

(2002) 07 BOM CK 0025

In the Bombay High Court

Case No : Criminal Appeal No. 355 of 1998

Arun Vinayak Gharkar, Mukesh Bapu Dongarkar and Shridhar
Balkrishna Chavan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 399

Citation : (2003) 2 ALD(Cri) 120 : (2004) CriLJ 1053

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Rohini Wagh, Shringarpure, app, for the Appellant;

Final Decision : Allowed

Judgement

J.G. Chitre, J.—The appellants are hereby assailing the correctness, propriety and legality of the order of conviction and sentence passed by the Additional Sessions Judge, Greater Mumbai in Sessions Case No. 246 of 1995 wherein the appellants have been convicted for the offenses punishable under the provisions of Section 399 IPC and sentenced to under go RI for three years and to pay a fine of Rs. 500/-, in default to undergo further RI for two months.

2. The prosecution case in brief is that on 9.11.1994 at about 9 a.m. or so PW Sanjay Satardekar got the information from his reliable sources that some persons are likely to commit decoity at Vaibhav Co-operative Bank Ltd., situated on L.B.S. Marg, Mulund (East), Mumbai. PSI Sanjay Satardekar collected his colleagues, panch witnesses and took a jeep and ambassador car and ambushed near the bus stop near the said Bank. Those accused were to come by Maruti Van bearing No. MFA 4173. The said van came near the bus stop and some persons including the appellants as per prosecution case boarded down from the said van. Mr. Gharkar told his associates that they should be ready with weapons and as soon as the cashier comes out from the said Bank they were to loot him. The raiding party immediately attempted to catch them but some of the culprits ran

away and out of them the present appellant Nos. 1, 2 and 3 were caught at the spot. A panchanama was prepared in the office. The appellant No. 1 and 2 were found in possession of knives in their pockets, appellant No. 3, as per the prosecution case, was the driver of the said van.

3. The learned trial Judge after appreciating the evidence of the prosecution witnesses examined for proving the guilt of the appellants, held them guilty of the charge framed against them and passed the order of conviction and sentence as mentioned above.

4. Smt. Rohini Wagh, Counsel appearing for the appellants, submitted that the prosecution has failed to prove the guilt of the appellants and the learned trial Judge ignored this important aspect of the matter and passed the order of conviction and sentence. According to her, it being incorrect, improper and illegal, needs to be set aside and the appellants need to be acquitted.

5. Shri Shringarpure, Additional Public Prosecutor, justified the said order of conviction and sentence as correct, proper and legal and prayed for dismissal of the appeal.

6. In view of the submissions advanced before this Court, the Court examined the evidence of Sanjay Satardekar, Vinod Surve and Sanjay Neklikar. The evidence appears to be totally improbable and unnatural for the reasons stated hereinunder. According to the evidence of Sanjay Satardekar, the trump witness of the prosecution, one Gharkar informed his associates after boarding down from the said Maruti Van that they were to be well prepared with their weapons and as soon as the cashier was to come from the Vaibhav Bank, he was to be looted. According to his evidence, this statement was made by him openly on the road and that too when about 10-12 persons were present waiting for the bus at the stop. Taking into consideration the normal human behaviour a person hatching up a plan of looting the Bank would not make such a remark so negligently and casually in such a tone which will allow anybody sundry to hear it like Sanjay Satardekar as he claims. Normally, such instructions, as human experience tells, are given in a secret way and such instructions in this case could have been given before the said persons boarded down from the said Maruti van. There was absolutely no cause for giving such instruction to his associates on road. Except this piece of evidence, the prosecution does not have any material to implicate the appellants in the charge levelled against them in the said trial. This aspect of the prosecution case itself cuts its throat and gives a death nail to its case and buries it in coffin.

7. The learned Trial Judge has ignored this important facet of the matter and recorded a conclusion against the appellants holding them guilty of the charge framed against them. He also ignored that the knives can be also foisted on the persons of the appellants when they were taken from the said bus stop to the police station where the panchanama was drawn. On this point, the evidence of panch witnesses and Sanjay Satardekar is discrepant.

8. Thus, the appeal is allowed. The order of conviction and sentence is hereby set aside and the appellants are hereby acquitted. They be released forthwith, if not required in any other enquiry, investigation or proceedings. No order in respect of the disposal of the property.