

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.307 OF 2013

BHARAT KALYANI BHANUSHALI)...APPELLANT

V/s.

THE SENIOR INSPECTOR OF POLICE & ANR)...RESPONDENTS

WITH

CRIMINAL APPEAL NO.302 OF 2013

SANJAY PREMNATH TRIPATHI)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.N.S.K.Ayubi, Appointed Advocate for the Appellants.

Ms.Purnima Kantharia, Special Public Prosecutor for Dadra and Nagar Haveli, Silvassa.

Mr.Prashant Jadhav, APP for the Respondent – State in Criminal Appeal No.307 of 2013.

Ms.Anamika Malhotra, APP for the Respondent – State in Criminal Appeal No.302 of 2013.

CORAM : A. M. BADAR, J.

DATE : 16th MARCH 2018

ORAL JUDGMENT :

1 Criminal Appeal bearing no.302 of 2013 has been filed by appellant/accused no.1 Sanjay Tripathi whereas Criminal Appeal bearing no.307 of 2013 has been filed by the appellant/accused no.2 Bharat Bhanushali. Both these appeals are required to be taken up for hearing together as they are arising out of judgment and order dated 21st November 2012 passed by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Sessions Case No.1 of 2010, thereby convicting both the appellants/accused persons of the offence punishable under Section 392 read with Section 34 of the Indian Penal Code and sentencing both of them to undergo rigorous imprisonment for 5 years apart from directing them to pay fine of Rs.2,000/- and in default to suffer rigorous imprisonment for 3 months by each of them. They, however, came to be acquitted of the offence punishable under Section 328 of the Indian Penal Code.

2 Facts, in nutshell, leading to the prosecution of both appellants/accused persons can be summarized thus :

- (a) PW3 Mahesh Rathod is owner of Navrang Tour and Travel based at Surat. Innova car bearing registration no.MH-04-CE-7270 which is subject matter of the crime in question was owned by this witness. PW1 Sakir Hussen was the driver employed by PW3 Mahesh Rathod to drive the said Innova car.
- (b) At about 3.00 p.m. of 3rd June 2009, by posing himself as Rajesh Navin Shah, appellant/accused no.1 Sanjay Tripathi contacted PW2 Hiteshbhai Patel – owner of Jai Jalaram Travels at Surat. At that time, he was accompanied by appellant/accused no.2 Bharat Bhanushali. The accused persons requested PW2 Hiteshbhai Patel to provide Innova car on rent for going to Vapi via Ankleshwar and then to return back to Surat. As Innova car was not available with PW2 Hiteshbhai Patel, he contacted PW4 Ankitbhai Singhwala – owner of Om Shree Sai Travels based at Amroli

for providing Innova car on rent. However, such car was not even available with PW4 Ankitbhai Singhwala. Therefore, PW3 Mahesh Rathod was contacted by PW4 Ankitbhai Singhwala for providing Innova car on hire. Hire charges at the rate of Rs.8.50 per kilometer came to be settled. PW3 Mahesh Rathod then directed his driver PW1 Sakir Hussen to take Innova car to Hotel Rupali, Surat, for taking customers to Vapi via Ankeshwar.

- (c) Accordingly, as per directions of his employer, PW1 Sakir Hussen took the Innova car bearing Registration No.MH-04-CE-7270 to Rupali Hotel, Surat. Both appellants/accused persons were standing outside the said hotel. They boarded the Innova car. Then, they all proceeded towards Ankeshwar. At GIDC, Ankleshwar, halt of 20 to 25 minutes was taken for having tea and then PW1 Sakir Hussen accompanied by both appellants/accused persons proceeded towards Vapi by the Innova car. On the way, at Sanman Hotel, they took breakfast. Thereafter, they had a stop at

