

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

CRIMINAL APPEAL NO.540 OF 2014

Gurmukhsingh alias Robin
Kashmira Singh,
Aged : 24 years,
R/o : B/V/P/O, Dolan Kalan,
Dist. Ludhiyana (Punjab)
Convict Inmate No. C-8906
Nashik Central Prison, Nashik

.... Appellant
(Ori. Accused no.2)

Vs.

The State of Maharashtra
Through Agripada Police Station

.... Respondent
(Ori. complainant)

Mr. Shantanu R. Phanse, appointed Advocate for the Appellant.
Mr. S.H. Yadav, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 28th November 2018

P.C.:

1 Heard the learned counsel for the parties.

2 The appellant herein is convicted for the offence punishable under Section 392 read with 397 and Section 394 of Indian Penal Code in Sessions Case No. 753 of 2010 vide judgment

and order dated 22nd November 2011 and sentenced to suffer rigorous imprisonment for seven years and fine of Rs.1,000/-, in default to suffer rigorous imprisonment for two months each respectively and all the substantive sentences are to run concurrently. Hence, this appeal.

3 It is the case of the prosecution that on 19th July 2010, Gurmukhsingh engaged Maruti Wagon-R taxi bearing registration number MH-01 JA 4447 at Mumbai Central Railway Station. He was accompanied by other persons. When they were passing through Lower Parel area, the driver of the taxi i.e. Ravindrakumar Kedarnath Jaiswar was directed to take the taxi by Senapati Bapat Road via Mahalaxmi Station. When the taxi reached Elphinstan bridge, one of the accused had brandished country-made revolver and had asked the driver to alight from the taxi. The driving licence, cellphone, taxi badge and cash amount of Rs.800/- was taken from the taxi driver. The driver was pushed out of the taxi. Thereafter driver, Ravindrakumar alongwith his brother had approached

Agripada Police Station and a report was lodged. On the basis of the report, Crime number 138 of 2010 was registered for the offences punishable under Sections 394 read with 34 of Indian Penal Code and under Sections 25 read with 3 of the Indian Arms Act.

4 The complainant Ravindrakumar Kedarnath Jaiswar was examined at Nayar Hospital, Mumbai. Investigation was set into motion and after completion of investigation, the charge-sheet was filed on 28th October 2010. The prosecution has examined as many as ten witnesses to bring home the guilt of accused.

5 The case rests upon the evidence of PW-1, Ravindra Kumar Kedarnath Jaiswar and the police witness. As far as PW-1 Ravindrakumar is concerned, he has deposed in consonance with the F.I.R. The complainant was called to Arthur Road Jail on 9th August 2010 for the purpose of identifying the accused. He had also identified the country-made revolver. He has deposed before the Court that the present appellant was seated on his left side in the taxi and that he was assaulted by the other accused. He had also

identified Sukhdip Singh. It is elicited in the cross-examination that a prior permission is required for plying the taxi out of Mumbai and the driver has to put on the badge as a taxi driver on the pocket of his uniform. The fact that he was assaulted by the person on the rear seat is an omission. In fact the entire narration of the F.I.R. is an omission. As far as the role attributed to each of the accused, there is a contradiction to the extent that he had purchased the taxi from one Sonu for Rs.3,58,000/-. The fact that the person seated next to him had brandished his country-made revolver, had touched the pistol to his body is an omission, however, the learned Sessions Judge has marked that the omission is in respect of bus stop only. It is also admitted in the cross-examination that on the relevant day, Dilip Kumar Jaiswal was plying the taxi in day shift. PW-1 has candidly admitted that he had seen the accused Rahul in the Court for the first time.

6 PW-2, Ajaykumar Radheyshyam Jaiswar is a panch for recovery of country-made pistol, who could not prove the contents of panchanama. He had obliged the police since he was called. He

has admitted that he had not visited the house of the accused. PW-2 also happens to be a taxi driver and was acquainted with the complainant. There is clear admission on the part of PW-2 that he cannot read, write and speak Marathi and is only well versed in Hindi. He has further admitted that unless the documents in Marathi is explained in Hindi, he would not know the contents. In view of this, it is clear that it cannot be said that the panchanama is proved. Similarly PW-3, Nasir Housil Shaikh has acted as a panch witness for the scene of offence from where the taxi was moved. He has also admitted that he is not well versed with Marathi language.

7 PW-4, Smt. Suvidha Satish Sawant was working as Nayab Tahsildar and Executive Magistrate, who has conducted the test identification parade. According to her, she had conducted the test identification parade as per rules. No dent could be created in her evidence.

8. PW-5, Captain Baldev Singh has acted as a panch alongwith Suraj Singh and Manoj. The panchanama was of the house

of one Mr. Nanakchand Dholkia. According to the prosecution, the appellant was residing in the said house and his luggage bags containing clothes were found in the said house. On enquiry, Nanakchand Dholkia had disclosed that the bags belong to his son's friend. The panchanama was written in Marathi. The passport and continuous discharge certificate were found in one of the bag during search of the room. The police had not even enquired whether he could read, write and speak Marathi. In any case, the seizure of bags could be of no significance as the appellant has not been named by the witness.

