

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.1299 OF 2019

Santosh s/o Sukhdeo Waikar,
Age 34 years, Occu. Labour,
R/o Takaliphata, Tq. Kopargaon,
District Ahmednagar

... APPELLANT

VERSUS

The State of Maharashtra
through Police Inspector
Shrirampur Taluka Police Station,
Tq. Shrirampur, Dist. Ahmednagar

... RESPONDENTS

.....
Shri M.L. Wankhede, Advocate for appellant
Mrs. D.S. Jape, A.P.P. for respondent
.....

CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 5th May, 2022

Date of pronouncing judgment : 15th June, 2022

J U D G M E N T :

The appellant along with four others was prosecuted for offences punishable under Section 395 read with Section 397 of the Indian Penal Code. It was the Sessions Case No.4/2017. Learned Additional Sessions

Judge-2, Kopargaon, vide judgment and order dated 26/7/2019, convicted the appellant for the offence punishable under Section 395 of the Indian Penal Code and, therefore, sentenced him to suffer rigorous imprisonment for ten years with a direction to pay a fine of Rs.10,000/-. In default of payment of fine, he was directed to suffer rigorous imprisonment for one year. The others prosecuted along with the appellant came to be acquitted. The State has not preferred appeal from acquittal. The appellant has been behind the bars since 11/12/2015 till date. The trial Court has granted him set off in terms of Section 428 of the Code of Criminal Procedure.

2. Facts giving rise to the present appeal are as follows :-

P.W.1 Sunil Kote (informant) would reside along with his wife and other family members in a house standing on his agricultural land at village Wakadi. He runs a Dhaba (roadside eatery). The incident took place on the intervening night of 17th and 18th October 2015. It so happened that the informant and his family members went to sleep little past 11.00 p.m. The informant heard some noise outside of his

residence. It was about 1.30 a.m. He looked outside to see presence of one person. That person hit him with a stone by means of catapult. Four other persons entered the house by breaking open the kitchen door. They were armed with sword. Their faces were covered with handkerchiefs. They tied the hands of both the informant and his wife – P.W.2 Shaila Kote. One of them snatched the cellphone of the informant and scattered the household articles. They were said to be 8 to 10 in number. They demanded key of a cupboard. Both the informant and his wife were assaulted. The culprits opened the cupboard and took away gold ornaments worth Rs.1,40,000/-, silver utensils worth Rs.20,000/- and cash amount of Rs.20,000/-. They also took away the Maruti Van of the informant.

3. It is the case of the prosecution that, while the offence was being committed, the handkerchief on the face of one of the culprits slipped below the chin. The informant and his wife identified that person as the appellant herein. After the culprits made their escape good, F.I.R. (Exh.15) was lodged by P.W.1 Sunil at 8.30 Hrs. in the morning. Crime vide C.R. No.130/2015 came to be registered at Shrirampur Police Station for the offence punishable under Section 395 of the

Indian Penal Code.

4. The crime was investigated. Scene of offence panchanama was drawn in the presence of panchas. The appellant came to be arrested. Involvement of other culprits was surfaced during interrogation of the appellant. The appellant and some of the culprits gave disclosure statements, pursuant to which the stolen articles came to be seized. On completion of the investigation, the appellant and others were proceeded against.

5. The prosecution examined 8 witnesses and produced in evidence certain documents to establish the charge. The trial Court, on appreciation of the evidence, convicted the appellant and sentenced him as stated hereinabove. Others came to be acquitted. Two of the accused were found absconding.

6. Shri Wankhede, learned counsel for the appellant would submit that, the appellant has a residence in the nearby of the house of the informant. The informant runs a Dhaba. He would sell liquor at his hotel unauthorisedly. Number of crimes in that regard were registered against the

informant. Wife of the appellant wanted to open up a hotel in the very vicinity. The informant, therefore, had a grudge against them. According to learned counsel, at the relevant time the appellant was behind the bars. As per the prosecution case itself, the lights in and around the residence of the informant were smashed. It was, therefore, difficult for the informant and his wife to identify the appellant. According to learned counsel, a false F.I.R. was lodged against the appellant herein. He, therefore, urged for allowing the appeal.

