

(2010) 10 CAL CK 0046

Calcutta High Court

Case No: C.R.A. No. 550 of 2006

Md. Anwar

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Oct. 4, 2010**Acts Referred:**

- Arms Act, 1959 - Section 25(1B), 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 393, 394, 397

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Debashis Roy, in C.R.A. No. 550 of 2006, Deep Chaim Kabir and Mosaraf Hossain, in C.R.A. No. 495 of 2007, for the Appellant; Prabir Kumar Mitra in C.R.A. No. 550 of 2006 and Swapan Kumar Mullick in C.R.A. No. 495 of 2007, for the Respondent

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**Judgement**

Ashim Kumar Roy, J.

Both the criminal appeals being C.R.A. No. 550 of 2006 and C.R.A. No. 495 of 2007 are arising out of the self-same judgment and order passed by the Learned Additional Sessions Judge, Fast Track, 2nd Court, Sealdah, 24-Parganas (South), in connection with Sessions Trial No. 1(2) 06 and accordingly the same are taken up for hearing together.

2. In the aforesaid trial the convicts are Md. Anwar and Md. Arshi. In the said trial both the accuseds Md. Anwar and Md. Arshi were convicted u/s 393 and u/s 397 of the Indian Penal Code. They were sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs. 2,000/- and with default clause on each count, for their conviction u/s 393 of the Indian Penal Code and u/s 397 of the Indian Penal Code.

In addition to that Md. Anwar was also convicted u/s 25(1B)(b)/27 of the Arms Act and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- with default clause.

All the sentences were directed to run concurrently.

3. The prosecution case in a nutshell are as follows;

One Md. Javed is a resident of a flat situated on the first floor of the premises No. 31B, Circus Avenue, Kolkata - 700 070, popularly known as Taj Mansion. On August 12, 2004 at about 8.25 hours in the evening the said Md. Javed was at his flat with his wife Saiyara Begum and his daughter, at that time the calling bell of his flat started ringing. Being attracted by the ringing of calling bell he opened the door of his flat and found three persons were standing. They first asked him whether that was the flat of one Asutosh Mukherjee or not and when he answered in negative and was about to shut the door the said miscreants pushed him inside and forcibly entered into his flat. Thereafter, one miscreant brought out his revolver and put it on the head of Javed, but Javed somehow caught hold of his hand and dashed him on the door and the revolver fell from his hand. At that time the other two miscreants brought out choppers and attempted to hit him on his head however this time also Javed somehow saved him from such attack by moving his head. In the meantime, the inmates of the house raised hue and cry and being attracted by such hue and cry the local people rushed to the spot and caught red handed one miscreant, viz., Md. Anwar but other two fled away.

4. In the trial both the accuseds were charged under Sections 393/394 of the Indian Penal Code and in addition to that appellant Md. Anwar was charged under Sections 25(1B)(b)/27 of the Arms Act. The prosecution to prove its case examined as many as nine witnesses, but defence examined none. It is the specific case of the defence that the appellants are innocent and have been implicated falsely in the case.

5. The prosecution to establish its case examined Md. Javed as P.W.1, while his wife Saiyara Begum as P.W.2. The P.W.5 Md. Naushad Alam and P.W.6 Md. Sahabuddin are post occurrence witnesses, who along with the members of the public caught the appellant Md. Anwar while he was trying to flee away from the spot. P.W.3 and P.W.4 are the doctors, who examined the injured Md. Javed after the occurrence, while P.W.7 is an Arms Expert and P.W.8 is the Judicial Magistrate, who held the T.I. Parade of the appellants and P.W.9 is the Investigating Officer of the case.

6. It is the evidence of P.W.1 that at the time of the alleged incident he was at his flat together with his wife and daughter. When on the sound of ringing of calling bell he opened the door of his flat, he found total three miscreants including the present two appellants. It is his further evidence that at first they asked whether the flat belong to one Asutosh Mukherjee or not and as soon as he replied in negative the said miscreants tried to forcibly entered inside his flat and one of them pointed a revolver towards his head. Somehow or other the witness managed to hold the hand of the said miscreant, who was holding the revolver and pushed him on the door and the revolver fell down from his hand. In the meantime, the other two accused persons brought out Bhojali and tried to hit him. When the wife of the

petitioner raised alarm and being attracted by same many local residents rushed to the spot and at this the miscreants getting afraid tried to escape, but one of the said miscreant with a Bhojali in his hand was caught by the local people, who was identified as the appellant Md. Anwar. He also identified the appellant Md. Arshi as one of the miscreant, who was present at the time of incident with a Bhojali in his hand. Thereafter, police arrived and seized the revolver and the Bhojali from the spot. Then the witness and his wife were removed to the Hospital for the treatment of the injuries they sustained during the incident. The witness further claimed that he identified both the accused persons during T.I. Parade.

This witness was cross-examined at length, but nothing could have been brought out which could touch the credibility of the witness as regards to his identification of both the appellants and in their participation in the commission of the offences. Not only the appellant Md. Anwar was arrested from the spot but also the P.W.1 identified both of them during the T.I. Parade and in the Court.

