

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

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CRIMINAL APPEAL NO.463 OF 1997

Taya Tama Varganti

...Appellant

Versus

The State of Maharashtra

...Respondent

**WITH
CRIMINAL APPEAL NO.431 OF 1997**

Vyankatesh Yelgure Shirke

...Appellant

Versus

The State of Maharashtra

...Respondent

....

Ms Akshata Desai i/b. Mr. Nitin Sejpal for the Appellant

Mr. S.V. Gavand, APP for Respondent-State in Apeal/431/1997.

Mr. P.H. Gaikwad, APP for Respondent-State in Apeal/463/1997

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 2nd DECEMBER, 2021.

ORAL JUDGMENT:-

By these appeals filed under Section 374 of the Code of Criminal Procedure, 1973, the Appellants (hereinafter referred to as accused Nos.1 and 3) have challenged the judgment dated 11/07/1997 passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No.1022 of 1994.

2. By the impugned judgment, the learned Judge has held the

the accused Nos.1 and 3 guilty of offences punishable under Section 392 r/w. 34 of the IPC and sentenced them to suffer rigorous imprisonment for five years and fine of Rs.500/- i/d. to suffer rigorous imprisonment for 3 months.

3. The case of the prosecution in brief is that on 25/3/1994 the Complainant Vijay P. Shinde (PW1) had gone to Sanjay Gandhi National Park along with his wife and son. At about 3.45 p.m. while they were sitting near the Crocodile Park, three persons came towards them. One of the persons pointed knife at the wife of the Complainant and the other person snatched the gold chain around his neck. The gold chain broke and the accused could take away only a piece of the chain along with the pendant. The Complainant and the other members of public chased the said accused persons and caught them and handed them over to the police, who had arrived at the scene of offence. The police had recovered piece of chain from the accused No.1. The Complainant-Vijay Shinde lodged the FIR against the accused, pursuant to which crime was registered against these two accused and the co-accused - Durga Varganti, who was allegedly armed with a knife. The accused were taken into custody. The statements of the witnesses were recorded and upon completion of the investigation charge sheet was filed against the accused for offences punishable under Sections 394,

395 and 397 of the IPC.

4. Accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined 7 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. Defence of the accused was that of total denial. Upon appreciating and analysing the evidence on record the learned Judge held all the three accused guilty of offence under Section 392 r/w 34 of the IPC and sentenced them to suffer rigorous imprisonment for 5 years. Accused No.2, who was an under trial prisoner, was also convicted for offence under Section 397 of the IPC and sentenced to undergo rigorous imprisonment for 7 years. He has not challenged the judgment. The present appeal has been filed by the accused Nos.1 and 3 under Section 374 of the Cr.P.C.

5. Heard Ms Akshata Desai, learned counsel for the accused Nos.1 and 3 and Mr.S.V. Gavand and Mr. P.H. Gaikwad, learned APP for Respondent-State in the respective appeals. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

6. The short point for my consideration is whether the

prosecution has established that these accused alongwith accused No.2 had committed robbery on 25/3/1994. In this regard the evidence of PW1-Vijay Shinde reveals that on the relevant date he along with his wife and son had gone to Sanjay Gandhi National Park. He has stated that at 3.45 p.m. while they were sitting near the Crocodile Park, the accused came near them. The accused No.2 pointed a knife at his wife and the accused No.1 snatched his gold chain. He has deposed that the chain broke and the accused No.1 could take only a piece of chain with the locket. He has stated that all the three accused ran away from the spot. He and his wife shouted for help and with the help of the members of public caught the three accused. In the meantime, police arrived at the spot. They handed over custody of the accused to the police. The police recovered a piece of gold chain and locket from the accused No.1. The police also seized the knife used by accused No.2 in commission of the crime.

7. PW2-Adhar Mahadu Sonawane was working in the National Park as a watchman. This witness has also deposed that on 25/03/1994 he was on duty at Sanjay Gandhi National Park from 9.00 a.m. to 4.00 a.m. He has stated that he resides in the park near Lion Safari area. While he was at home, he heard the members of the public shouting "chor chor". He saw some people gathered near Crocodile Park. He has

stated that all the three accused persons were caught by the members of the public and they were beaten as they were involved in snatching a chain.

8. PW3-Kashinath is also a watchman working in Sanjay Gandhi National Park. This witness has also stated that on 25-3-1994 at 4.00 p.m. after finishing his duty he was proceeding at his residence. He saw the accused running. The Complainant and other members of public were shouting "chor, chor" and were chasing the accused. They caught the accused and assaulted them and later handed them over to the police. He has stated that the police recovered a piece of gold chain with one locket from the accused No.1.

9. PW5- Parsuram is a police personnel, who was on duty at Sanjay Gandhi National Park. He has deposed that while he was proceeding towards Crocodile park he saw the accused running in the opposite direction. He saw the Complainant and the other members of public chasing them. They were shouting "chor, chor" and some of the members of the public was shouting "pakdo, pakdo". He has deposed that he and the other two watchmen of the Sanjay Gandhi National Park caught all the three accused. Some of the members of the public assaulted them as they were involved in snatching the gold chain. He

has stated that in the meantime police on patrolling duty arrived at the spot. They handed over the accused persons to the police. He has deposed that personal search of the accused was taken and a piece of gold chain with locket was recovered from accused No.1.

10. On 25/03/1994 PW7-API-Sambhaji Patil was on duty in patrolling van. He has deposed that at about 4.00 p.m. when the police van had reached near the Crocodile Park, they saw a crowd gathered near the park. PW5 was also present at the site. When he went to the spot of the incident he was told that the accused persons, who were caught by the public, had snatched a gold chain of the Complainant. He has deposed that he had taken personal search of accused in presence of PW7 and recovered a piece of gold chain with a pendant from the accused No.1.

11. The evidence of the Complainant amply proves that on 25/03/1994, he, his wife and son had been to Sanjay Gandhi National Park and were sitting near the Crocodile Park. The evidence on record indicates that the accused accosted PW1, the accused No.2 pointed a knife at the wife of the Complainant and accused No.1 snatched his gold chain. The chain had broken and the accused No.1 had taken the piece of gold chain and the locket. The evidence adduced by the

prosecution amply proves that the accused Nos.1 and 3 were caught while they were running away and a piece of gold chain was recovered from the accused No.1. There is no reason to doubt the credibility of the Complainant and the other witnesses, who are independent witnesses and have no reason to falsely implicate the accused. Thus, the evidence adduced by the prosecution proves that the accused Nos.1 and 3 had committed robbery within the meaning of Section 390 of the IPC. I do not find any infirmity in the judgment or any other valid reason to interfere with the conviction.

12. As regards the quantum of sentence, it is stated that as on the date of the offence the accused Nos.1 and 3 were young boys in their early twenties. They had committed the crime possibly led by poverty, illiteracy and misguidance resulting due to impressionable young age. They were in custody for about five months. Subsequent to their release on bail, they have married. These accused, who are now in their fifties have settled in life with their respective families. Considering this fact and considering the time lag, in my considered view the sentence imposed against accused Nos.1 and 3 needs to be reduced to the sentence undergone.

13. Under the circumstances, the appeals are partly allowed.

The conviction of accused Nos.1 and 3 is maintained while the sentence is reduced from 5 years to the sentence undergone by the accused Nos.1 and 3.

(SMT. ANUJA PRABHUDESSAI, J.)