

(2015) 03 BOM CK 0359

In the Bombay High Court

Case No : Criminal Appeal No. 727 of 2014

Shantaram Vasant Kale and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2015) ALLMR(Cri) 2708

Hon'ble Judges : P.V. Hardas, J;Shalini Phansalkar Joshi, J

Bench : Division Bench

Advocate : Rebecca Gonsalvez, for the Appellant; Sangeeta D. Shinde, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J—The appellants/Original Accused Nos. 1 and 4, who stand convicted for offence punishable under Section 395 of the Indian Penal Code and sentenced to imprisonment for life and each accused to pay a fine of Rs. 2,000/-, in default of which to undergo further RI for one year, by the Additional Sessions Judge, Pune, by judgment dated 6/3/2014, in Sessions Case No. 659 of 2009, by this appeal question the correctness of their conviction and sentence. Though this appeal is of the year 2014, in view of the order passed by this court in Criminal Application No. 224 of 2015, dated 3/3/2015, this appeal has been listed before us for final hearing.

2. Facts, in brief, as are necessary for the decision of this appeal may be stated thus:--

"PW 3 - Police Officer Navnath Bere, who, on 27/1/2007, was attached to the Shirur Police Station, was entrusted with the investigation of Crime No. 266 of 2006, which had been registered on the basis of the First Information Report lodged by PW 2 - Uttam Walke at Exh. 83. On the basis of the said report, the aforesaid crime was registered. PW 3 - Police Officer Bere recorded the

supplementary statements of the witnesses and further to the completion of investigation, a charge-sheet against the accused was filed. It further appears that on the basis of a disclosure statement made by accused No. 2 - Rohini, certain stolen articles were recovered."

3. On the case being committed to the Court of Sessions, trial court vide Exh. 43 framed charge against the accused for offence punishable under Sections 395 and 412 of the IPC. The accused denied their guilt and claimed to be tried. Prosecution examined three witnesses in support of its case. The defence of the accused was of denial. The trial court upon appreciation of the evidence, convicted and sentenced Original Accused Nos. 1 and 4 as afore-stated and acquitted Original Accused Nos. 2, 3 and 5.

4. We have heard Ms. Rebecca Gonsalvez, learned counsel for the appellants and the learned APP and in order to effectively deal with the submissions advanced before us by the learned counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

5. Prosecution has examined P.W. 1 -Ashok Minde, a panch to the discovery memorandum relating to the discovery of the stolen ornaments. The aforesaid memorandum had been made at the behest of Original Accused No. 2 - Rohini, who has been acquitted. The aforesaid circumstance, therefore, is not incriminating circumstance in so far as the present appellants are concerned.

6. Prosecution has examined PW 2 - Uttam, the first informant, who deposes that on 14/12/2006 he was residing at Karade, Taluka - Shirur, District - Pune. On that day at about 2 a.m. he was awakened on hearing the cries of his mother who was sleeping in another room. Two persons had entered in his room and those two accused had attempted to strangle him with the muffler which was worn by PW 2 -Uttam. The accused threatened him and asked him to produce the ornaments, else they would kill him. Wife of PW 2 - Uttam, therefore, was awakened and ornaments on her person were removed by the two accused. Those two accused also assaulted the wife of PW 2 - Uttam. The accused then removed the gold and silver ornaments which had been kept in the wooden almirah and then left his house. PW 2 - Uttam thereafter entered the room of his mother and noticed that his mother had sustained injuries on her head and hands and was lying on the floor. He, therefore, with the help of the neighbour, took his wife and mother to the Vighnaharta Hospital at Shirur for treatment. His statement was recorded at Exh. 83 on the basis of which the offence was registered. He has given the description of the ornaments which had been stolen. He has identified the accused Nos. 1 and 4 to be the same persons who had committed dacoity in his house.

7. In cross-examination, he has admitted that the incident lasted for about half an hour. He has voluntarily stated that a light was burning at the time of the incident.

8. The learned counsel for the appellants has urged before us, (i) that PW 2 -

Uttam has not given the description of the accused in the FIR at Exh. 83, (ii) there is no reference in the FIR at Exh. 83 that a light was burning in the house and, therefore, he had seen the accused and (iii) PW 2 - Uttam had identified the accused for the first time in court after nearly eight years of the incident. The learned APP has supported the findings recorded by the trial court.

9. PW 2 - Uttam does not claim that the accused were acquainted with him. It is thus clear that he had not seen the accused prior to the incident. The incident had occurred, according to PW 2 - Uttam, on 14/12/2006. In the FIR at Exh. 83, there is no reference about description of the accused and also there is no reference that a light was burning in the house at the time of the incident. PW 2 - Uttam has identified the accused for the first time in court on 8/1/2014 i.e. after eight years of the incident. Undisputedly, no Test Identification Parade had been held. In our opinion, therefore, in the absence of any other corroborative evidence, no reliance can be placed on the identification of the accused for the first time in court after eight years of the incident. As pointed out by us above, the seizure of the stolen articles was at the behest of Original Accused No. 2 - Rohini who has been acquitted. There is no other corroborative evidence and in our opinion, therefore, the present appellants are entitled to be given the benefit of doubt. Accordingly, Criminal Appeal is allowed and the conviction and sentence of the appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants, be refunded to them. Since the appellants are in jail, they be released forthwith, if not required in any other case.