

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

CRIMINAL APPEAL NO. 374 OF 2013

Rajesh Mohan Chavan	]	
Aged about 25 years, permanently	]	
residing at Post Nevargaon, Tal-Gangapur	]	
Dist-Aurangabad, (and at present in judicial	]	
custody and lodged at Pune Central Prison,	]	..Appellant
Pune.	]	(org. Acc. No.4)
v/s.		
The State of Maharashtra	]	..Respondent

Ms. Megha Shashi Bajoria appointed advocate for Appellant.
Mr. S.S. Pednekar - APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 9th April 2019.

JUDGEMENT.

1. The present appellant herein is original accused no. 4 in Sessions Case No. 769 of 2009. The appellant herein is convicted for the offence punishable under section 396 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and he also convicted for the offence punishable under section 460 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years, vide judgment and order dated 27th July 2012 passed by Additional Sessions Judge, Pune.

2. It is the case of the prosecution that on 5th March 2003 in the middle of the night, there was dacoity in the house of the complainant Nisha Bahel in which her father had died a homicidal death and her mother was seriously injured. She lodged a report at Pimpri Police Station. Several valuables were stolen from their house. Similarly a revolver belonging to the deceased was also stolen. The investigation was entrusted with C.I.D.

3. The present appellant was arrested on 15th May 2008 in Crime No. 43 of 2003 registered at Pimpri Police Station. In fact, the charge-sheet was filed on 4th June 2007. The appellant herein was arrested on 15th May 2008. In the course of the trial, the prosecution examined as many as 21 witnesses to bring home the guilt of the accused.

4. The case rests upon the evidence of Nisha Behal PW-10, Neelima Behal PW-12 and PW-2 Prashant Dixit, who is Panch for the arrest Panchnama for the accused–appellant and also for a disclosure statement, the discovery of the stolen articles at the hands of the present appellant and PW-3 Anil Pimpalkhare, who is the Panch for the recovery of the stolen articles at the instance of the present appellant. Narendra Gaikwad PW-20, who is investigating officer has arrested the present appellant. It is the case of the prosecution that the accused in the present case had visited the house of the deceased under the garb of selling crockery, four to five months prior to the alleged incident, Neelima Bahel PW-12 i.e. the wife of the deceased

had purchased some crockery from the accused persons. That on 5th March 2003 in the middle of the night, the accused with the intention of causing theft had assaulted the husband of PW-12 in the bedroom and at the same time had given heavy blow on the head of PW-12, thereby making her fall unconscious. She had regained consciousness after sometime. She then called up her brother-in-law. They have visited her house, her daughter Nisha Bahel had taken the injured and her husband to the hospital. Thereafter, the police had recorded the statement of Nisha on the basis of which the offence was registered.

5. PW-2 Prashant Dixit has deposed before the Court that he had been to the office of the C.I.D to inquire about the murder case of Rajesh Bahel. At the request of the police, he had agreed to act as a Pancha. They have informed PW-2 that they had caught one accused from Madhya Pradesh. His name was Rajesh Chavan. PW-2 then acted as Pancha for the arrest Panchnama which is at 'Exhibit-59'. The present appellant had also made disclosure statement in the presence of PW-2 on the basis of which, Memorandum under section 27 of the Indian Evidence Act was recorded. The Memorandum is at 'Exhibit-60'. The accused had led the police squad to Nehru Nagar Road, Pimpri. He had shown the premise of Hindustan Antibiotics Company and they informed the police that they used to visit the said spot for consuming beer. It is seen that the accused had also disclosed the *modus operandi* by which Rajesh Behal was done to death.

6. PW-3 Anil Vasant Pimpalkhare, has deposed that he happens to be a taxi driver. He was asked by the police to act as Panch. On the basis of the disclosure statement a discovery was made at the instance of the present appellant. According to the witness, he has stood as Panch for memorandum and recovery of articles from the other accused. Thereafter, they had proceeded at the instance of the appellant. The accused had asked them to stop the vehicle in front of his house and had taken the police squad behind that house. He had shown the corner of the outer side of the wash room and had informed that he had kept the the stolen articles at that spot by digging a pit. The said place was dug and they found the plastic carry bag containing two watches and two golden rings. It is pertinent to note that the witness PW-10 has identified the watch and golden ring which were recovered at the instance of the present appellant. The defence could not create any dent in the evidence of PW-10, in the course of cross examination.