Alpa Hotel, Chikhli, for having dinner. When they all reached near Vapi, appellants/accused persons told PW1 Sakir Hussen to take the car towards Silvassa on the pretext that they were not having any work at Vapi. On the way to Silvassa, on directions of appellants/accused persons, PW1 Sakir Hussen stopped the car at the premises of ESSAR Petrol Pump at Silvassa. The appellants/accused persons told him that they would wait for arrival of their friend and he may sleep in the car itself. After sometime, appellants/accused persons took out a knife and placed it on throat of PW1 Sakir Hussen. He was beaten by them. Then both appellants/accused persons tied his hands and legs and he was put at the rear side of the Innova car. The appellant/accused no.1 Sanjay Tripathi drove the Innova car. On the way, appellant/accused no.2 Bharat Bhanushali forced PW1 Sakir Hussen to drink the water containing stupefying substance. After making PW1 Sakir Hussen to drink the water containing the stupefying drug, the car was stopped and he was pushed outside the car in the field. The

car was then taken away by both appellants/accused persons.

- (d) After regaining senses, PW1 Sakir Hussen shouted for help. Motorcycle, on which three persons were traveling, stopped responding to his call. Nearby Police Chowki was informed about the incident. PW1 Sakir Hussen also requested the inmates of the approaching car of Tavera make to make a telephonic call to his owner. That is how, PW3 Mahesh Rathod was informed about the incident. PW1 Sakir Hussen was then taken to Vinobha Bhawe Hospital at Silvassa for medical treatment where his First Information Report (FIR) Exhibit 15 came to be recorded by PW8 Ishwarbhai Agri, Police Head Constable. It was then forwarded along with the covering letter Exhibit 34 to the Police station. That is how the crime in question came to be registered at Police Station Silvassa and investigation started. During the course of investigation, information about highway robbery came to be transmitted to the Police Stations at Maharashtra as well as Gujarat.

- (e) On 5th June 2009, Police Sub Inspector A.I.Mane attached to Crime Branch, Kurla, received information that appellant/accused no.2 Bharat Bhanushali is going to sell the stolen car within the jurisdiction of Kurla Police Station, Mumbai. Therefore, a police team was deputed to the spot which was near Kamran Hotel, Kurla. PW10 Ishwara Mane, Police Head Constable, as well as PW11 Anagha Satavase, Police Sub-Inspector, were members of the raiding team along with other police personnels. At about 5.30 p.m. of 5th June 2009, the Innova car bearing Registration No.MH-04-CE-7270 came and stopped near footpath in front of Kamran Hotel of Kurla. One out of the two persons, who were inside the car, came out and started chitchatting with the person on the steering wheel of the Innova car. They were surrounded by the members of the raiding team. Panch witnesses PW9 Deepak Jagtap and PW12 Anand Varma were called. Personal search of both those persons whose identities were subsequently revealed as

appellant/accused no.1 Sanjay Tripathi and appellant/accused no.2 Bharat Bhanushali, was conducted. In personal search of appellant/accused no.2 Bharat Bhanushali, a country made revolver with two cell phones etc. were found, whereas in personal search of appellant/accused no.1 Sanjay Tripathi, the key of the car and two cell phones etc. were found. In the dash board of the Innova car, a purse containing driving license and PAN Card in the name of PW1 Sakir Hussen apart from two cell phones were found. Apart from this, from personal search of appellant/accused no.2 Bharat Bhanushali, driving license in the name of Rajesh Navin Shah but having photograph of appellant/accused no.2 Bharat Bhanushali was also found. By preparing panchnama Exhibit 36, those articles were seized. Necessary intimation was then given to Police Station Silvassa in respect of arrest of appellants/accused persons and seizure of Innova car. Under transfer warrant, the appellants/accused persons were then handed over in custody of Police Station Officer Silvassa.

