This Hon'ble Court in the case of **Rajkumar Bikam Dhobi Vs. State of Maharashtra**, ¹ has observed that ;

¹ 1994, 2 Crimes (HC) 467;

“ The word 'used' may also include showing of the blade of the knife in a menacing way so as to give threat or cause fear in the mind of the victim.”

These observations are squarely applicable to the present case. Therefore, it cannot be said that the offence under Section 397 of I.P.C. is not made out.

21. Considering all these aspects, I am of the opinion that, there is no error committed by either of the Courts below and there is no reason to interfere with the judgment and order passed by them. Hence, the following order :

ORDER

The Criminal Revision Application is dismissed.

[SARANG V. KOTWAL,J.]