

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.290 OF 2014

AAKASH RAMCHANDRA CHAVAN)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mrs.N.S.K.Ayubi, Advocate for the Appellant.

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

CORAM : A. M. BADAR, J.

DATE : RESERVED ON 28th AUGUST 2019
PRONOUNCED ON 29th AUGUST 2019

JUDGMENT :

1 By this appeal, the appellant/accused no.2 in Sessions Case No.135 of 2010 decided along with Sessions Case No.596 of 2010 vide judgment and order dated 19th September 2011 passed by the learned Extra Joint Adhoc Additional Sessions Judge, Sewree, Mumbai, is challenging his conviction and resultant sentence imposed for the offence punishable under Section 394 read with Section 397 of the Indian Penal Code. The appellant/accused no.2 was sentenced to suffer rigorous

imprisonment for 7 years apart from direction to pay fine of Rs.5,000/- and in default to undergo rigorous imprisonment for 6 months vide the impugned judgment and order.

2 Facts, in brief, leading to the prosecution and resultant conviction of the appellant/accused no.2 in Sessions Case No.135 of 2010 are thus :

- (a) First Informant Vijay Sadavate boarded the local train on 24th October 2009 from Chhatrapati Shivaji Maharaj Terminus station for going to his house after working hours. He alighted at Chembur Railway Station at about 11.30 p.m. One Mansoor was with him. By walk, they proceeded by the side of the railway track. At that time, three accused persons came. One of them caught hold of collar of shirt of the First Informant/PW1 Vijay Sadavate and by extending threat of killing him, tried to extract cash and valuables from him. He gave blow of knife on back side of head of the First Informant/PW1 Vijay Sadavate causing bleeding injury. Another accused caught hold of Mansoor and pushed him.

The accused persons then fled from the spot of the incident when Mansoor shouted for help. Police from Chembur Police Station came on the spot and the First Informant/PW1 Vijay Sadavate was admitted to Shatabdi Hospital, where he lodged report which resulted in registration of Crime No.57 of 2010 with Police Station Chembur.

- (b) During investigation, it is revealed that soon before this incident, the accused persons waylaid PW2 Pradeep Pawar and asked him to deliver his wrist watch to them. He refused and scuffle ensued, during the course of which, he was assaulted by one of the accused by means of a knife. His right index finger ring had fallen. He had taken medical treatment at Rajawadi Hospital.
- (c) During investigation, robbers came to be arrested. Test Identification Parade was conducted. On completion of routine investigation, they came to be charge-sheeted.

- (d) The learned trial court framed Charge for the offence punishable under Section 394 read with 397 of the Indian Penal Code. The accused pleaded not guilty and claimed trial.
- (e) In order to bring home the guilt to the appellant/accused, the prosecution has examined as many as ten witnesses. The defence of the accused persons was that of total denial. They, however, did not enter in defence.
- (f) After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to convict appellant/accused no.2 Aakash Chavan along with co-accused Rais @ Jamil Bashir Shaikh and sentenced them as indicated in the opening paragraph of this judgment. However, the third accused came to be acquitted.

3 I have heard Mrs.Nasreen Ayubi, the learned advocate for the appellant/accused no.2. She argued that nothing was

looted from either the First Informant/PW1 Vijay Sadavate or PW2 Pradeep Pawar. Evidence of the prosecution is suffering from discrepancies and inconsistencies. No weapons came to be seized during the course of investigation. Therefore, the appellant/accused no.2 is entitled for acquittal.

4 The learned APP supported the impugned judgment and order.

5 I have considered the rival submissions and carefully perused the record and proceedings including oral as well as documentary evidence adduced by the prosecution.

6 Case of the prosecution is based on testimony of the First Informant/PW1 Vijay Sadavate and that of PW2 Pradeep Pawar, who are said to be the victims of the crime in question. Similarly, there is evidence regarding Test Identification Parade in which both these witnesses have identified the appellant/accused no.2 as one of the robbers. Both these witnesses are injured

witnesses and as such, their presence on the scene of the occurrence suffers from no doubt.