- (f) PW14 Chhayaben Tandel, Police Sub-Inspector of Silvassa Police Station, then arranged for conducting Test Identification Parade of appellants/accused persons. The same was conducted by PW7 Dineshkumar Datta, Mamlatdar and Executive Magistrate, in presence of panch witness PW6 Manish Shah. PW1 Sakir Hussen identified both appellants/accused persons as the robbers. The spot was inspected and panchnama Exhibit 24 was prepared. On completion of investigation, appellants/accused persons were charge-sheeted.
- (g) After framing and explaining the Charge to them, the appellants/accused persons pleaded not guilty and claimed trial. In order to bring home the guilt to the appellants/accused persons, the prosecution has examined in all fourteen witnesses. Defence of the appellants/accused persons is that of total denial. They, however, did not enter in the defence.

(h) After hearing the parties, by the impugned judgment and order dated 21st November 2012 passed in Sessions Case No.1 of 2010, the learned trial court was pleased to convict both appellants/accused persons of the offence punishable under Section 392 read with 34 of the Indian Penal Code and they are accordingly sentenced as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Nasreen Ayubi, the learned advocate appearing for appellants/accused persons at sufficient length of time. She had taken me through the deposition of all prosecution witnesses and submitted that the entire evidence of the prosecution is discrepant and lacunic. The Test Identification Parade was conducted after more than one month and there is no evidence on record to show that the identifying witnesses had no opportunity to see appellants/accused persons during the said period of more than one month. The learned advocate further argued that evidence of PW1 Sakir Hussien is discrepant and his tendency to make exaggerations makes the said evidence

unbelievable and as such, the same cannot be made foundation for convicting appellants/accused persons. She drew my attention to the various improvements made by PW1 Sakir Hussen during the course of his statement before the court by comparing it with the FIR Exhibit 15 lodged by him. The learned advocate further submitted that both appellants/accused persons were called at the police station and they are falsely implicated in the crime in question.

4 Ms.Kantharia, the learned Public Prosecutor appearing for the prosecuting agency, submitted that even if evidence of Test Identification Parade is ignored, PW1 Sakir Hussen was having ample opportunity to see both appellants/accused persons during their journey from Surat to Vapi and then towards Silvassa. The car which was robbed from possession of PW1 Sakir Hussen was ultimately found immediately with both appellants/accused persons. From that car, driving license and PAN Card of PW1 Sakir Hussen is seized and this evidence is sufficient to uphold the conviction.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings including the oral as well as documentary evidence.

6 Innova car bearing Registration No.MH-04-CE-7270 owned by PW3 Mahesh Rathod was taken on hire on the pretext of going to Vapi and then coming back to Surat by appellants/accused persons, as seen from the prosecution case. Appellants/accused persons did not contact PW3 Mahesh Rathod who was running Jai Jalaram Travels at Surat but the car was hired through PW2 Hiteshbhai Patel and PW4 Ankitbhai Singhwala. Evidence of PW2 Hiteshbhai Patel as well as that of PW4 Ankitbhai Singhwala and PW3 Mahesh Rathod is congruous and consistent in establishing the background facts leading to the taking of the Innova car by appellants/accused persons. It is seen from evidence of PW2 Hiteshbhai Patel, owner of Jai Jalaram Travels, Surat, that at about 3 p.m. of 3rd June 2009, posing himself as Rajesh Navin Shah, appellant/accused no.1 Sanjay

Tripathi came to his office along with appellant/accused no.2 Bharat Bhanushali. They requested PW2 Hiteshbhai Patel to provide Innova car on hire for going to Vapi via Ankleshwar and then for coming back to Surat. It is seen from evidence of PW2 Hiteshbhai Patel that car of Innova make as requisitioned by appellants/accused persons was not available with him and therefore, he contacted PW4 Ankitbhai Singhwala of Om Shree Sai Travels, Amroli. PW4 Ankitbhai Singhwala is vouching this fact by stating that he got a phone call from PW2 Hiteshbhai Patel enquiring about availability of Innova car on hire but as the Innova car was not available with him, he telephonically contacted PW3 Mahesh Rathod of Navrang Travels, Surat and PW3 Mahesh Rathod consented for giving Innova car on hire at the hiring charges of Rs.8.50 per kilometer. In tune with version of these two witnesses, PW3 Mahesh Rathod has deposed that on 3rd June 2009, at about 3.00 p.m, he got a telephonic call from PW4 Ankitbhai Singhwala enquiring him as to whether car of Innova make is available for hiring it out to the customers for travel via Ankleshwar to Vapi and then for coming back to Surat.

