

**(2003) 01 BOM CK 0122**

**Bombay High Court**

**Case No:** Criminal Appeal No. 972 of 1997

Vijay Uttamlal Chaudhary

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision:** Jan. 27, 2003

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 392, 394, 397, 452

**Citation:** (2003) 2 ALD(Cri) 109 : (2004) 1 BomCR 154 : (2004) CriLJ 1846

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

**Bench:** Single Bench

**Advocate:** Arfan Sait, K.V. Saste, app, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

J.G. Chitre, J.

The appellant is hereby assailing the correctness, propriety and legality of the judgment and order of conviction and sentence passed by Additional Sessions Judge for Greater Bombay in Sessions Case NO. 1125 of 1995 wherein the applicant has been convicted for an offence punishable under the provisions of Section 452 read with 34 of IPC, 392 read with 34 of IPC, 394 read with 34 of IPC and Section 392 read with Section 397 of IPC.

2. The prosecution case in brief is that on 5.6.1995 at about 3.10 p.m. complainant Satyabhama Bansal was alone in her house as her husband and son left for business purpose and domestic servant Sitaram had left at 3.00 p.m. after finishing his job. At 3.10 p.m. somebody rang the bell and on account of that the complainant Satyabhama saw as to who he was by opening the chain and bit of door. The appellant Vijay was accompanied by three persons. Appellant Vijay was working as a domestic servant with Satyabhama prior to said day. Satyabhama did not open the door. Therefore those persons bolted in wit violence. They assaulted Satyabhama wit knife and glass pane causing her injuries. Satyabhama escaped from their

clutches and went inside the bathroom. But before that Vijay had snatched out the keys of the cupboard where the ornaments and cash were kept. Satyabhama was inside the bathroom for some time till she was rescued by her mother-in-law and others. But before their arrival, Vijay and his associates, as per the prosecution case, had left her house after taking away (SIC) ornaments and cash. These ornaments were : 1 golden chain, 2 golden ear rings, 1 silver ear-ring and cash which was approximately Rs. 500-700. Satyabhama was taken to Jaslok Hospital where she was medically treated. Thereafter she ascertained as to what was stolen and F.I.R. was lodged.

3. During the investigation, police raided the hut of the appellant and seized a golden ear-ring from his pocket. Police seized golden chain - Article 1, one single ear-ring-Article 4 from his possession as said articles were mortgaged by appellant Vijay wit PW-7 for a sum of Rs. 7,400/- by telling witness PW-7 Harshad Mohanlal Chopra that his mother was ill and he was in dire need of money. From the scene of offence a shirt alleged to have been belonging to the appellant was seized. It was blood stained. Seizure of ornaments from appellant from his hut, from Harshad Chopra from his shop and blood stained shirt belonging to the appellant from the scene of offence, all was done by police under panchanamas, investigation ended in filing of the charge sheet against the appellant which led to trial, which ended in order of conviction and sentence which has been assailed by this appeal.

4. Shri Arfan Sait, counsel appearing for the appellant vehemently submitted that the complainant Satyabhama might not have been able to identify the appellant because at the time of said incident she was frightened. He submitted that the FIR has been lodged late say after 24 hours. He also submitted that the golden ear rings, golden chain are not properly identified by Satyabhama. According to Shri Sait, Harshad Chopra stated falsehood and implicated the accused-appellant for saving his skin. He submitted that the learned trial court committed the error of convicting and sentencing the appellant. Therefore, this appeal be allowed and the order of conviction and sentence be set aside.

5. Shri Saste justified the said order of conviction and sentence as correct, proper and legal and pointed out as to how that has been supported by the evidence by making reference to the evidence on record. He prayed for dismissal of the appeal.

