

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 693 OF 2013

Steven Simon Pareira
Aged 50 yrs., R/at
B-7534 Hospital Ward,
Kolhapur Central Prison,
Kalamba, Dist. Kolhapur.

..Appellant.

V/s.

The State of Maharashtra,
at the instance of Inspector of Police,
through Chembur Police Station,
Mumbai.

..Respondent.

Ms. Farhana Shah, advocate appointed for appellant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 22, 2019.

JUDGMENT :

1 The appellant herein is convicted for offence punishable under section 392 read with section 34 of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs. 5,000/- I.d. to suffer R.I. for 3 months by the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai vide Judgment and Order dated 30/8/2012 in C.C. No. 1271/PW/2011. Hence, this appeal.

Talwalkar

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) P.W. 1 Sunil Shukla was working with Syrin Chemical Company, a proprietary firm run by Sanjay Mahendru. He was entrusted with the work of dealing with the bank affairs. On 27th May, 2011, the proprietor of the firm have handed over to him a cheque of Rs. 75,000/- and Rs. 25,000/- and had directed him to withdraw the amount. At about 11 a.m. he reached Bharat Cooperative Bank and withdrawn an amount of Rs. 75,000/-.

(ii) He was then proceeding towards HDFC Bank in order to withdraw an amount of Rs. 25,000/-. Some persons came from behind and dashed him by giving a fight on his stomach. Hence, the plastic carry bag had fallen down.

(iii) One of the persons fled alongwith the carry bag containing an amount of Rs. 75,000/-. One person ran from opposite side. The present appellant is alleged to have given him a severe blow on his stomach and was trying to run away.

(iv) In the said process, P.W.1 had raised alarm. Hence, public at large chased the present appellant and took him into custody. The patrolling police party had also reached the spot and taken the accused in custody. The investigation was set in motion. In any case, the appellant was apprehended on the spot and taken into custody.

3 The learned APP submits that the appellant herein has no criminal antecedents. P.W. 1 has stated that he was alone when the incident had occurred. It is also matter of record that no amount was recovered from the present appellant who was apprehended on the spot. Upon hearing the exclamation "Chor Chor", people gathered there and the patrolling party has apprehended the appellant and he was taken into custody.

4 In the present case, there was no question of holding test identification parade as the present appellant was apprehended on the spot and taken to the police station in the presence of the complainant. It appears that upon disclosure of the manner in which the incident had occurred while in police custody, the original accused Nos. 2 and 3 were arrested.

5 P.W. 2 Premnath Bhoir was attached to Chembur Police Station as ASI on the relevant date. He has corroborated the evidence of the P.W. 1.

6 P.W.3 Goga More is the panch witness. According to him, Accused had shown his willingness to recover the amount. He had led

them to his house which was on the way and had shown the bag in which the amount was concealed. P.W. 3 has expressed his inability to tell the court that how many times he has acted as panch for the police.

7 P.W. 4 was also attached to Chembur Police Station. On 27/5/2011 he was serving as a detection officer. In fact on that day, the accused was subjected to test identification parade and hence, P.W. 4 has also not gone and met him personally. Accused Nos. 2 and 3 were arrested on 2/6/2011. P.W. 4 has categorically deposed before the court that he was caught on the spot just a few minutes walking distance of the spot panchanama.

8 P.W. 5 Investigating Officer has categorically admitted that only after interrogating the complainant, he had registered the crime. In fact, that was not the course of investigation, as commencing of a criminal prosecution ensues only after registration of offence or bringing it to the notice of police that cognizable offence had taken place. In fact, it is the case of the prosecution that after the people had apprehended thief i.e. the present appellant, the police who was on patrolling duty had stopped to see what had happened. At that time, they took custody of the accused and rescued the accused No. 1 from the public at large. The names and identity of the accused Nos. 2 and 3 was also submitted by

the accused No. 1 i.e. the appellant. It is admitted position that no documents in respect of bank transaction of the complainant were seized or filed on record.

9 The learned Counsel for the appellant vehemently submits that the sentence imposed upon the appellant was a short term sentence and during the pendency of the appeal, he has undergone the whole of the sentence including the default sentence. Since this is a case of direct evidence, no fault can be found with the Judgment passed by the Learned Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai. Hence, the appeal being sans merits stands dismissed. The appeal is disposed of accordingly.

10 Learned Counsel Ms. Farhana Shah has been appointed by the High Court Legal Services Committee to espouse the cause of the appellant. Hence, she is entitled to professional fees which are determined as per the rules to be paid by the High Court Legal Services Committee within 3 months from today.

[SMT. SADHANA S. JADHAV, J.]