PW3 Mahesh Rathod has further deposed that he informed PW4 Ankitbhai Singhwala regarding availability of his Innova car bearing Registration No.MH-04-CE-7270 and hire charges were then fixed at Rs.8.50 per kilometer. It is seen from evidence of PW3 Mahesh Rathod that as per instructions of PW4 Ankitbhai Singhwala, he sent his Innova car along with his driver PW1 Sakir Hussen to Rupali Hotel at Surat for collecting the passengers for their journey to Surat.

7 Cross-examination of all these three witnesses could not yield any material to doubt their testimony. PW2 Hiteshbhai Patel, with whom appellants/accused persons contacted, had not collected the documents regarding identity proof of appellants/accused persons, one of whom had posed himself as Rajesh Navin Shah. However, this infirmity is not fatal to the prosecution case because no car of Innova make was available with PW2 Hiteshbhai Patel and therefore, he had requested PW4 Ankitbhai Singhwala to arrange for the car of Innova make. As such, it was not necessary for PW2 Hiteshbhai Patel to collect documents of

identity from appellants/accused persons. Evidence of PW2 Hiteshbhai Patel regarding identification is also not shattered during the course of his cross-examination. From cross-examination of PW3 Mahesh Rathod – owner of Innova car, it has been brought on record that PW1 Sakir Hussen was driving his car since six to eight months prior to the incident in question. This fact is cementing the version of PW3 Mahesh Rathod that he had sent PW1 Sakir Hussen along with Innova car to Rupali Hotel for collecting the passengers i.e. appellants/accused persons.

8 What happened next which constitutes the offence of robbery on highway is coming on record through evidence of PW1 Sakir Hussen, who was driver of Innova car, which was later on hired to appellants/accused persons, as seen from version of PW2 Hiteshbhai Patel, PW3 Mahesh Rathod and PW4 Ankitbhai Singhwala. It is in evidence of PW1 Sakir Hussen that his employer PW3 Mahesh Rathod had directed him to take the Innova car bearing Registration No.MH-04-CE-7270, of which, he was the driver, to Rupali Hotel at Surat for collecting two

customers and taking them to Vapi. PW1 Sakir Hussen candidly stated before the court that he reached Rupali Hotel at about 5.30 p.m., where he found both appellants/accused persons standing outside that hotel. They both boarded the Innova car and asked him to proceed towards Ankkeshwar. PW1 Sakir Hussen has deposed about the details of the journey by stating that initially they took halt at GIDC Ankleshwar for having tea. That halt was for 20 to 25 minutes. Then onwards journey started and the next halt was at Sanman Hotel where appellants/accused persons took breakfast and tea. Further journey towards Vapi was then broken to take halt at hotel named "Alpa" at Chikhli, where appellants/accused persons took dinner. Then they all left that hotel to proceed further towards Vapi. As deposed by PW1 Sakir Hussen, when they reached near Vapi, appellants/accused persons told him that they want to go to Silvassa as they did not have any work at Vapi. Then, their journey towards Silvassa started. It is seen from evidence of PW1 Sakir Hussen that preparation for committing robbery started at 1.00 a.m. of the night intervening 3rd June 2009 and 4th June 2009. At about 1.00 a.m. of 4th June

2009, as stated by PW1 Sakir Hussen, appellants/accused persons asked him to park the car for taking rest. They further informed him that their friend from Vapi was coming and he has bungalow at Silvassa and therefore, they needed to wait. That is how, appellants/accused persons got the Innova car stopped at the ESSAR Petrol pump near Silvassa by breaking the journey.