7. Mrs. Jape, learned A.P.P. would, on the other hand, submit that, the scene of offence panchanama drawn immediately after the incident does indicate that dacoity took place at the house of the informant. The evidence indicates that, the lights were smashed by the culprits while leaving the place. The appellant was clearly identified by the informant and his wife. He was of their acquaintance. The appellant has criminal antecedents. Number of crimes have been registered against him. Pursuant to the disclosure statement made by the appellant, some of the stolen articles came to be recovered from his residence. The learned A.P.P., therefore, urged for dismissal of the appeal.

8. Considered the submissions advanced. Perused the evidence in the case. The informant along with his family members admittedly reside in a house standing on his agricultural land situated at Wakadi Phata. He runs a Dhaba. True, he would sell illicit liquor unauthorisedly. Crimes have, therefore, been registered against him. The same is, however, not a fact to disbelieve his evidence.

9. The scene of offence panchanama (Exh.22) drawn in the presence of panch witnesses soon after the crime was committed does indicate that a dacoity/ robbery took place at the residence of informant. The scene of offence panchanama has been duly proved by the evidence of panch witness Kishor Boravake (P.W.5) and the investigating officer Rameshwar Turnar (P.W.7) as well.

10. Both the informant and his wife are the victims of the offence. Both have given evidence consistent with each other. It is in their evidence that on the night of 17th October 2015, all of them went to sleep. At about 1.30 a.m. they heard some noise outside their residence. The informant looked outside to see presence of one person. That person hit

him stone by means of catapult. After a while, four persons entered the kitchen room by breaking open its door. Some others joined them later on. All of them broke open the door of living room. All of them had covered their faces with handkerchiefs. The informant and his wife were assaulted. Cupboards in the room were searched. Cash amount with gold and silver ornaments were taken charge of. The culprits then left the house but not before smashing of the glowing lights. It is also their case that the culprits took away the informant's Maruti Van.

11. Both the informant and his wife have categorically testified that, while the offence was being committed, handkerchief on the face of one of the culprits slipped. Both of them could, therefore, identify the person as the appellant herein. Within hours of the incident, F.I.R. (Exh.15) was lodged, naming the appellant therein.

12. The trial Court had summoned the police papers of a particular crime in connection of which the appellant had claimed to have been behind the bars on the day of the incidence. On perusal of those papers, the trial Court found the appellant had not been under arrest in connection with

the said crime. As such, the defence of the appellant fell flat.

13. True, two days after the alleged incidence, both the informant and his wife approached the Primary Health Centre and obtained injury certificates. The trial Court has rightly disbelieved evidence in this regard. This Court has no reason to take a different view. On the question of recovery of stolen articles, it is to be stated that the description of the articles stolen was not given in the F.I.R. On seizure of those articles, no identification thereof was held. Still the fact remains that the appellant was identified as one of the culprits involved in the offence in question. The trial Court has, therefore, rightly convicted the appellant.

14. The trial Court sentenced the appellant to suffer ten years rigorous imprisonment. In view of this Court, the sentence appears to be somewhat disproportionate. There is nothing to indicate the appellant to have had assaulted the informant or his wife. He has been behind the bars for little over six years. In view of this Court, the sentence of imprisonment of seven years would serve the purpose. For the aforesaid reasons, the appeal partly succeeds. Hence the order :-

ORDER

- (i) The Criminal Appeal is partly allowed.
- (ii) Conviction of the appellant for the offence punishable under Section 395 of the Indian Penal Code imposed by learned Additional Sessions Judge-2, Kopargaon in Sessions Case No.4/2017, by judgment and order dated 26/7/2019 is maintained. The sentence of ten years rigorous imprisonment is, however, reduced to seven years rigorous imprisonment. Rest of the terms of the impugned order of conviction and resultant sentence to stand unaltered.

**(R. G. AVACHAT)
JUDGE**

fmp/-