

Bhopat Singh Kishan Singh

Vs

State of Maharashtra

Criminal Appeal No. 88 of 1969

(A. N. Grover, M. H. Beg JJ)

16.03.1972

JUDGMENT

GROVER, J. -

1. This is appeal by special leave from a judgment of the Bombay High Court by which the conviction and sentence of the appellant under Section 379, Indian Penal Code, have been upheld.
2. The first information report resulting in the taking of proceedings against the appellant was lodged at 11.15 a.m. on June 12, 1966, by Mansukhlal Vallabhdas at V.P. Road Police Station, Bombay. According to him a theft of four diamonds nose studs valued at Rs. 900/- had been committed by picking his pocket while was travelling a bus on that very morning. He boarded the bus at Thakurdwar and had to stand on the footboard because there was no sitting accommodation available inside. The appellant and two other persons stood near him on the same footboard. When he got down at Prathana Samaj Bus Stop he felt that the pocket of his underwear in which he had kept the packet containing the four diamond nose studs had been cut and the packet was missing. He got down from the bus and walked back in the direction of Thakurdwar. He saw another bus plying on route No. 126 passing towards Prathana Samaj in which he noted that the appellant was travelling. He got down and boarded that bus and repeatedly asked that conductor to stop the bus and take him to the police station but his request was not complied with. The appellant offered to accompany him to the police station. Both of them got down. The appellant admitted having stolen the diamond studs but said that he had passed them on to his accomplices. He requested the complainant to accompany him to Bapti Road where the Lost Property Officer was situate. The complainant, however, asked the taxi driver to take the taxi to V.P. Road police station. As soon as the appellant and the complainant got down from the taxi the former gave him a slip and boarded a bus and disappeared. He then went to Maharbauri Police Station and lodged the complaint.
3. After arrest of the appellant on June 15, 1966, the appellant is alleged to have told the police that he had deposited the stolen diamond studs in the Lost Property Office. He took the police to that office and the studs were produced by the clerk in-charge. These diamonds were later on got identified at the instance of the police by the complainant.
4. The Presidency Magistrate did not accept the defence of the appellant which was one of total denial and found the accused guilty. He was accordingly convicted and sentenced. The High Court in its judgment was rightly careful in accepting the evidence of the complainant Mansukhlal Vallabhdas, P.W. 2, because the prosecution case substantially on his version. The High Court noted that in the first information report all the details which were later on given in his statement in court by the complainant were not furnished but according to the High Court it was not necessary that an

elaborate account of every thing that had happened should have been given by the complainant while lodging the first information report. The High Court was impressed greatly by the fact that the complainant was a person of some status and it had neither been suggested nor proved that he had any animus or motive to falsely implicate the appellant. The High Court did not accept the prosecution case about the discovery of the stolen studs at the instance of the appellant of the afternoon of June 16, 1966. At any rate the extra judicial confession made by the appellant to the complainant and the testimony of the complainant were considered sufficient for upholding the conviction of the appellant.

5. Learned counsel for the appellant has pointed out that the identification parade which was held on July 2, 1966, was a farce because the complainant had ample opportunity to see the appellant before the parade was held. It does not appear that the High Court has attached any importance to the question of identification made at the parade held for the purpose. It has been suggested on behalf of the appellant that he was a total stranger and the complainant could not have remembered him when he was produced in court after the lapse of a considerable time and therefore the question of identification at an earlier stage assumes importance. In this connection we may point out that in the first information report the full description of the appellant had been given by the complainant. The complainant also had an ample opportunity to see the appellant when they both went in a taxi. It was never argued either before the Trial Court or before the High Court that the appellant does not answer the description to be found in the first information report. All that has been suggested is that his height is given as 6 ft. 6 inches whereas in fact it was 5 ft. 6 inches. It seems to us that 6 ft. 6 inches was either a printing error or was an error in writing when the first information report was recorded. It must be remembered that a height 6 ft. 6 inches is very unusual and ordinarily one does not see many persons of that height in Indian. At any rate it was open to the appellant to invite the attention of the trial magistrate to this matter and if that had been done the trial magistrate would have examined the same and also made his comments on the question of the height of the appellant.

6. We find no such error or infirmity in the judgment of the High Court to justify inference in the present appeal. The appeal is therefore dismissed. The appellant, who is on bail, shall surrender to his bail bonds and serve the unexpired portion of the sentence imposed on him.

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