9 PW1 Sakir Hussen further deposed that after parking the car at the premises of ESSAR petrol pump near Silvassa, appellants/accused persons asked him to take rest or sleep for about two hours in the car itself, as they were waiting for arrival of their friend. He further deposed that he then rested at the driving seat of the Innova car and woke up on being assaulted by appellants/accused persons. Appellant/accused no.1 Sanjay Tripathi put knife on his neck. His clothes were removed and he was tied with the help of rope. His mouth was tied by cloth and he was pushed to the rear side of the Innova car. Appellant/accused no.2 Bharat Bhanushali then sat besides him whereas appellant/accused no.1 Sanjay Tripathi took charge of

the steering wheel of the car. The car then proceeded and traveled for about fifteen minutes.

10 PW1 Sakir Hussen has stated before the court that then appellants/accused persons informed him that they are not intending to kill him, but they are administering a stupefying substance mixed with water to him. Thereafter, cloth tied to his mouth came to be removed. Appellant/accused no.2 Bharat Bhanushali then forced him to drink the water containing the stupefying substance. After thirty minutes, appellants/accused persons checked him in order to ascertain whether he was conscious or not. He pretended to be in unconscious state. Thereafter, the car was stopped and he was pushed from the car in an open place. Appellants/accused persons then fled from that spot by taking with them the Innova car. This is the statement of PW1 Sakir Hussen regarding the incident of robbing him of the Innova car, of which he was the driver.

11 What happened next is stated by PW1 Sakir Hussen in further part of his evidence. As per his version, he then saw three persons coming on a motorcycle. He narrated the incident to them and they assured to chase the car and left. Thereafter, he noticed approaching Tavera car and stopped it. He narrated the incident to the driver of the car. From his cell phone, the incident was disclosed to his employer PW3 Mahesh Rathod. Thereafter, the driver of Tavera car, on request of PW3 Mahesh Rathod, took him to Police Station, from where he was taken to Vinobha Bhave Hospital, as he became unconscious at the Police station. PW1 Sakir Hussen has deposed that at Vinobha Bhave Hospital, his report Exhibit 15 came to be recorded.

12 The star witness for the prosecution was cross-examined at length and it has been brought on record that this witness has not stated to police while recording his FIR that - the person sitting in the rear seat pointed out knife on his neck, driver of the car asked him to drink the liquid, appellant/accused no.1 Sanjay Tripathi asked appellant/accused no.2 Bharat Bhanushali

to put a revolver on his head and to remove the cloth tied to his mouth. He had not stated that his driving license, purse and two cell phones were kept in the Innova car, when it was taken by appellants/accused persons. Similarly, this witness was unable to assign any reason as to why the exact timings are also not mentioned in the FIR. His post event narration regarding stopping the car of Tavera make, contacting his employer etc. are also coming on record by way of omission in the FIR.

13 With the aid of this material, as stated in the foregoing paragraphs, evidence of PW1 Sakir Hussen is criticized by stating that he has tendency to put embellishments to his version and therefore, his evidence cannot form the basis to convict appellants/accused persons. Firstly, it needs to be mentioned here that the FIR is not an encyclopedia of the crime. What is required to be stated in the FIR are the facts constituting commission of cognizable offence. The First Informant is not supposed to give all details about the incident in the FIR. Moreover, in the case in hand, evidence of PW1 Sakir Hussen shows that some stupefying

substance was administered to him from water and on reaching the police station, he became unconscious, and therefore, he was admitted to Vinobha Bhave Hospital at Silvassa. This fact is corroborated by evidence of PW13 Dr.Ramesh Patel, working in the said hospital. Evidence of this witness shows that on 4th June 2009, at about 5.30 p.m., PW1 Sakir Hussen was admitted in the hospital by staff of Police Station Silvassa. Thus, under the shock of the incident and in the state of dizziness, the FIR came to be lodged by PW1 Sakir Hussen, while being admitted at the Vinobha Bhave Hospital of Silvassa. It is not expected of him to narrate minute details of the incident at such delicate state of health after suffering the trauma of robbery.

