
(2001) 03 BOM CK 0022
In the Bombay High Court
Case No : Criminal Appeal No. 313 of 1987

Mohamed Aslam and Another	Vs	APPELLANT
The State of Maharashtra		RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 34, 392, 397

Citation : (2001) ALLMR(Cri) 2258 : (2001) CriLJ 3243

Hon'ble Judges : A.S. Bagga, J

Bench : Single Bench

Advocate : Prabha S. Mane, for the Appellant; D.R. More, APP, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bagga, J.—This appeal has been filed by the Appellants (Original) Accused Nos. 1 and 2 against the Judgment and Order passed by the Additional Sessions Judge. Greater Bombay, thereby convicting the appellants for the offences punishable under Sections 392 read with Section 34 and Section 392 read with Section 397 of the Indian Penal Code and sentencing the appellant No. 1 to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 500/-, in default to suffer further rigorous imprisonment for three months for the offence punishable u/s 392 read with Section 397 of the Indian Penal Code. The appellant No. 2, by the same order is sentenced to undergo seven years" rigorous imprisonment and to pay a fine of R Section 200/-, in default to suffer further rigorous imprisonment for six weeks for the same offence.

2. The facts giving rise to the filing of this appeal are as follows :

The complainant Auguste Ceasar Remedies (PW No. 2) was serving as Supervisor in Don Bosco High School, situated at Vazir Naka, Borivli (West). He was proceeding in the School jeep to withdraw cash from the Bank located at Ganjawala Road, Borivli (West), Bombay. For that purpose, he had a cheque of

Rs. 1000/-. He was also given a cheque of Rs. 11,000/- for payment of Municipal taxes. He had kept both the cheques in a leather bag. The jeep was driven by the School driver Shri Kelkar. After withdrawing the sum of Rs. 1,000/- from the Bank, the Complainant was proceeding towards Municipal Office for depositing the cheque. When the jeep was on its way, a white Fiat Car followed it and when the jeep was in front of Pearl Wine Shop, the Fiat car intercepted it and the jeep was forced to stop. While appellant No. 1 (Original Accused No. 1) carried the revolver, the appellant No. 2 (Original Accused No. 2) carried a razor like weapon. Appellant No. 1 pointed out the revolver at the Complainant. Appellant No. 1 removed the leather bag containing cash of Rs. 1020/- and the cheque. All the Four fled from the place in the Fiat car. The complainant left the jeep in charge of the driver and went to Borivli Police Station, where P. I. Parab (PW-2) recorded his F.I.R. (Exhibit 7). Thus, a complaint came to be registered u/s 392 read with Section 114 of the Indian Penal Code under C.R. No. 410 of 1982 against four unknown persons. P. I. Parab recorded the spot panchanama and the statements of witnesses and entrusted investigation of the case to C.B.I. Police Inspector. The papers of investigation remained at the Police Station till 24-7-1984, but neither the car nor the criminals were found by that time. P.I. Kulkarni (PW No. 7) attached to D.C.B.,C.I.D., while investigating a crime registered by Goregaon Police Station in respect of loss of cash of Polychem Limited, Bombay, noticed that culprits in that offence had also used a white Fiat car for commission of the offence and in the course of investigation of that crime, P.I. Kulkarni arrested six persons. He came to know during the course of investigation that the present appellants were involved in the crime registered with the Borivli Police Station. He arranged an identification parade with the help of Special Executive Magistrate Shri Mulye (PW No. 6). It was the case of the prosecution that in the identification parade conducted during investigation, the Complainant and P.W. No. 1 Narendra Patil had identified both the appellants. On the basis of evidence so collected, charge-sheet came to be filed. Thereafter, the appellants came to be tried before the Additional Sessions Judge, Greater Bombay, who by the impugned judgment and order convicted and sentenced the appellants as stated hereinbefore.

3. With the help of Ms. Prabha S. Mane, learned counsel for the appellants and Shri D.R. More, learned APP, I have gone through the evidence and other material on record. It would be seen that the learned trial Judge accepted the evidence of the complainant and that of PW No. 1 Narendra Patil, both of whom had participated in the identification parade conducted by the Special Executive Magistrate Shri Mulye (PW No. 6). It is important to note that the offence took place on 16-6-1982 at about 11.00 a.m. Though the F.I.R. was lodged with the Police Station quickly, neither the Fiat car which is said to have intercepted the jeep of the complainant nor the criminals were found by the Police till 24-7-1982. It was only, while investigating the crime which was registered with Goregaon Police Station in respect of loss of cash of Polychem Limited, Bombay, that certain accused persons were arrested. Except the oral evidence of the

complainant and P.W. No. 1 - Narendra Patil, who have deposed about the identification of the appellants, there is no other evidence on record. The leather bag which was allegedly snatched from the Complainant has not been found. Neither the revolver nor the knife have been attached. It is also significant that the driver of the jeep by which the complainant travelled was also not examined.

4. With regard to the identification of the appellants the learned Judge himself stated that the description of appellant No. 1 as was given in the F.I.R. (Exhibit 7), wherein the appellant No. 1 was referred to as a small stretched man of dark complexion, while the learned Judge has observed that appellant No. 1 cannot be said to be a stretched black person by any stretch of imagination. It is also important to note that the Complainant in the Court did not identify the appellant No. 2 at all. The offence took place, as stated earlier on 16-6-1982, while the identification parade was conducted on two occasions- one on 26-7-1982 and the other one on 30-7-1982. I am not satisfied that the identification parade was conducted in such a manner that there was no possibility of the witnesses having seen the accused persons and that there was no opportunity for both these witnesses, the Complainant and Narendra Patil, to see the accused persons and the police officers. In short, the evidence of PW No. 1 Narendra Patil and the Complainant is not foolproof. The conviction of the appellants is based on the evidence of these two witnesses. Since there is no recovery, either of the leather bag in question or of the weapons used in the commission of the offence, this Court has doubts about the involvement of the appellants in the incident alleged to have taken place on 16-6-1982. Conviction, in such circumstances, on the basis of these two witnesses, would not be safe. It is significant to note that during the course of trial, before the learned Judge, P.W. 1 Narendra Patil did not state that the appellant No. 1 (Accused No. 1) had shown the revolver to members of public, while this fact had been stated by him in his statement. During the trial, the Complainant had not identified appellant No. 2 at all. The identification parade conducted by the Special Executive Magistrate (PW No. 6) was not foolproof. Finally, the Complainant referred to appellant No. 1 as a small stretched person with black complexion. However, the learned Judge has himself observed that the appellant No. 1 present during the trial cannot be said to be a black man.

5. In view of the above discussion, the conviction of the appellants (Original Accused Nos. 1 and 2) cannot be sustained. The conviction recorded by the learned Judge and sentence passed against the appellants will have to be set aside. It is set aside. The appeal is allowed. The appellants, who are already on bail, are acquitted of the offences u/s 392 and/or under: Section 397 of the Indian Penal Code and they are set at liberty.

6. Parties and the concerned authorities to act on an ordinary copy of this judgment duly authenticated by the Sheristedar of this Court. Certified copy allowed.