7. At this juncture, the learned counsel appointed for the appellant submits that in fact the recovery was from an open place. The said place was accessible to the public. It is also submitted that on the day of recovery of the articles, the property was not in the possession of the present appellant and therefore, no implicit reliance can be placed on the evidence of PW-3 or the recovery at the instance of the appellant cannot be considered to be an incriminating circumstance against the appellant. As against this the

investigating officer has deposed that it had transpired during the course of investigation that the wife of the appellant had sold the said plot i.e. survey no. 42 from Haimber Shivara to one Ashok Pawar in the year 2003. However, from 2003 to 2007, the wife of the appellant was residing in the said house. It had also transpired in the course of the investigation that the said house was in a locked position and was not occupied by anybody on the day on which the recovery was caused at the instance of the present appellant. The defence of the accused is that of total denial. It is the contention of learned counsel for the appellant that in all probabilities, he could have been the receiver of stolen property. However, there is no such suggestion to any of the witness and neither the accused has stated so before the Trial Court in his statement under section 313 of Cr.P.C. that he had received the goods from any other person. In any case, there are criminal antecedent against the present appellant. Several offences are registered at various places and although his permanent residence shown as Nevargaon, he was arrested from Madhya Pradesh and there is no plausible explanation for the same.

8. PW-10, Nisha Behal has been examined by prosecution only to substantiate the contention in the First Information Report.

9. PW-12 Nilima Bahel has deposed before the Court that on 5th March 2003 at about 2.30 a.m. she heard some noise and therefore she woke up. Since she had woke up she had received blow on her head by some unknown persons. She regained consciousness

after sometime and had seen her husband lying on bed in upside down position, she had called upon her brother-in-law Yogesh Behal and thereafter the wife of Yogesh Behal had woke up PW-10 Nisha Behal. She had received grievous injuries. Her jaw was fractured and needed to be operated and hence, her statement could not be recorded at the earliest. After being discharged from the hospital after 12 days, she has verified the articles that were missing from her house and she had reported a list of articles including one revolver belonging to her husband which was recovered at the instance of the accused in the present case. The Titan Watch and the golden ring having two white stone was recovered at the instance of the present appellant. She was summoned by the police to identify the accused. Some of the accused were identified in the prison at Yervada. A specific question was put to the witness in the cross examination as to whether the photograph of the present appellant was shown to her prior to the test identification parade. However, she had denied the same. According to her, during the visit to their house, the police used to show photograph of the accused but none of the photographs were of the accused before the Court. It is elicited in the cross examination that on 12th August 2004 the police has shown her photographs of accused Ashok @ Lodrya Mangilal Pawar, Avinash @ Gondrya Santosh Pimpale @ Pawar, Rajesh Mohan Chavan and Ramesh Salunkhe. Since the witness had gone through the ordeal of in which her husband had died, she has rightly stated that she could not recollect at the time of giving substantive evidence as to the dates on which the articles were identified by her. The witness has

identified the accused before the Court. The identification before the Court would be substantive evidence.

10. The injury certificate which is at 'Exhibit-103' is proved by PW-17 Dr. Deepak Ranade, which shows that PW-12 had sustained head injury, multiple fractures on facial bone, fracture mandible, fracture mandibular arch, fracture zygomatic arch, swelling over face, inability to speak. PW-20 who happens to be the investigating officer has proved the omission and contradiction of the witness.

11. As far as the case against the present appellant is concerned, he has stated before the court that he had recorded the statement of Ashok Pawar on 10th April 2008 and at that time, he had disclosed that although he had purchased the property in 2003, the wife of the present appellant was residing in the said house till 2007. Hence, the recovery at the instance of the present appellant would be incriminating circumstance against the appellant as the stolen property was found in exclusive possession of the accused-appellant.

12. The identification of the accused at the behest of the complainant and the identification of the articles which are recovered from the accused, would be material circumstances. The prosecution has established both the aspects and hence, no fault could be found with the judgment of the trial court by which the appellant has been convicted for the offence punishable under

sections 396 and 460 of the IPC. In view of this, the appeal deserves to be dismissed.

Order

- i) Appeal is dismissed.
- ii) The conviction of the appellant for the offence punishable under sections 396 and 460 of Indian Penal Code passed by Additional Sessions Judge, Pune vide judgment and order dated 27th July 2012 and sentenced him to suffer maximum rigorous imprisonment for 7 years is confirmed.
- iii) The learned advocate, Ms. Megha Bajoria was appointed in the present matter to espouse the cause of the appellant as it happens to be an appeal filed by the appellant, who is in custody. She has put in her best efforts to espouse the cause of the appellant. Hence, her professional fees are quantified as per rules to be paid to her by High Court Legal Aid Services Committee, Mumbai.

(SMT. SADHANA S. JADHAV, J)