

(1997) 05 BOM CK 0026

In the Bombay High Court

Case No : Criminal Appeal No. 618 of 1995

Ravindra Laxman Mahadik

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-05-1997

Acts Referred:

Evidence Act, 1872 — Section 3, 8

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

Citation : (1998) 1 BomCR 297(1) : (1998) BomCR(Cri) 30(1) : (1997) 3 MhLj 213

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : D.S. Mhaispurkar, app, H.E. Mooman, for the Appellant;

Judgement

Vishnu Sahai, J.—By this appeal, the appellant has challenged the judgment and order dated 10-11-1995, passed by the Additional Sessions Judge, Gr. Bombay, in Sessions Case No. 658 of 1992, whereby he has been convicted and sentenced to undergo 3 year's Rigorous Imprisonment and to pay a fine of Rs. 1,000/- in default Rigorous Imprisonment for one month, for an offence u/s 392 read with 34 I.P.C.

2. In short, the prosecution case is that on 20-2-1992, at about 9.30 p.m. when Smt. Manda Vinod Sahani, PW. 1 and her husband Shri Vinod Sahani, P.W. 2 and children were returning after attending the parent's Meeting and had reached part of the Juhu beach, behind Union Bank of India and Mayur Bungalow in Santacruz (West) Bombay, the appellant along with another on the point of knife, relieved Manda Sahani and Vinod Sahani of their valuables and money. The looted articles included mangalsutra and earrings belonging to Manda Sahani. Some money from the purse of Manda Sahani and the purse of Vinod Sahani.

Both the miscreants were unknown to Manda Sahani and Vinod Sahani.

3. The FIR of the incident was immediately lodged by Manda Sahani at the

Santacruz Police Station, On its basis, a case u/s 392 r/w 34 I.P.C. was registered against unknown persons. The investigation was conducted by API Sayaji Dubal. On 5-3-1992, he arrested the appellants. On 8-3-1992, he informed the SEM Rauf A.G.Sayed to hold a test identification parade at the police station.

4. Identification of the appellant and co-accused Javed Pathan who had also been apprehended, was conducted on 8-3-1992 at the Santacruz Police Station by the SEM Rauf Sayed. At the said identification, the appellant was identified by the victim Manda Sahani, P.W. 1.

5. After completion of the investigation, the appellant was charge sheeted.

6. The case was committed to the Court of Sessions in the usual manner, where a charge u/s 397 r/w 34 I.P.C. was framed against the appellant to which he pleaded not guilty and claimed to be tried. During the trial, the prosecution in all examined as many as six witnesses. Two of them, namely Manda Sahani and Vinod Sahani, the victims, were examined as eye-witnesses. In defence, no witness was examined.

7. The trial Judge believed the evidence adduced by the prosecution and convicted and sentenced the appellant in the manner stated above.

8. The short submission of Mr. H.E. Mooman learned Counsel for the appellant is, that it would not be safe to sustain the conviction of the appellant on the solitary identification of Manda Sahani. He contended that no weightage can be given to the identification of the appellant by Vinod Sahani because, he identified him for the first time in the Court and did not attend the test identification parade during the investigation. I find merit in Mr. Mooman's submission that no value can be attached to the identification of the appellant by Vinod Sahani for the first time in Court. There is no dearth of authorities of the Supreme Court on the point. However, reference need only be made to the one reported in Kanan and Others Vs. State of Kerala, .

9. I find merit in Mr. Mooman's submission that it would not be safe to accept the identification evidence of Manda Sahani. Manda Sahani in her examination-in-chief stated that on the place of the incident, there was no light. In her cross-examination (para 6) she stated that it was dark at the place of the incident but, slight light was emanating from the building situate on the shore. The distance between the building and the place where Manda Sahani and her husband were looted has not been unfolded in the evidence. The learned trial Judge has observed that the evidence of Vinod Sahani is that the incident took place at a distance of about 100 ft from the Gandhi statue, where the meeting was held. What he wanted to convey was that hence there must have been light at the place of incident. In my view, on the face of the definite statement of Manda that it was dark as there was only slight light, and bearing in mind that the incident took place at 9.30 p.m. in the month of February, 1992, it would not be safe to conclude that there was sufficient light on the place of the incident enabling

Manda Sahani to identify the appellant.

10. There is another angle of looking at the matter and that is admittedly against the appellant, the only evidence is that of a solitary identification. In the magnum opus, on the law of identification, reported in Asharfi and Another Vs. The State, ., James J. speaking for the Division Bench, in. para 46, observed thus :-

".....Hence, only one identification cannot eliminate the possibility of the pointing out being purely through chance and for this reason is insufficient to establish the charge."

I am in respectful agreement with the observations of James, J. They are applicable with all the more rigour to the instant case, because as observed earlier, light was also insufficient for Manda Sahani to have recognised the appellant.

11. I would however, like to point out that the above observations which I have extracted from para 46 of Asharfi and Another Vs. The State, , should not be construed to mean that the inflexible requirement of law is that under no circumstances, conviction cannot be based on a solitary identification. It is only a rule of prudence.

12. For the said reasons, in my view, it would not be safe to sustain the conviction and sentence of the appellant. Accordingly, I allow this appeal and acquit the appellant for the offence u/s 392 r/w 34 I.P.C. and set aside his conviction and sentence on that count. He is on bail. He need not surrender. His bail bonds stand cancelled and sureties discharge. In case he has paid the fine it shall be refunded to him.

In case an application for a certified copy of this Judgment, is preferred, the same shall be issued on an expedited basis.

13. Appeal allowed.