

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.48 OF 2018

SURAJ SINGH @ ASHISH JILEDAR SINGH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms. Farhana Shah, Appointed Advocate for the Appellant.

Mr. Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 27th SEPTEMBER 2019

JUDGMENT :

1 By this appeal, the appellant/convicted accused is challenging the judgment and order dated 5th August 2016 passed by the learned Additional Sessions Judge, Greater Mumbai, in Sessions Case No.486 of 2014, thereby convicting him of offences punishable under Sections 392 and 397 of the Indian Penal Code. On the first count, the appellant/convicted accused is sentenced to

suffer rigorous imprisonment for 5 years apart from direction to pay fine of Rs.1,000 and in default, to undergo simple imprisonment for 3 months. On the second count, he is sentenced to suffer rigorous imprisonment for 7 years. The learned trial court directed the substantive sentences to run concurrently.

2 Facts, in brief, leading to the prosecution as well as the resultant conviction of the appellant/convicted accused, can be summarized thus :

(a) PW1 Navrottam Patil used to work as a Commission Agent for selling fish in Shivaji Market of Mumbai. He used to go to his work place by hiring taxi of PW2 Mohammed Habib Qureshi. Return journey was used to be by local train. As usual, on 2nd April 2014, PW1 Navrottam Patil left his house at about 4.20 a.m. by a taxi driven by PW2 Mohammed Habib Qureshi for going to his work place. When the taxi came near Vijayanta Building No.117 of Nehru Nagar, Kurla, one blue coloured Maruti car of Eco model obstructed and stopped it. Four persons alighted from the said car and the appellant/

convicted accused was one amongst them. The appellant/convicted accused pointed out a revolver at the head of PW1 Navrottam Patil and took the amount of Rs.1740/- apart from photocopy of the pan card from pocket of shirt of PW1 Navrottam Patil. At the same moment, a police van, in which PW6 Vijay More, Police Sub-Inspector of Nehru Nagar Police Station was doing patrolling, happened to come towards the direction where the taxi was obstructed. PW1 Navrottam Patil as well as PW2 Mohammed Habib Qureshi then started shouting "save save". The dacoit, who was keeping watch, shouted and signaled the other dacoits to run away. All dacoits then rushed towards the Maruti car for fleeing from the spot. Though other dacoits succeeded, the appellant/convicted accused could not reach the car as he suffered a fall, and by that time, the Maruti car along with other dacoits left the spot. The appellant/convicted accused then started running towards Shivaji ground and he was chased by Head Constable Patil. PW6 Vijay More, Police Sub-Inspector, chased the Maruti Eco car. However, both of them were not

successful in their mission. PW6 Vijay More, Police Sub-Inspector, then returned to the spot and took PW1 Navrottam Patil as well as PW2 Mohammed Habib Qureshi to Police Station Nehru Nagar. Description of the dacoits, who fled from the spot, was then taken by PW4 Bhadrinath Awhad, Police Constable of Nehru Nagar Police Station, Mumbai. He was also informed about the incident by PW6 Vijay More, Police Sub-Inspector. PW4 Bhadrinath Awhad, Police Constable, then telephonically informed about the incident to PW3 Amol Ingale, Police Constable, who was on night duty as the Beat Marshall. Description of the dacoits was also given to PW3 Amol Ingale, Police Constable, with a direction to apprehend the said dacoits. With the help of PW8 Niyaz Majid as well as Jafar, PW3 Amol Ingale, Police Constable, apprehended the appellant/convicted accused. He was taken to the police station. Personal search of the appellant/convicted accused was taken in presence of panch witnesses PW5 Mahendra Kamble and PW7 Jafar Shaikh. He was found to be possessing one revolver, three live cartridges, looted

amount of Rs.1740/- as well as photocopy of Pan Card of PW1 Navrottam Patil. The appellant/convicted accused came to be arrested.

(b) On completion of routine investigation, he came to be charge-sheeted. The appellant/convicted accused was put to trial as he pleaded not guilty to the Charge. In order to bring home the guilt to the appellant/convicted accused, the prosecution has examined in all eleven witnesses. The defence of the appellant/convicted accused was that of total denial. He, however, did not enter into defence.

(c) After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to convict the appellant/accused and sentenced him accordingly, as indicated in the opening paragraph of this judgment.

3 I have heard Mrs.Farhana Shah, the learned advocate appointed to represent the appellant/convicted accused at the

costs of the State. She vehemently argued that the prosecution has failed to prove the guilt of the appellant/convicted accused beyond all reasonable doubts. Identity of the appellant/convicted accused is not established and except interested witnesses, no other independent witness was examined by the prosecution. Therefore, the appellant/convicted accused is entitled for acquittal.

4 The learned APP argued that evidence of the victim of the crime in question is fully corroborated by evidence of PW2 Mohammed Habib Qureshi as well as official witnesses and considering the time of the offence, there was no possibility to have an independent witness.

5 I have considered the submissions so advanced and also perused the record and proceedings including oral as well as documentary evidence.