7. The P.W.2 Saiyara Begum was also one of the eye witness and a victim of the incident. She fully corroborated the evidence of her husband P.W.1. This witness identified Md. Anwar as one of the miscreant, who was caught by the local people at the time when he was trying to flee away from the spot as well as the Md. Arshi as one of the miscreant, who was present with a Bhojali in his hand. She also claimed that during the scuffle she sustained injuries and was treated at the local hospital along with her husband. It is also her evidence that the accused Md. Anwar was caught red handed with a Bhojali in his hand and police seized the said Bhojali as well as the revolver which was fell from the hand of another miscreant. This witness identified both the appellants during the T.I. Parade as well as in the Court.

The P.W. 2 was also cross-examined at length, but in her cross-examination nothing could be brought out from her touching the credibility of her evidence as to the involvement of these two appellants in the commission of the offence.

8. The P.W. 8 is the Learned Judicial Magistrate, who held the T.I. Parade and according to the said witness, in the T.I. Parade both P.W.1 Md. Javed and P.W.2 Saiyara Begum identified the appellants Md. Anwar and Md. Arshi and while identifying them also disclosed the role, the said accuseds played during the incident. It appears from the evidence of this P.W.8 that all necessary precautions were taken by him at the time of holding of the T.I. Parade and nothing could have been brought from his evidence to raise any doubt as to the same.

9. The P.W.6 is one Md. Sahabuddin and P.W.5 is one Md. Nausad Alam and both of them are local residents. While the P.W.5 is the owner of a tire repairing shop, the P.W.6 is a driver cum mechanic. According to the said two witnesses at the time of the incident both of them were taking tea in a shop situated in front of the Taj Mansion, where the incident took place. According to the said witnesses being attracted by the alarm "Bachao Bachao" they rushed to the spot and while they were

entering inside the house, they found Md. Anwar trying to flee away with a chopper in his hand and the said accused was caught by them. Both the witnesses identified the appellant Md. Anwar, who was caught red handed at the spot as well as the Bhojali which he was carrying at that time and the revolver which was found lying at the flat of the P.W.1.

These two witnesses also cross-examined at length by defence but their evidence remained unshaken as far as the facts that the appellant Md. Anwar with a Bhojali in his hand was caught by them while he was trying to flee away from the spot.

10. The P.W.3 and P.W.4 are two doctors attached to the Calcutta National Medical College and Hospital, who examined the P.W.1 and P.W.2 after the incident and they found injuries on the person of the P.W.1 and P.W.2 and were told by the injured that they sustained those injuries while trying to resist commission of dacoity in their flat.

In their examination u/s 313 of the Code of Criminal Procedure, all the aforesaid incriminating circumstances appearing from the evidence of the witnesses were put to them but both of them claimed to be innocent and that they were falsely implicated in the case.

11. It has been argued on behalf of the appellants by their respective Counsels that the Learned Trial Court relied on inadmissible evidence but they could not have been able to point out any such evidence on which the Trial Court relied upon to convict the accuseds although same were not legally admissible. They argued that except the P.W.1 and his wife P.W.2 no local witness has been examined in support of the prosecution case. This is a case where an attempt of committing robbery was taken place inside a four-storied building in a flat, therefore the inmates of the flats are very natural witnesses and absence of any other residents of the building is not at all fatal for the prosecution. Both the P.W.1 and P.W.2 are not only the inmates of the flat, where the accused persons attempted to commit robbery but they were the victim of the incident and there is no reason for them to falsely implicate the appellants. However, in this case the prosecution has examined both P.W.5 and P.W.6, who happened to be the local shopkeepers and being attracted by the hue and cry raised by the victim rushed to the spot and apprehended the accused Md. Anwar with a Bhojali in his hand. Therefore, the submissions of the Learned Advocate appearing on behalf of the appellants that no local residents were examined by the prosecution is absolutely baseless and without any force. In this case the accused Md. Arshi was identified in the T.I. Parade, which was held immediately after his arrest by both the P.W.1 and P.W.2 and they also disclosed to the Learned Magistrate holding the T.I. Parade the role played by the accused Md. Arshi as well as Mr. Anwar apprehended at the spot in course of commission of the crime.

In my opinion, the prosecution has been able to prove the case against the appellants beyond all shadow of doubt. In such circumstances the Trial Court has very rightly found them guilty and accordingly convicted the accused Md. Anwar under Sections 393/397 of the Indian Penal Code read with Section 25(1B)(b)/27 of the Arms Act and Md. Arshi under Sections 393/397 of the Indian Penal Code.

Now, coming to the question of sentence this Court is of the view the sentence is not at all excessive and same deserve no interference. This appeal fails and stands dismissed.

The Appellant Md. Anwar is now on bail, his bail stands cancelled and he is directed to surrender before the Court below at once to serve out the remaining part of the sentence. The Trial Court is directed in the event the appellant Md. Anwar does not surrender within a week from this date the Court must take all necessary steps for his apprehension.

The Office is directed to communicate this order at once to the Trial Court.

The Lower Court Records be sent down immediately.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.