

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.666 OF 2014

Sow. Rajni w/o. Raju Sheety ..Appellant

Versus

The State of Maharashtra
and ors. ..Respondents

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Mr.N.B.Narwade, advocate for appellant

Mr.N.T.Bhagat, APP for respondent no.1

Mr.N.K.Kakade, advocate for respondent no.2

Mr.S.S.Jadhavar, advocate for respondent no.3

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CORAM : M.T. JOSHI, J.
DATE : DECEMBER 14, 2015

PER COURT :

Heard both sides.

2] Aggrieved by the acquittal of respondent nos.2 to 4 from the offences punishable under Section 451, 211, 195, 120(B), 506, 507 of Indian Penal Code and Section 20(ii)(b) of Narcotic Drugs and Psychotropic Substances Act (for short "N.D.P.S.

Act") in Sessions Case No.7 of 2010 by learned learned Assistant Sessions Judge-4, Ahmednagar, original complainant has preferred present appeal.

3] The prosecution case, in nutshell, is as under:-

. That the complainant is leader of a political party. On 27th August, 2010, when her husband went on duty and she had been to market, at that time, at her house, behind her back at about 7:30 p.m., in presence of her another daughter Hansita and her maid servant Gangubai, certain sweet boxes were delivered by two unknown persons who had come on a scooter. Lateron, when she returned to her house, she received a call on her mobile phone from phone no.2322586. The caller told that in those boxes, along with sweets, Ganja was sent. The caller further told that he would send Charas and Bomb etc. also. He also threatened the complainant to stop from filing complaints with

the police. The complainant therefore suspected involvement of the respondent no.1 in the incident of sending boxes.

4] It is the complainant's case that since the FIR was not accepted by police immediately, after much persuasion, the FIR was registered on 28th August, 2008. Investigation was started. Identification of the persons who had delivered the sweet boxes was disclosed as Arjun Thube – present respondent no.3 and Maheshkumar Thenuwa present respondent no.4 (regarding whom, the application for condonation of delay was rejected by this court for want of prosecution).

5] Before the Special Executive Magistrate, in test identification parade, PW 3 – Hansita Shetty and PW 4 – Kamal (according to the prosecution, wrongly described as Gangubai in the FIR) had identified each of the respondent nos.3 and 4 and not both.

6] It appears that no investigation was carried regarding the location of the telephone from which, the complainant had received the call. Learned Addl. Sessions Judge, upon hearing both sides, has acquitted the respondents/accused. Hence, the present appeal.

7] Upon hearing both sides, in my view, learned Addl. Sessions Judge has taken a reasonable and probable view of the material before him. Even if we keep aside the controversy regarding the name of the maid servant i.e. Gangubai or Kamalbai, who was stated to be an eye witness, identity of the respondents nos.3 and 4 is completely flawed. According to the prosecution, these two witnesses were the eye witnesses in whose presence, the two persons had brought sweet boxes. As per the test identification parade held by PW 7 – Special Judicial Magistrate, the eye witnesses could

identify only one accused person each and not both the accused, as detailed supra.

8] When it is the prosecution case that the eye witnesses were able to see two persons yet, if only one person was identified during the test identification parade, as detailed supra, in view of the other material, learned Addl. Sessions Judge has granted benefit of reasonable doubt. There was no material against respondent no.2. He was also therefore acquitted.

9] Considering all the material on record and finding that the very statements of the eye witnesses, were flawed, present appeal filed by the complainant, deserves to be dismissed.

10] In the result, the appeal is hereby dismissed.

[M.T. JOSHI, J.]