



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 437 OF 2004

The State of Maharashtra
(Through PSO, Parola P.S.)

... Appellant
(Orig. Complainant)

Versus

Shivlal @ Shivaji Bhagwat Rankhamb
Age : 24 years, Occu. : Driver,
R/o. Tugaon, Tq. and Dist. Osmanabad.

... Respondent
(Orig. Accused)

...

Mr. N. D. Batule, APP for Appellant - State.
Mr. S.P. Salgar, Advocate for Respondent (Appointed through legal Aid)

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 15th FEBRUARY 2024

PRONOUNCED ON : 21st FEBRUARY 2024

JUDGMENT :

1. Judgment and order of acquittal dated 20.03.2004 passed by learned Judicial Magistrate First Class, Parola, acquitting present respondent from offence punishable under section 394 of Indian Penal Code (IPC), is now taken exception to by State.

FACTS LEADING TO THE PROSECUTION ARE AS UNDER

2. Parola police charge-sheeted respondent for commission of offence under section 394 of IPC, alleging that, on 27.12.2002 around 6.00 p.m., respondent along with three unknown persons assaulted informant Vilas, who was driving Tata-

sumo vehicle bearing registration no. MH-12-PA-2260 and threw him besides the road after tying him down while vehicle in the vicinity of village Karanji-Bk on National Highway No.6. Later on, information was passed by informant Vilas to Parola Police and on the strength of his statement, crime bearing No. 228 of 2002 was registered and after investigation accused was charge-sheeted for above offence and tried by learned Judicial Magistrate First Class, Parola.

3. On appreciating the oral evidence of 13 witnesses as well as documentary evidence, learned trial Judge reached to a finding that, evidence on record does not establish guilt of accused and finally held the case as not proved and acquitted the accused as per section 248(1) of Cr.P.C. by judgment and order dated 20.03.2004.

Feeling aggrieved by the above judgment and order of acquittal State has come in appeal praying to quash and set aside impugned judgment by allowing the appeal.

4. Sum and substance of the arguments of learned APP is that, occurrence has been proved from the testimony of informant, who is a victim. He has deposed about working as a driver on the

vehicle owned by PW2 Nivrutti. That, PW2 Nivrutti deposed about vehicle hired for journey by paying advance. On directions of PW2 Nivrutti, PW1 Vilas drove the vehicle and while the vehicle in the vicinity of village Karanji-Bk on National Highway No.6, after beating by accused and three unknown person, informant was thrown besides the road. He managed to inform PW4 Ananda and thereafter crime was registered and investigated. That, prosecution had examined as many as 13 witnesses. Test identification parade was done. Accused was identified by informant, both in test identification parade as well as before court, even PW2 Nivrutti and PW3 Ganesh identified accused. Medical evidence was also supported assault. Guilt was cogently proved, but according to him, learned trial Judge failed to consider and appreciate the evidence and acquitted the accused. According to him, findings are not supported by sound reasons. There is non application of settled law. Hence, he prays to allow the appeal by setting aside the impugned judgment.

5. In answer to above, learned counsel for accused would submit that, prosecution miserably failed to establish the charges. He pointed out that, none of the witness is corroborating each other. There is no evidence of vehicle being taken on hire purchase. Complaint is about being beaten from behind. Accused and three

unknown persons are tried to be involved. That, before test identification parade, accused was confronted to the informant and therefore, very parade is rendered doubtful. According to him, apparently medical evidence i.e. injury certificate is fabricated. All such aspects were duly considered by learned trial Judge and as such finding no case being made out, learned trial judge has correctly acquitted the accused. Therefore, for all above reasons, he prays to dismiss the appeal for want of merits.

6. After hearing the submissions and on re-appreciation of evidence it seems that, case of prosecution is rested on the testimony of 13 witnesses and their status as well as sum and substance are as under :-

PW1 Vilas deposed that he is driver on a Tata-sumo vehicle owned by Nivrutti Mahajan (PW2). According to him, on 26.12.2002 owner Mahajan directed him to make a trip of Jalgaon and accordingly he went to Srikant Travels. Vehicle was booked on hire basis. After fixing rate he took said person around 6:00 p.m. The said person directed to halt the vehicle near Khadki railway station. After 10 to 15 minutes, three more persons came and occupied back seat. On the way, they made the vehicle halt and purchased Gutkha. While in the vicinity of Bhosari area he was asked to stop the vehicle. Two of them got down and went

somewhere. Remaining two also got down, but stood there near the vehicle. Then two persons who had gone returned, then vehicle was taken to petrol pump. When vehicle was in the vicinity of village Karanji-Bk., vehicle was stopped as one of them go to answer call of nature. After 10 to 15 minutes, when all sat to proceed, somebody gave heavy blow on his head from backside and he was beaten, his hands and legs were tied, mouth was also shut by use of gamja and they drove the vehicle by keeping him in dicky. After traveling for short while, he was removed from the vehicle and thrown on the road. He managed to free himself, reached the village and with the help of villagers and police patil, he took to police station. He was first taken to hospital and police recorded statement at Exh.15.

PW2 Nivrutti, owner of the vehicle deposed that, PW1 Vilas was appointed as driver. His nephew Ganesh runs travel agency. His vehicle was engaged for hire. Therefore, he asked driver to take the vehicle after his nephew Ganesh gave Rs.500/- advance. He deposed about receiving phone call from Parola police station regarding driver being beaten, forced him in the vehicle. He identified the vehicle and his driver. He also claims that he identified accused during identification parade.

