

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.495 OF 2017
WITH
CRIMINAL APPLICATION NO.1694 OF 2018
IN
CRIMINAL APPEAL NO.495 OF 2017**

ROBERT SAMSUNG GEORGE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Aniket Vagal, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 26th OCTOBER 2018

JUDGMENT :

1 This appeal is taken up for final hearing as the appellant/accused has already undergone major part of sentence imposed upon him by the learned trial court, as he was an under trial prisoner even during the trial.

2 The appellant/accused, by this appeal, is challenging the judgment and order dated 29th April 2017 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.351 of 2015, thereby convicting him of the offence punishable under Section 397 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years.

3 Facts in brief, leading to the prosecution of the appellant/accused, are thus :

- (a) First Informant/ PW1 Akhtar Hussain was the owner of a meat shop situated at Uday Nagar, Machhi Market, Saki Naka, Mumbai. On 19th September 2014, at about 11.10 a.m., the appellant/accused who was known to the First Informant / PW1 Akhtar Hussain came to his shop and demanded *hafta* of Rs.5,000/-. PW1 Akhtar Hussain refused to pay the amount sought to be extorted by the appellant/accused.

- (b) The incident in question allegedly took place at 7.15 a.m. of 21st September 2014. PW1 Akhtar Hussain was busy in selling the meat at that time. Workers including his nephew PW3 Badruddin Qureshi were working in the shop. Customers including PW5 Sahabu Khan were also present in the shop. At that time, appellant/accused Robert came to the meat shop of PW1 Akhtar Hussain and threatened that if PW1 Akhtar Hussain wants to do business in his area, then PW1 Akhtar Hussain needs to pay *hafta* to him. PW1 Akhtar Hussain resisted. Thereupon, appellant/accused Robert took out a chopper and kept it on neck of PW1 Akhtar Hussain. Then, he snatched an amount of Rs.2,550/- kept in left shirt pocket of PW1 Akhtar Hussain. When PW1 Akhtar Hussain started shouting and as some people gathered there, the appellant/accused whipped a chopper in air and threatened the public at large not to interfere or intervene in the matter. The incident was then telephonically reported to police help line by dialing 100

number. Mobile van came to the spot of the incident but by then the appellant/accused left the spot.

- (c) PW1 Akhtar Hussain then went to Police Station Saki Naka and lodged report at about 9.00 a.m. of 21st September 2014 itself. The said report was recorded by PW10 Kanif Gavali, Police Sub-Inspector. Accordingly, Crime No.467 of 2014 for offences punishable under Sections 385, 397 and 504 of the Indian Penal Code came to be registered against the appellant/accused.
- (d) PW6 Hiralal Dabhade, Assistant Sub-Inspector, was on patrolling duty on 21st September 2014. When he was at Saki Naka area, he was informed by one person that somebody is lying near fish market of Uday Nagar. This witness then found the appellant/accused with some injuries on his person. While lifting the appellant/accused for taking him to the hospital, PW6 Hiralal Dabhade, Assistant Sub-Inspector, noticed the fact that the appellant/accused was

having a pointed weapon like chopper kept at his left backside. The appellant/accused was treated at Rajawadi hospital and then he was brought to Saki Naka Police Station where the chopper came to be seized. The spot came to be inspected in presence of panch witness PW2 Amuddin Qureshi. According to the prosecution case, on the basis of voluntary disclosure statement made by the appellant/accused, an amount of Rs.2550/- came to be recovered from the tin sheets of the roof of his house, in presence of panch witness PW4 Riyajuddin Ismail.

- (e) On completion of routine investigation, the appellant/accused came to be charge-sheeted for offences punishable under Sections 385, 397 and 504 of the Indian Penal Code. Accordingly, the learned trial court framed and explained the Charge, to which the appellant/accused pleaded not guilty. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all eleven witnesses. The defence of the appellant/accused was

that of total denial. After hearing the parties, the learned trial court was pleased to convict the appellant/accused for the offence punishable under Section 397 of the Indian Penal Code and accordingly he is sentenced, as indicated in the opening paragraph of this judgment.