7 As per version of the First Informant/PW1 Vijay Sadavate, after reaching Chembur Railway Station by local train, when he was proceeding by the side of the railway track along with his friend Mansoor, three persons came there and accosted them. As per version of this witness, one of them gave a blow of knife on backside of his head and he was asked to take out the cash with him. The First Informant/PW1 Vijay Sadavate deposed that second person caught hold of his friend Mansoor and the third person terrified them. As deposed by this witness, he shouted loudly, so also his friend Mansoor, and as such, the public gathered on the spot and apprehended the culprits. The First Informant/PW1 Vijay Sadavate deposed that appellant/accused no.2 Aakash Chavan is one of the robbers who pushed Mansoor. In cross-examination this witness admitted the fact that he had seen accused persons at the police station, at the time of lodging the report. This witness stated that the accused persons were

injured when they were brought to the police station. Cross-examination of the First Informant/PW1 Vijay Sadavate shows that then subsequently, Test Identification Parade was conducted, where also he identified the appellant/accused no.2.

8 So far as PW2 Pradeep Pawar is concerned, he has stated in his evidence that three accused persons accosted him and directed him to remove his watch. He was assaulted by them and in the assault, he sustained bleeding injury to his right palm and his right index finger ring had fallen down on the spot. While in the dock, PW2 Pradeep Pawar has duly identified appellant/accused no.2 as one of the robbers.

9 There are minor discrepancies in evidence of the First Informant/PW1 Vijay Sadavate and PW2 Pradeep Pawar, in so far as timing of the local train reaching Chembur Railway Station is concerned. However, both these witnesses were returning to their home after finishing day's work. It is not expected of them to correctly recollect the time of alighting from the local train at

Chembur Railway Station and therefore, minor discrepancy in the time of reaching Chembur Railway Station is of no consequence. Evidence of PW2 Pradeep Pawar reflects that the incident in respect of him took place first, and thereafter, the incident of attempt to rob the First Informant/PW1 Vijay Sadavate took place.

10 PW5 Dr.Sandeep Kedar had medically treated the First Informant/PW1 Vijay Sadavate where as PW7 Dr.Nitin More had medically treated PW2 Pradeep Pawar. Evidence of PW5 Dr.Sandeep Kedar shows that the First Informant/PW1 Vijay Sadavate had suffered contused lacerated wound on occipital area apart from similar wound on right hand. Evidence of PW7 Dr.Nitin More shows that PW2 Pradeep Pawar had suffered injury on right hand at base of thumb. Thus, medical evidence is supporting the version of the injured witnesses regarding attempt to rob them by accused persons.

11 Evidence of PW8 Hiralal Parmeshwar, panch witness, shows that during inspection of the spot of the incident, stains of

blood were found on stones and one finger ring was also found, which came to be seized vide Panchnama Exhibit 64. This evidence corroborates version of both injured witnesses.

12 Dock identification is the substantive evidence and in the case in hand, the First Informant/PW1 Vijay Sadavate and PW2 Pradeep Pawar have identified the appellant/accused no.2 during the course of adducing evidence. There is nothing in their cross-examination to doubt this dock identification which constitutes substantive evidence. The incident was that of attempted robbery in the vicinity of Chembur local Railway Station. Thus, there was ample opportunity with these two injured witnesses to see the robbers. As such, even if evidence of Test Identification Parade is discarded because of possibility of seeing the accused persons in the police station, evidence of dock identification of the appellant/accused no.2 by the victims cannot be discarded. Similarly, I find no substance in the submission of the learned advocate for the appellant/accused no.2 that nothing was recovered from the appellant/accused no.2. The case in hand

is a case of attempted robbery and as such, recovery is not required.

13 In the light of the foregoing discussion, the prosecution has successfully established that the appellant/accused no.2 had attempted to commit robbery and in that attempt, had used deadly weapon. No interference in the impugned judgment and order, as such, is warranted. Therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)