14 The matter was viewed from another angle also. “*Falsus in uno falsus in omnibus*” is a theory not accepted by Indian Jurisprudence. It is the duty of the court to sift the grains of truth from the chaffe. The improvements or omissions of the witness, unless goes to the root of the matter, cannot demolish the entire prosecution case. The witness may go on adding embellishments

to his version, perhaps, for the fear of his testimony being rejected by the court. The court, however, should not disbelieve the evidence of such witness altogether, unless such witness is otherwise untrustworthy. Minor discrepancies in version of such witness are required to be ignored, as they are result of shock, trauma and horror suffered by the witness at the time of occurrence leading to disturbed mental disposition. In the case in hand, version of PW1 Sakir Hussien, so far as it relates to tying him, pushing him out of the Innova car and robbing him of the Innova car, of which he was the driver by appellants/accused persons, is not shaken at all. Improvements, allegedly, made by this witness over the FIR lodged by him soon after the incident does not go to the root of the case. Evidence of this witness is in general agreement and consistent with the substratum of the prosecution case and the same is duly corroborated by the evidence of other witnesses, namely, PW2 Hiteshbhai Patel, PW3 Mahesh Rathod and PW4 Ankitbhai Singhwala.

15 While in the witness box, PW1 Sakir Hussen has duly identified appellants/accused persons as the robbers who robbed the Innova car from him. Prior to that, in the Test Identification Parade held on 23rd July 2009 by PW7 Dineshkumar Datta - Executive Magistrate, in presence of PW6 Manish Shah – panch witness, PW1 Sakir Hussen had identified both appellants/accused persons. Perusal of evidence of this First Informant goes to show that during the course of adducing evidence, he has ascribed and described the specific role played by each appellants/accused persons during the course of robbery. Specific acts are attributed by this witness to appellants/accused persons. As stated in foregoing paragraphs, PW1 Sakir Hussen was in company of both appellants/accused persons right from 5.30 p.m. of 3rd June 2009 till about 2 a.m. of 4th June 2009. He had traveled with both of them from Surat to Ankleshwar and then Vapi, and thereafter towards Silvassa. They had taken various breaks during this journey for having tea, breakfast as well as dinner. The journey was broken near Silvassa on the pretext of waiting for arrival of the friend of appellants/accused persons for sufficient length of

time. Thus, because of sufficient length of time for which PW1 Sakir Hussen was in company of appellants/accused persons, he had ample opportunity to see both appellants/accused persons and therefore, evidence regarding identification of appellants/accused persons by this witness cannot be doubted.

16 Now let us examine whether evidence of PW1 Sakir Hussen is further corroborated by other evidence adduced on record by the prosecution. Evidence of PW14 Chhayaben Tandel, Police Sub-Inspector, Silvassa Police Station, shows that after registering the FIR, she sent information about the commission of crime of robbing the car of Innova make to all police stations situated in the state of Maharashtra as well as state of Gujarat. Thereafter, on 9th July 2009, she received a communication Exhibit 53 from the Assistant Commissioner of Police, DCB Unit No.5, Kurla, intimating arrest of appellants/accused persons and seizure of the said Innova car.

17 Events leading to arrest of appellants/accused persons and seizure of Innova car which came to be robbed from possession of PW1 Sakir Hussen are unfolded by evidence of PW10 Ishwara Mane, Police Head Constable of Crime Branch, Kurla and PW11 Anagha Satavase, Police Sub-Inspector Crime Branch, Kurla, as well as panch witnesses PW9 Deepak Jagtap and PW12 Anand Varma. Congruous evidence of PW10 Ishwara Mane, Police Head Constable and PW11 Anagha Satavase, Police Sub-Inspector shows that on 5th June 2009, information was received by the police that two persons are coming near Kamran Hotel near Kurla for selling stolen Innova car. Therefore, team of police personnel came to be deputed to the said spot and PW10 Ishwara Mane, Police Head Constable and PW11 Anagha Satavase, Police Sub-Inspector were members of that police team. It is seen from evidence of both these witnesses that at about 5.30 p.m. of 4th June 2009, Innova car bearing Registration No.MH-04-CE-7270 came on the spot. Out of two inmates of that car, one person got down and started chitchatting with the person on the steering wheel of that car. Police team surrounded them and thereafter,