9 PW-7 Pratap Baburao Kharade was attached to Agripada police station in July 2010. The F.I.R. was lodged at the police station, which is marked at Exhibit 16. He has conducted the investigation himself. According to him, the brother of the complainant had accompanied him to the police station. He has admitted in the cross examination that the vehicle is not registered in the name of the informant and T.T.O. form had not produced before

me. He had not noticed any blood stains on the clothes of the informant and therefore he had not seized them. The complainant had informed PW-7 that he was the owner of the taxi as he had purchased the same. He has proved the omissions of the first informant, which goes to the root of the matter. It is admitted that the first informant had given the correct registration number at the time of filing of the report and had also produced the original documents while lodging F.I.R. He had disclosed that he was the owner of the said vehicle. It is pertinent to note that the complainant had not disclosed the material facts to PW-7 and therefore there is an admission as follows :

“It is true that it is not specifically mentioned in F.I.R. that who pushed him out of the taxi”

10 P.W. 8 Mahesh Himmatrao Ahirrao was on duty as Radio Telephonic Operator Police Constable (RTPC) on 20th July 2010. It was his duty to check vehicles in traffic and conduct blockade. On that day, he alongwith SDPO Ishu Sindhu were at Fakery railway crossing for checking motor vehicles. At about 6.30 to 6.45 pm., they hand-signalled Wagon-R car to stop for inspection. The driver

of car did not stop and had almost driven the car on his person. He fell down and sustained injury to his left eye. PW-8 was taken to the hospital. Since they saw the car, speeding, without paying any heed to their hand-signals, blowing up sirens or flashing the lights, an information was given to Varangaon Road police station on Nagpur highway. There was a blockade at Varangaon. They could not stop the vehicle at Varangaon also and had seen it proceeding towards Nagpur. The vehicle was chased by the police. Through the SDPO, a direction was given to Malkapur police station to block the traffic to the highway, despite that the vehicle did not stop. While passing through Malkapur highway, the said vehicle stuck in a pothole, near Malkapur police station. Three persons alighted from the vehicle and were trying to flee. The police who were chasing were hardly 50 metres away from the spot and they could apprehend the accused. PW-8 had caught hold one of the accused, who tried to snatch service revolver. He released himself from the clutches of PW-2 and had fallen on the ground. The accused were arrested and were taken to Malkapur Civil Hospital for examination, as they had

sustained certain injuries during their scuffle with Police. The accused had disclosed their names.

11 It is pertinent to note that PW-8 had failed to identify the present appellant and had identified him as Rahul Dholkiya. PW-8 has admitted that the panchanama was not drawn of the spot where one round from the maxim of service revolver went missing. There are no arrest panchanamas. The revolver was not sent to ballistics expert. The witness has proved the contents of F.I.R., which is marked at Exhibit 47-A. In fact the evidence of PW-8 does not inspire confidence.

12 Perused the panchanama of seizure of vehicle. The registration number is MH-01 JH 4447. The chassis number of the vehicle is not recorded in the panchanama.

13 PW-10, Sunil Shankarrao Borse was attached to Agripada Police Station as Police Inspector. According to him, the revolver (katta) was seized from the accused and the revolver was having six

chambers. The revolver was sent to the Ballistics expert. The witness had received the memorandum of test identification parade, however, the supplementary statement of the witness was not recorded after conducting test identification parade. It is pertinent to note at this stage that PW-8 has not deposed before the Court that his service pistol was snatched and taken away by the accused. In fact in the cross-examination, he has admitted that he returned the service revolver and only after verification whether there was fire from the said revolver, it was returned to him after noting down missing of one round. He has specifically stated that it was not sent to Ballistics expert. It is to be further noted that the number of the taxi as stated by PW-1 is MH-01-J- 4447 and not MH-01-JA-4447. The report of Ballistics expert is at Exhibit "53".

14 The above discussion would lead to an inference that the intrinsic circumstances speak volumes against the investigation agency and raises considerable suspicion regarding the complicity of the appellant in the present case. The Court cannot be oblivious of the fact that witnesses may lie but not the circumstances. Hence, in

view of this, the appeal deserves to be allowed. Hence, the following order :

ORDER

- i) The appeal is allowed and disposed of.
- ii) The conviction imposed on the appellant vide judgment and order dated 22nd November 2011 in Sessions Case No. 753 of 2010 passed by the Ad-hoc Assistant Sessions Judge, Greater Mumbai is hereby quashed and set aside.
- iii) The appellant is acquitted of all the charges levelled against him.
- iv) Fine amount if paid, be refunded to the appellant
- v) The appellant be released forthwith, if not required in any other offence.
- vi) The professional fees of Rs.7,000/- be paid to the learned advocate appointed to espouse the cause of the appellant within two months from today.

(*Smt. Sadhana S. Jadhav, J*)