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

CRIMINAL APPEAL NO.1033 OF 2012

Jalindersing Ajitsing Kalyani

..Appellant.

Vs

The State of Maharashtra

..Respondent

Smt. Nasreen S.K. Ayubi, Advocate appointed for Appellant.
Ms. V.S. Mhaispurkar, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 20th APRIL 2018.

ORAL JUDGMENT:

1] The present appeal is directed against the Judgment and Order dated 28th April 2012 passed by the learned Additional Sessions Judge Pune in Sessions Case No.160 of 2008 arising out of C.R. No.218 of 2006 registered with Bhosri Police Station, Pune, thereby convicting the appellant under Sections, 395, and 457 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years on each count and to pay total fine amount of Rs.10,000/-.

The said Judgment and Order dated 28th April 2012 is impugned herein.

2] By an Order dated 12th September 2014, Smt. Nasreen S.K. Ayubi, the learned Advocate was appointed to espouse the case of the appellant.

Heard Smt. Nasreen Ayubi, the learned Counsel appointed by this Court for the appellant and the learned APP. Perused the record.

3] The prosecution case in brief is as under:-

(i) In the intervening night of 21.6.2006 and 22.6.2006 and particularly in the wee-hours of 22.6.2006 i.e. between 3.00 a.m to 4.00 a.m the appellant along with four other accused persons broken open the door of the house of Shri Mangesh Patil (PW No.1) and committed criminal trespass in his house. That the appellant was holding a sword in his hand. The co-accused Lalsingh Dagar (accused No.7) was holding country made fire-arm. The appellant and other accused by putting the inmates of the house i.e. Shri Mangesh Patil (PW No.1), Smt. Sandhya Patil (PW No.2) and their two children under the fear of death, robbed the ornaments and other valuables from the cupboard. That a bulb in the passage of the said building was burning and in the light of the said bulb initially Shri Mangesh Patil and Smt. Sandhya Patil had an occasion to see the appellant while

committing dacoity in their house. The appellant and other accused persons threatened the inmates to switch off the other lights. The incident of dacoity was going on for about 15 to 20 minutes. Thereafter the appellant and other accused left the said premises by locking the main door of the said house from outside. While leaving the house, the appellant and other accused persons threatened the inmates of the house of dire-consequence, if they raise alarm or noise.

(ii) After the appellant and other accused persons left the said house, the inmates of the said house raised alarms whereupon the neighbours gathered there. It was revealed that, the appellant and co-accused had also committed dacoity in the house of Shri Kolte which was situated on the ground floor of the said building.

(iii) The first information report of Mr. Mangesh Patil (PW No.1) came to be lodged and was reduced in writing by Shri Rajendra Dhamankar (PW No.5), Police Officer attached to Bhosri Police Station, Pune. The investigation was thereafter conducted by Shri Karbhari Handore (PW No.7) A.P.I. attached to the said Police Station. During the course of investigation, the appellant came to be arrested on transfer warrant, as he was also involved in another crime bearing No.426 of 2006 registered with

Swargate Police Station, Pune and was arrested by Shri Bajirao Jagtap (PW No.8), an officer attached to Anti-Dacoity Cell. The Investigating Agency recovered various ornaments which came to the share of the appellant in the presence of panch-witness Shri Mangesh Waikar (PW No.4).

(iv) After completion of investigation, the police submitted chargesheet in the Court of competent jurisdiction. As the offence under Section 395 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The Trial Court framed charge below Exhibit-8 for the offences punishable under Sections 395, 457 and 380 of the Indian Penal Code. The said charge was read over and explained to the appellant and other accused to which they denied and claimed to be tried. The prosecution in support of its case, examined in all eight witnesses. The learned Trial Court after recording the evidence and after hearing the parties to the said case, was pleased to convict the appellant by its impugned Judgment and Order dated 28th April 2012 as stated hereinabove.

4] The record indicates that, Shri Mangesh Patil (PW No.1) in his testimony has clearly stated that, the incident of dacoity was continued for a period of about 15 to 20 minutes and he and his wife had sufficient

opportunity to observe the appellant and other accused during the said period though the faces of the accused persons were partly covered, they also observed the stature of the accused persons. The Test Identification Parade has been conducted by Shri Sandesh Shirke (PW No.6), Nayab Tahsildar of Haveli, District-Pune and Special Executive Officer wherein Shri Mangesh Patil (PW No.1) and Smt. Sandhya Patil (PW No.2) have identified the appellant and other accused persons in the said test identification parade. Apart from the identification in the test identification parade by the said two witnesses, they have also identified the appellant and other accused persons during the course of recording of substantive evidence in the Court. The evidence of Smt. Sandhya Patil duly corroborates the versions of Shri Mangesh Patil.

5] Thus the identification of the appellant by PW Nos.1 and 2 is proved beyond reasonable doubt. The evidence on record further indicates that, after the arrest of appellant, recovery of the ornaments has been effected at his instance in the presence of Panch-witness Shri Mangesh Waikar (PW No.4). The police have recovered gold ornaments weighing one kilogram and silver ornaments/articles weighing forty-five kilograms at the instance of the appellant from the shop namely Parvati Jewellers,

owned by Mr. Mannaram Prajapati situated at Ramtekdi, Pune. The said gold and silver ornaments was the share of the appellant not only in the present crime, but also from other crimes committed by the appellant alongwith other accused persons. Shri Mangesh Patil (PW No.1) and Smt. Sandhya Patil (PW No.2) have identified their ornaments such as necklaces and bangles as has been mentioned in the first information report.

6] Thus there is sufficient evidence against the appellant to show his involvement in the present crime. The modus-operandi adopted by the appellant alongwith other accused is undoubtedly serious in nature and does not deserve any leniency, even if certain minor contradictions and/or omissions are brought on record by the defence.

After assessing the entire evidence on record, this Court is of the considered view that the Trial Court has not committed any error while convicting and sentencing the appellant by the impugned Judgment and Order.

7] I find no merits in the present appeal.

Appeal is accordingly rejected.

8] Before parting with the judgment, this Court deems it appropriate to place on record a word of appreciation for the efforts put in

by Smt. Nasreen S.K. Ayubi, the learned Counsel appointed for appellant in ablely assisting this Court. Her professional fees are quantified at Rs.5000/- to be paid to him by the High Court Legal Services Committee. The professional fees be paid within a period of four weeks from the date of receipt of this Order.

Office to communicate this order to the appellant who is presently lodged in Yerawada Central Prison, Pune.

(A.S.GADKARI, J.)