4 I have heard Shri Aniket Vagal, the learned appointed counsel for the appellant/accused, at sufficient length of time. He argued that evidence of the prosecution is discrepant and inconsistent. PW1 Akhtar Hussain has deposed that after the alleged incident, his nephew PW3 Badruddin Qureshi had called the police by dialing 100 number whereas PW3 Badruddin Qureshi is stating that it was PW1 Akhtar Hussain who called police by making a phone call from cell phone of this witness. The learned counsel further argued that though it is alleged by the prosecution that the amount was seized at the instance of the appellant/accused, the same was not produced before the court. This is clear from evidence of PW4 Riyajuddin Ismail. It is further argued that evidence of PW6 Hiralal Dabhade, Assistant Sub-

Inspector, shows that the appellant/accused along with the chopper were entrusted in custody of PW10 Police Sub-Inspector Kanif Gavali. The chopper was not seized by police by sealing it. Therefore, possibility of planting the chopper cannot be ruled out. It is further argued that though as per version of PW6 Hiralal Dabhade, Assistant Sub-Inspector, the appellant/accused was found at about 9.45 a.m. of 21st September 2018, he was sent to the hospital at about 11.25 a.m. of that day. What happened in between is not explained by the prosecution. With this, he prayed that the appellant/accused is entitled for acquittal.

5 The learned APP opposed the appeal by supporting the impugned judgment and order by arguing that witnesses examined by the prosecution which include three eye witnesses to the incident cannot be disbelieved by giving importance to the minor inconsistencies.

6 I have considered the rival submissions and also perused the record and proceedings including oral and documentary evidence adduced by the prosecution.

7 PW1 Akhtar Hussain is the star witness to the incident in question, he being the victim of the crime in question. His evidence unerringly points out that initial demand of *hafta* was made to him by the appellant/accused on 19th September 2014. It was for an amount of Rs.5,000/-. This witness refused to pay heed to the demand of the appellant/accused. Then, the incident in question took place in the morning hours of 21st September 2014. As per version of this witness, at that time, he as well as his labourers were working in the shop and customer named PW5 Sahabu Khan was also present in his shop. This fact is gaining corroboration from the First Information Report (FIR) lodged by PW1 Akhtar Hussain within two hours from the incident. PW1 Akhtar Hussain, who happens to be the First Informant, has candidly deposed that the appellant/accused came to his shop on that day, put chopper on his neck, drew an amount of Rs.2550/- from his shirt pocket and thereafter, whipped the chopper in the air for threatening others. As stated by this witness, then a boy working in his shop rang the police control room by calling on number 100 and police came there. However, by that time, the

appellant/accused left his shop. He, therefore, went to the police station and lodged report Exhibit 14.

8 Despite searching cross-examination of PW1 Akhtar Hussain, nothing came on record to disbelieve his version about the incident in question. His evidence is consistent and cogent. It is duly corroborated by the FIR lodged with promptitude.

9 PW3 Badruddin Qureshi is the eye witness to the incident, he being a worker working in the meat shop of PW1 Akhtar Hussain, at the time of the incident. Incidentally, this witness happens to be nephew of PW1 Akhtar Hussain. This witness has spoken about the initial demand of *hafta* by the appellant/accused from PW1 Akhtar Hussain. So far as the incident is concerned, PW3 Badruddin Qureshi candidly deposed that at about 7.00 a.m. of that date, the appellant/accused came and demanded *hafta* from PW1 Akhtar Hussain. PW1 Akhtar Hussain protested. Thereafter, as stated by PW3 Badruddin Qureshi, the appellant/accused took out an amount of Rs.2550/-

from rear pant pocket of PW1 Akhtar Hussain and when PW1 Akhtar Hussain shouted, the appellant/accused whipped out a knife and pointed it at the neck of PW1 Akhtar Hussain. He threatened others also. PW3 Badruddin Qureshi stated that then by using his cell phone, PW1 Akhtar Hussain called police control room by dialing number 100. He further deposed that, thereafter, PW1 Akhtar Hussain along with PW5 Sahabu Khan went to the police station. In cross-examination this witness admitted that he had not given description of the chopper as well as that of accused Robert.