PW3 Ganesh deposed that, PW2 Nivrutti is his uncle. He stated that, vehicle was taken on hire by one person on 26.12.2002. He identified that person in the court. He deposed about contacting PW2 Nivrutti, fixing rate for kilometer and accused person handing over Rs.500/- as advance to PW2 Nivrutti. He also deposed about learning regarding the incidence of PW2 Nivrutti about driver beaten and vehicle taken away.

PW4 Ananda is the son of police patil of village Karanji-Bk. He deposed that, on 27.12.2002 one person named Vilas was brought, who narrated about vehicle taken away by four persons. According to him, he saw bleeding injury on the head of said person.

PW5 Dilip, police head constable received message from Gurudeosing about Tata-sumo bearing No. MH-12-PA-2260 halted near his Dhaba in abandoned condition and he reported this police head constable and the said vehicle was seized.

PW6 Raju, who works in S.T.D. booth stated that, one Raju Shegokar called him, who was accompanied by a person and told that, the person is in need of Rs.150/- and in returned he wants to keep his stepney. According to him, he handed over Rs.150 to Raju shegaonkar, who further handed it to that person.

PW7 Vasudeo, panch to test identification parade.

PW8 Madhukar, panch to spot panchanama.

PW9 Dr. Pramod Chandwade, who examined PW1 Vilas on history of beating by 3 to 4 persons, treated him and issued injury certificate (Exh.42).

PW10 Sadique Shah deposed about one person hiring his auto-rickshaw by stating that Tata-sumo has failed and he needs to go to bring stepney and accordingly he took the said person, who obtained money from S.T.D. booth.

PW11 Ravindra, police head constable, who collected the papers of Tata-sumo.

PW12 Pramod Dharmadhikari - Tahsildar, who conducted test identification parade on 04.01.2003. Said panchanama is at Exh.53.

PW13 Himmatrao Desai is the investigating Officer, who carried out investigation.

ANALYSIS

7. Here, charge was framed for under section 394 of IPC. In order to attract said charge, prosecution has to establish the following essential ingredients :-

- “(1) Accused committed or attempted to commit robbery;
- (2) He and anyone else jointly concerned in committing or attempting to commit robbery caused hurt;
- (3) Hurt was caused voluntarily.”

8. In the light of above requirements and on carefully sifting prosecution evidence, evidence of PW1 Vilas, PW2 Nivrutti and PW3 Ganesh is of more significance.

On critical analysis of testimonies of above witnesses, it is emerging that, PW2 Nivrutti is the owner of the alleged stolen vehicle. PW1 Vilas is the driver appointed by PW2 Nivrutti. PW3 Ganesh runs a travel agency and it is at his instance, on 26.12.2002, PW2 Nivrutti as well as PW1 Vilas approached the travel agency, where a person was available, who was in need of a vehicle on hire basis. According to PW2 Nivrutti, PW3 Ganesh also paid him Rs.500/- as an advance after the deal was finalized and thereafter PW1 Vilas was directed to take the said person for a journey. Thereafter, it is only PW1 Vilas and said person in the vehicle.

9. On taking survey of evidence of PW1 Vilas he is found to be deposing about vehicle initially towards railway station and then three more persons joining the first person and in all four occupied the vehicle and they moved. Vehicle was halted at Pan

stall at Bhosari for answering call of nature while on the road and thereafter according to PW1 Vilas, some heavy object was hit on his head from back side. It is to be noticed that, all four persons are strangers to him, he has merely given physical description in his statement to police.

In cross he has admitted that, he did not see exactly which amongst the four persons gave blow on the head. He further answered that, he does not remember the faces of the person, who were traveling in the vehicle and he further candidly admitted that, on the day of identification parade he made a guess work. In para 9 of the cross he also admitted that police had shown the accused, saying that, he is the accused. PW2 Nivrutti and PW3 Ganesh seem to have visited the police station prior to going to Tahsil office for test identification parade. They both are admitting that they all were together on the day of test identification parade. Therefore, very aspect of test identification parade comes under shadow of doubt.

10. It is pertinent to note that, PW13 Himmatrao Desai, Investigating Officer has taken accused in custody as suspects while he was already in custody of Chatushringi police station.

11. Therefore, the identification of accused, which was

very crucial in this case, accused being strangers, it was expected of prosecution to prove beyond reasonable doubt that identification of real culprit is fully established. But taking into account the answers given by informant in cross and when PW2 Nivrutti and PW3 Ganesh are with him and also taking into consideration the material about confrontation of accused at Police Station, identification parade though conducted, is rendered valueless for above reasons.

12. That, informant is unable to state who assaulted him. Vehicle is also found to be in abandoned condition and not recovered directly from possession of any of the accused. Here, essential ingredients of section 394 of IPC cannot be said to be made out for establishing the charges.

13. On going through the judgment, learned trial Judge seems to have correctly appreciated the available evidence. There is no clinching, incriminating material for above reasons. Evidence has been properly appreciated by learned trial Judge and findings are supported by sound reasons. No infirmity or perversity is brought to the notice of this court so as to interfere. Finding no merits, I proceed to pass the following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)