



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 339 OF 2019

BABAN BAPURAO SARWADE
VERSUS
THE STATE OF MAHARASHTRA

...
Shri Avishkar Patil, advocate h/f Shri Salunke Sudarshan J.,
Advocate for the Applicant.
Shri M.A. Aher, APP for the Respondent/ State.
...

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 20 August 2026

P. C. :-

1. The applicant has filed this Criminal Revision Application against the impugned judgment and order dated 16.11.2019 passed by learned Additional Sessions Judge, Majalgaon, in Criminal Appeal No.42/2015 thereby, dismissing the said appeal and confirming the judgment and order dated 18.08.2015 passed by learned JMFC, Majalgaon, in RCC No.286/2012 whereby, the applicant is convicted for the offence punishable under Section 379 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment of one year and to pay fine of Rs.3000/- and in default to suffer Simple

Imprisonment for two months

2. According to the prosecution, on 21.10.2012 at about 07:00 pm, PW-2 (Kalyan Phaphal) tied his buffaloes and calf at cattle shed in his field and went to his house. On next day i.e. 22.10.2012 at about 06:00 am, PW-2 did not find buffaloes and calf in the cattle shed. He took search and when PW-2 went to cattle shed of his cousin Maroti (PW-4), PW-4 informed that his buffaloes is also not at the place where it was tied. Therefore, both started search of their cattle. PW-4 Maroti sent his younger brother Swanand and his son Gorakh for search of animals at cattle market. When Swanand and Gorakh were taking search at cattle market at village Ghodegaon in Ahilyanagar district, they saw one person standing there for sell of buffaloes and calf. This fact was told by them on phone to PW-2. Accordingly, the information was given to the Police Station, Dindrud and thereafter, the police along with PW-2, PW-4 and other persons went at animal market, Ghodegaon. After reaching there, they found the present applicant, who was standing along with stolen animals. Upon enquiry, the applicant did not give satisfactory answers. Therefore, PW-2 lodged the report on 27.10.2012 with

the Dindrud Police Station.

3. On the basis of the said report, investigation was set in motion. The Investigating Officer collected evidence. After completion of investigation, the charge-sheet came to be filed. The charge was framed to which the applicant/ accused pleaded not guilty and claimed to be tried. Thus, the applicant was prosecuted for the offence punishable under Section 379 of the Indian Penal Code. After recording evidence and hearing arguments, vide the judgment and order dated 18.08.2015, the learned JMFC convicted and sentenced the applicant as noted above. Being aggrieved by the order dated 18.08.2015, the applicant/ accused filed Criminal Appeal No.42/2015 before the learned Additional Sessions Judge, Majalgaon, who dismissed the appeal vide impugned judgment and order dated 16.11.2019. Hence, the applicant is before this Court.

4. Learned advocate for the applicant/ accused submits that both the courts below have committed grave error in law thereby, not appreciating evidence in proper perspective. The finding recorded by learned JMFC as regards the offence registered against the applicant that the applicant has stolen

animals belongings to PW-2 (Kalyan) and PW-4 (Maroti), is incorrect. Learned advocate further submits that there is no evidence to suggest that the stolen animals have been stolen by the applicant. The prosecution has failed to prove that the stolen animals i.e. buffaloes and calf were owned by PW-2 and PW-4. There is no satisfactory explanation in the FIR or in the evidence of the prosecution witnesses explaining the delay of about five days in lodging the FIR. Learned advocate submits that the witnesses are interested and their testimony is required to be scrutinized carefully. According to learned advocate, learned JMFC has committed an error in relying upon such witnesses. As such, the reasoning given by both the Courts below is incorrect. Learned advocate, therefore, prayed for allowing this revision and acquitting the applicant/ accused.

5. *Per contra*, learned APP submits that the courts below have not committed any mistake and error in passing the impugned judgments. The prosecution has established guilt of the applicant beyond reasonable doubt. The courts below have appreciated evidence in proper perspective and there is no doubt in evidence so as to suggest that other than the present applicant,

other accused persons are responsible for commission of theft of buffaloes and calf. As the prosecution has succeeded in establishing its case before the Trial Court, therefore, conviction recorded by the Trial Court is required to be maintained by this Court as it has been rightly maintained by the learned Sessions Judge. According to the learned APP, since the courts below have not committed any mistake or error in law in convicting the applicant, therefore, no interference is warranted in this revision. As such, the revision is required to be dismissed.

6. After hearing the learned advocates for the parties and after going through the record, it is clear that the applicant came to be prosecuted for the offence punishable under Section 379 of the Indian Penal Code on the basis of the report lodged by PW-2 (Kalyan Phaphal). Learned Sessions Judge was pleased to observe that the present applicant was found standing along with stolen animals in the cattle market at Ghodegaon and the said fact has been stated by PW-2 and PW-3 in their evidence. Though the incident took place from the evening of 21.10.2012 till morning of 22.10.2012, but as PW-2 and PW-4 were in search of stolen animals, they could not lodge the report and when they

found stolen animals at cattle market at Ghodegaon, the report came to be lodged on 27.10.2012. Therefore, learned Sessions Judge has rightly held that delay in lodging the FIR is not serious concern and is not fatal to the prosecution case.

7. On independent consideration of the evidence on record, I find that the material witnesses have consistently stated about the theft of the animals, the efforts made to trace them and the finding of the animals in the possession of the applicant at the cattle market at Ghodegaon. Their evidence on material particulars has not been shaken in cross-examination. The delay in lodging the report has been explained in the circumstances noticed hereinabove and does not create such a doubt as would discredit the otherwise reliable prosecution evidence. The learned Magistrate as well as the learned Additional Sessions Judge have considered the material evidence in its proper perspective and the findings recorded by them cannot be said to be perverse, unreasonable or contrary to the evidence on record. No jurisdictional error, illegality or material irregularity is demonstrated warranting interference in exercise of revisional jurisdiction. In view of concurrent findings by both the Courts

below, no interference is warranted in this revision. The revision is devoid of any merit and is liable to be dismissed.

8. However, so far as the sentence is concerned, the incident is of the year 2012 and the applicant was aged about 38 years at the relevant time. Thus, a substantial period of about fourteen years has elapsed since the date of the incident, during which period the applicant has faced the criminal prosecution and the subsequent appellate and revisional proceedings. The offence under Section 379 of the Indian Penal Code is punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Thus, the statute itself provides for imposition of fine as an alternative to imprisonment. Having regard to the nature of the offence, the passage of considerable time since the occurrence and the overall facts and circumstances of the case, I am of the view that sending the applicant to undergo the sentence of imprisonment at this stage would serve no useful purpose. At the same time, the conviction recorded by the Courts below deserves to be maintained. In the peculiar facts and circumstances of the present case, the sentence of imprisonment is, therefore, modified and

the applicant is sentenced to pay a fine of Rs.3,000/- instead of undergoing the sentence of imprisonment awarded by the Courts below.

9. The Criminal Revision Application is, accordingly, disposed of.

kps

(SUSHIL M. GHODESWAR, J.)