6. So far as appellant Vijay Uttamlal Choudhary is concerned, there has been a challenge to identification on the appellant by complainant Satyabhama Bansal as Shri Sait has submitted in his argument that on account of sudden assault Satyabhama might have been bewildered and, therefore, on account of confusion in mind and fear she might not have been able to get the correct impressions of the assailants in her mind and brain, and, therefore, the identification made by Satyabhama in the court while she was examined as a prosecution witness identifying the present appellant cannot be believed. Shri Sait has also pointed out that in the cross-examination she admitted that she had told the private doctor who

sutured her injuries that she fell and sustained the said injuries. Shri Sait did not notice that when a clarification was asked from her she had stated clearly that she did state that way because she was apprehending that the said doctor giving her medical treatment would not have sutured the wound had she told him that she was assaulted in a robbery. Keeping in view the normal experience of so placed persons, her explanation is natural and acceptable. It is the experience of the life that some persons even do not lift the person caught in motor accident, the victim assaulted by the assailants lying on public road even in day light for avoiding police interrogation. Number of people do not come to their rescue or do not intervene or do not lift the victim and take them to hospital on account of unwanted fear of getting involved in police investigation. Even some private medical practitioners do hesitate in giving medical aid to such persons for the fear of violating the technicalities. All these things should be abandoned. On account of too much thinking about the technicalities, the victims are likely to suffer heavy bleeding and resultantly the lives also. Therefore for getting immediate medical treatment Satyabhama might have told that way to said doctor.

7. The appellant was a servant working in the house of Satyabhama, the incident is of a day time and, therefore, though it might have been the case of an assault, robbery, Satyabhama could not have lost her balance of mind and on account of that her identification identifying the appellant as one of the assailants cannot be thrown out. It is pertinent to note that Satyabhama relieved herself from those assailants though she sustained the injuries and went inside the bathroom, shut the door by closing it by chain. Thereafter she shouted for help and after some time was helped by her mother-in-law. Furthermore, it is important to note that the incident lasted for a long time and that could also give sufficient time to Satyabhama for getting and storing the correct impressions of the assailant, more particularly, the present appellant. Her injuries also corroborate her evidence in respect of the said robbery and assault in it. Thus, the trial Court did not commit any error whatsoever in accepting the evidence of Satyabhama so far as the identification of the present appellant as one of the assailants who assaulted Satyabhama in the said incident of the robbery is concerned.

8. It is important to note that the prosecution has adduced evidence of Santosh Sawant who stated that on 7.6.95 he was present at about 11.45 a.m. at Gamdevi Police Station where the appellant Vijay Chaudhary took him, two panchas and investigating agency staff to the jeweller's shop where at his instance the owner of M.B. Jewellers, Shri Harshad Chopra produced one golden chain, one pair of golden "zumka", one piece of ear toys which the present appellant had given to him by telling him that he was in need of money for medical treatment of his mother. Those ornaments have been seized by the police under panchanama Exhibit-17 which has been legally proved which corroborates the evidence of PW Santosh Sawant, Investigating Officer and Harshad Chopra. Those ornaments have been identified by PW Satyabhama as belonging to her and as stolen away in the said robbery. PW

Harshad Chopra stated in the same way by stating on oath that the appellant Vijay Choudhary came with the police and panch witness and pointed out his shop. At the instance of the present appellant, he produced those ornaments which were seized by the police under panchanama Exhibit-17. Same is the evidence of Investigating Officer, Vijay Raut.

9. Vijay Raut stated further in his examination on oath that on 6.6.1995 the hut of the appellant in Bhimnagar Zopadpatti, M.I.O.C. was raided and from his possession in the said search one single ear ring of yellow metal alongwith cash of Rs. 4,371/- was seized under the panchanama Exhibit-11 which has been legally proved. The said evidence has been corroborated by panch witness Kishore Vengurlekar who stated that in his presence police officer Raut seized from the present appellant the said ear ring.

10. This Court is not touching the evidence in respect of this identification parade because so far as the appeal of the present appellant is concerned, there is no need of examining it. Evidence of PW Anand Bansal corroborates the evidence of Satyabhama on all material particular. PW-2 Satish Bansal's evidence also corroborates the evidence of Satyabhama on material particulars. Seizure of blood stained clothes also lends corroboration to the evidence of Satyabhama.

11. Thus, the prosecution has established the guilt of the appellant beyond reasonable doubt and the conclusion to this effect drawn by the trial court is correct, proper and borne out by the evidence on record. The way of appreciation of evidence adopted by the trial Court is also legal and there is no flaw detectable. Thus, this Court has no hesitation in accepting the judgment of conviction and sentence passed against the appellant by the trial Court by dismissing this appeal. Thus, the appeal stands dismissed. No interference in the order regarding disposal of the property.