10 Perusal of evidence of this witness, as such, clearly shows that this witness deposed in tune with the prosecution case. Minor discrepancy in his evidence regarding the pocket from where the amount was snatched needs to be ignored because the incident of such nature creates terror in the mind of the victim and the witness, and therefore, at the time of adducing evidence they may not recollect events in proper sequence. Suffice to state that this witness has also corroborated version of PW1 Akhtar

Hussain regarding robbery committed by the appellant/accused at the point of knife.

11 PW5 Sahabu Khan is an independent witness to the incident in question, he being the customer present at the spot, at the time of commission of incident of robbery. This witness has stated that when he was present at the meat shop of PW1 Akhtar Hussain, at about 7.15 a.m. of 21st September 2014, the appellant/accused came there. This witness described the appellant/accused as a *goonda* in the locality. He stated that the appellant/accused demanded *hafta* from PW1 Akhtar Hussain. After exchange of words between them, the appellant/accused took out a chopper and put it on the neck of PW1 Akhtar Hussain and snatched money from shirt pocket of PW1 Akhtar Hussain. In cross-examination, this witness stated that he has not described looks of Robert to police. In cross-examination of this witness, it is brought on record that he had been there for purchase of mutton. Thus, there is nothing in cross-examination of this witness to disbelieve his version of the incident.

12 It is, thus, clear that, evidence of PW1 Akhtar Hussain, PW3 Badruddin Qureshi and PW5 Sahabu Khan, who are eye witnesses to the incident, that at about 7.15 a.m. of 21st September 2014, the appellant/accused pointed a chopper at the neck of PW1 Akhtar Hussain and snatched an amount of Rs.2550/- from his shirt pocket. This evidence is sufficient to convict the appellant/accused of the offence punishable under Section 397 of the Indian Penal Code, as at the time of committing robbery, the appellant/accused had used deadly weapon i.e. chopper, as seen from evidence of these two eye witnesses and one victim.

13 PW6 Hiralal Dabhade, Assistant Sub-Inspector, has deposed that soon after the incident, the appellant/accused was found lying injured and at that time, he was armed with a weapon like chopper. Cross-examination of this witness does not bring any material on record to discredit his version that when the appellant/accused was apprehended, he was armed with a

chopper. Seizure panchnama of chopper at Exhibit 42 is admitted by the defence. PW10 Kanif Gavali, Police Sub-Inspector, has also deposed about production of injured appellant/accused before him by PW6 Hiralal Dabhade, Assistant Sub-Inspector, with a chopper.

14 Injuries sustained by the appellant/accused do not cast a shadow of doubt on case of prosecution as PW8 Dr.Jagdish Jadhav has deposed that injuries found on the appellant/accused were not fresh injuries. As per version of this Medical Officer, the appellant/accused had given history of sustaining injuries a day earlier to the date of the incident. This Medical Officer deposed that the injuries were in the nature of tenderness on lower part of legs of the appellant/accused and abrasion over lower part of the legs. The appellant/accused was apprehended within two hours of the incident and the Medical Officer has deposed that the injuries found on him were not fresh. In this view of the matter, it cannot be said that the injuries found on person of the appellant/accused were caused to him at the time of the incident

in question. Thus, on this aspect also, the prosecution case cannot be doubted.

15 There is evidence regarding recovery of amount of Rs.2550/- on the basis of voluntary disclosure statement made by the appellant/accused and proved by PW4 Riyajuddin Ismail. However, that amount was not produced before the court and it was not pointed out that the said amount comprises of the same currency notes which were snatched from PW1 Akhtar Hussain. Hence, that evidence cannot be used against the appellant/accused. Similarly, evidence of PW2 Amuddin Qureshi regarding the Spot panchnama Exhibit 20 is of no assistance because nothing incriminating was found on the spot of the incident.

16 In the result, no infirmity can be found in the impugned judgment and order of conviction and the resultant sentence imposed on the appellant/accused for the offence punishable under Section 397 of the Indian Penal Code. The

appellant/accused is awarded minimum sentence for this proved offence by the learned trial court. The appeal is, therefore, devoid of substance. Hence the order :

ORDER

- i) The appeal is dismissed.
- ii) In view of dismissal of appeal, Criminal Application No.1694 of 2018 also stands disposed off.

(A. M. BADAR, J.)