panch witnesses PW9 Deepak Jagtap and PW12 Anand Varma were summoned.

18 Evidence of these four witnesses shows that PW11 Anagha Satavase, Police Sub-Inspector, questioned those two persons. One of them told his name as Bharat Bhanushali (appellant/accused no.2). His personal search resulted in recovery of a country made revolver with live cartridges as well as two cell phones etc. A driving licence in the name of Rajesh Navin Shah but having photograph of appellant/accused no.2 Bharat Bhanushali was also recovered from him in the personal search. The other person, who disclosed his name as Sanjay Tripathi (appellant/accused no.1) was also searched by police in presence of panch witnesses and from him keys of the car as well as cell phones etc. came to be recovered. Evidence of all these four witnesses further shows that search of Innova car resulted in recovery of a purse containing driving license and PAN card of PW1 Sakir Hussien as well as two cell phones. All these articles were seized by police from Crime Branch Kurla, Mumbai, vide

Seizure Panchnama Exhibit 36. There is nothing in cross-examination of all these four witnesses to disbelieve their version about apprehending appellants/accused persons on 5th June 2009, at about 5.30 p.m. along with the robbed Innova car bearing Registration No.MH-04-CE-7270. On the contrary, from cross-examination of PW9 Deepak Jagtap it is brought on record that the police stopped the vehicle by encircling it and pulled out the person sitting in the car. Thus, this material elicited in the cross-examination of the witness is in tune with the prosecution case. Suffice to state that I see no reason to disbelieve congruous version of all four witnesses which demonstrated that appellants/accused persons were caught by police with the robbed Innova car.

19 At this stage, it is apposite to quote provisions of Section 14 along with Illustration (a) thereto, which reads thus :

“Section 114 - Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural

events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations :

The Court may presume -

(a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;”

20 Thus, the subject Innova car which was robbed from possession of PW1 Sakir Hussen, at about 2.00 a.m. of 4th June 2009, was found in possession of both appellants/accused persons at about 5.30 p.m. of 5th June 2009. It was robbed from the place near Silvassa and was found with appellants/accused persons at Kurla in Mumbai. Thus, soon after commission of robbery, appellants/accused persons were found in possession of the robbed Innova car bearing Registration No.MH-04-CE-7270. This fact established by the prosecution leads to raising presumption that both appellants/accused persons who were in possession of the robbed Innova car, were the robbers thereof.

21 Apart from this, evidence of PW6 Manish Shah, panch witness, and PW7 Dineshkumar Datta, Executive Magistrate, shows that on 23rd July 2009, First Informant PW1 Sakir Hussen has duly identified both appellants/accused persons in the Test Identification Parade.

22 In the result, the prosecution has established that both appellants/accused persons in furtherance of their common intention committed robbery of Innova car bearing Registration No.MH-04-CE-7270 owned by PW3 Mahesh Rathod from possession of PW1 Sakir Hussen after assaulting him. Therefore, no fault can be found in the conviction of appellants/accused persons for the offence punishable under Section 392 read with 34 of the Indian Penal Code. Similarly, the learned trial court has already adopted a lenient view in imposing the sentence of only 5 years rigorous imprisonment on appellants/accused persons though the incident was that of highway robbery committed in the midnight. The appeals, therefore, fail, and as such, the order :

ORDER

i) Both appeals are dismissed.

(A. M. BADAR, J.)