

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

CRIMINAL APPEAL NO.407 OF 2009

Rajesh @ Foujan Vijaykumar
Gupta @ Samaydin Choudhary
Age : 20 years,
R/o : Azad Nagar Zopadpatti,
Opp. Masjid Zopada, Pathanwadi (East)
Mumbai. Appellant

Vs.

The State of Maharashtra
At the instance of Andheri Police Station
Mumbai Respondent

Mr. Kaif Ansari h/for Mrs. Anjali Iyer for the Appellant.

Mr. S.R. Agarkar APP for State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 11th April 2019

JUDGMENT :

1. Heard the respective counsel.
2. The appellant herein is the original accused no.2 in Sessions Case No. 952 of 2006. The appellant is convicted by 10th

Adhoc Additional Sessions Judge, Sewree, Mumbai vide judgment and order dated 14th February 2008 thereby convicting him for the offence punishable under Section 397 read with 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for two months. He is also convicted for the offence under Section 4 read with 25 of the Arms Act and sentenced to suffer rigorous imprisonment for two years and a fine of Rs.500/-, in default to suffer rigorous imprisonment for one month. Both the sentences shall run concurrently. Hence, this appeal.

3. Such of the facts necessary for the decision of the appeal are as follows :

That Shrinivas Kadipalli was employed in a medical shop by name 'Medical Shoppy' at Andheri. On 1st May 2006, the accused had been to his shop and demanded drugs namely 'Restil'. He had informed the non-availability of the said drug. The accused had left the shop only to return after sometime. They went near the cash counter and had brandished their chopper and knife and asked the

complainant Shrinivas to handover the cash amount. Upon opening the cash box, they had taken Rs.4,500/- and snatched his cellphone. The complainant- Shrinivas managed to snatch the chopper from the hand of accused no.1 and then accused no.1 fled from the spot. However, the appellant herein was caught by the complainant with the help of Mukesh Doshi. There was scuffle. During the scuffle, the complainant and Mukesh Doshi had sustained injuries on their left eyebrow and palm. In the meanwhile, police constable had come to the spot and took the appellant to the police station.

4 The complainant had lodged a report. On the basis of the report, Crime No. 174 of 2006 came to be registered for the offence punishable under Sections 394 and 397 read with 34 of Indian Penal Code. Accused No.3 Mohamad Shafiq @ Mehbook Mohamad Malang Sayyed was the juvenile in conflict with law.

5 At the trial, the prosecution has examined as many as five witnesses to bring home the guilt of the accused. The accused who

had fled from the spot has been identified at the test identification parade. The learned Sessions Judge has rightly observed that this is a case of direct evidence and in the given set of evidence, the accused is convicted for the offence punishable under Sections 394 and 397 of Indian Penal Code. The findings recorded by the learned Sessions Judge are in consonance with the evidence adduced by the prosecution. Moreover, the accused-appellant is habitual offender. After he had undergone whole of the sentence, the appellant was enlarged on bail by this Court by order dated 22nd October 2010 after his conviction. However, during the pendency of trial, the appellant is shown as an accused in Sessions Case Nos. 670 of 2007, 844 of 2011 and 314 of 2012. He is undergoing the sentence of life imprisonment and he is lodged in Nashik Road Central Jail. The findings recorded by the Sessions Judge call for no interference. Hence, the appeal stands dismissed.

(*Smt. Sadhana S. Jadhav, J*)