6 In the case in hand, after commission of dacoity, the appellant/convicted accused came to be apprehended immediately. In this backdrop, let us examine what PW1 Navrottam Patil says about the incident. As per his version, he left the house at about 4.20 a.m. of 2nd April 2014 in the taxi driven by PW2 Mohammed Habib Qureshi for going to Shivaji market, where he was working as Commission Agent for selling fish. This victim further testified that when their taxi was passing from front of Vijayanta building no.117, blue coloured Maruti car of Eco model intercepted their taxi and four dacoits alighted from that taxi. PW1 Navrottam Patil stated that the appellant/convicted accused was one amongst them and he was holding a revolver in his hand. He put that revolver on head of PW1 Navrottam Patil and threatened him to take out all valuables. As stated by PW1 Navrottam Patil, then the appellant/convicted accused put his hand in his shirt pocket and took away an amount of Rs.1740/- as well as Pan Card. PW1 Navrottam Patil further stated that then a police van was sighted at the rear side of the spot of the incident, and therefore, he as well as PW2 Mohammed Habib Qureshi

shouted for help. The dacoits, therefore, started running away. Though others managed to board the Maruti Eco car, the appellant/convicted accused fell down and then started running towards Shivaji ground. The Maruti Eco car fled from the spot. PW1 Navrottam Patil further stated that then they were taken to police station and while he was lodging his report, the appellant/convicted accused was brought to the police station and a revolver, three live cartridges as well as the cash amount looted from him came to be recovered from the appellant/convicted accused. Other witnesses proved his First Information Report (FIR) Exhibit 15A and also identified the appellant/convicted accused while in the dock. Cross-examination of this victim was limited to the fact that when the taxi was intercepted by the car, he became frightened and immediately after the incident, he noticed the police van at the backside. This witness denied the suggestion that newspaper and milk vendors were present at the spot of the incident. Suffice to state that, with this cross-examination, the testimony of the victim remained unshattered.

7 Evidence of PW1 Navrottam Patil is fully corroborated by PW2 Mohammed Habib Qureshi, who was accompanying him. This witness has also stated as to how the taxi driven by him was intercepted and the manner in which the appellant/convicted accused robbed PW1 Navrottam Patil by putting revolver on head of PW1 Navrottam Patil and snatching money from his shirt pocket. Even as per version of PW2 Mohammed Habib Qureshi, when they were at the police station, the appellant/convicted accused was brought there by the police. He identified the appellant/convicted accused. Nothing could be elicited from cross-examination of this witness to doubt his version in respect of the incident.

8 Now let us examine evidence of official witnesses. PW6 Vijay More, Police Sub-Inspector of Nehru Nagar Police Station, reached on the spot at the time of happening of the incident. He deposed that after hearing screams, while on patrolling duty on the police mobile van, he reached on the spot and noticed the taxi obstructed by a blue coloured Maruti Car of

Eco model. PW6 Vijay More, Police Sub-Inspector, stated that some dacoits fled in it towards Barve road, whereas one suffered a fall and started running towards Shivaji ground. PW6 Vijay More, Police Sub-Inspector, testified that Head Constable Patil chased that person whereas he attempted to intercept the Maruti car by the mobile police van. However, both of them could not succeed and therefore, he returned to the spot and took PW1 Navrottam Patil to Police Station Nehru Nagar.

9 PW4 Bhadrinath Awhad, Police Constable, who was on night duty at Nehru Nagar Police Station, has spoken about receipt of information regarding the incident through PW6 Vijay More, Police Sub-Inspector. He further testified that he took description of the dacoit from PW1 Navrottam Patil and informed the same to Police Constable Amol Ingale – PW3, who was on night duty as a Beat Marshall.

10 PW3 Amol Ingale, Police Constable, in turn has stated that while on night duty as Beat Marshall on 1st April 2014, he

received phone call of PW4 Bhadrinath Awhad, Police Constable, at about 4.50 a.m. He received information and instructions from PW4 Bhadrinath Awhad, Police Constable, that about 25 years old young boy armed with a revolver and wearing jeans pant and full shirt was going towards Kurla Railway Station and he should be apprehended. PW3 Amol Ingale, Police Constable, then left for searching such person and found him going by S.G.Barve road towards railway station. Evidence of PW3 Amol Ingale, Police Constable and that of PW8 Niyaz Majid – rickshaw driver shows that after some scuffle and resistance by the appellant/convicted accused, they could manage to apprehend the appellant/convicted accused with the help of one Jafar. Both of them in unison stated that then the appellant/convicted accused was taken to police station, where his search was taken.

11 PW5 Mahendra Kamble and PW7 Jafar Shaikh are panch witnesses in whose presence search of the appellant/convicted accused was taken on 2nd April 2014 leading to preparation of Panchnama Exhibit 20. PW1 Navrottam Patil,

PW3 Amol Ingale, Police Constable and PW8 Niyaz Majid had also witnessed that proceedings. Evidence of all these witnesses goes to show that from person of the appellant/convicted accused, one revolver, three live cartridges, amount of Rs.1740/- and printed copy of Pan Card came to be recovered and the same came to be seized. There is nothing in cross-examination of all these witnesses to disbelieve their version.

12 It is, thus, clear from evidence adduced by the prosecution and as discussed in foregoing paragraphs, that prosecution has successfully established that in the morning hours of 2nd April 2014, near Vijayanta Building, Nehru Nagar, Mumbai, the appellant/convicted accused along with wanted accused committed dacoity and at the time of commission of the dacoity, he had used deadly weapon i.e. revolver. As such, no interference is required in the impugned judgment and order of conviction and the resultant sentence imposed on the appellant/convicted accused by the learned trial court. The appeal is devoid of merits. Therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)