

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 25 OF 2002

Sarjerao Rambhau Jadhav

Age : 28 Yrs., Occ. Labour,

R/o : Telgaon, Tq. :

Majalgaon, Dist.: Beed.

.... APPLICANT/

[ORIGINAL ACCUSED]

V E R S U S

The State of Maharashtra

.... RESPONDENT

.....

Mr. B.S.Kudale, Advocate for the Applicant.

Mr. V.P.Kadam, A.P.P. for the Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 12th JANUARY, 2015

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ORAL JUDGMENT :

1. Exception is taken by the present applicant to the Judgment and order dated 29/11/2000 passed by the learned J.M.F.C., Majalgaon, District Beed in R.C.C. No. 60/1997, whereby the present applicant was convicted for

the offence punishable u/s 392 of the Indian Penal Code and was directed to suffer Rigorous Imprisonment for 3 years and to pay fine of ₹ 500/- [Rupees Five Hundred only], in default further Rigorous Imprisonment for 5 months. He was also convicted for the offence punishable u/s 457 of the Indian Penal Code and was directed to suffer Rigorous Imprisonment for 3 years and to pay fine of ₹ 500/- [Rupees Five Hundred only], in default further Rigorous Imprisonment for 6 months, together with the Judgment and order dated 17/10/2001 passed by the learned Additional Sessions Judge, Beed in Criminal Appeal No. 8/2001, by which the learned appellate Court dismissed the Appeal filed on behalf of the present applicant.

2. The applicant faced Charge from the learned Magistrate, Majalgaon that on 24/02/1997 at 00.30 hrs. at village Bhatwadgaon, Taluka Majalgaon, District Beed, he committed an offence of lurking house trespass by entering into the house belonging to one Sudhir Vishwanathrao Rampurkar along with others and thereby committed an offence punishable u/s 457 of the Indian Penal Code. He was also charged that on the said date and time, he robbed

golden ornaments and cash worth ₹ 8,975/- [Rupees Eight Thousand Nine Hundred Seventy Five only] belonging to Sudhir Rampurkar and his wife and thereby committed an offence punishable u/s 392 of the Indian Penal Code.

3. It is to be noted that initially Uttam Kashinath Gaikwad was tried for the same incident independently and the learned trial Court acquitted said Uttam Gaikwad.

4. The prosecution case, after hearing the learned counsel for the applicant and the learned A.P.P., it is clear, is based only on the memorandum statement of the present applicant recorded u/s 27 of the Indian Evidence Act, 1872, which is at Exh. 21 and the consequent recovery of the golden ornaments.

5. As per the prosecution case, at the time of the commission of offence, the persons who committed robbery, were having mask on their face. In that view of the matter, there is no identification of any of the accused including the present applicant.

6. According to the prosecution, the applicant was in police custody remand in respect of another crime i.e. Crime No. 184/1996. It is the case of the prosecution that the applicant was in police custody remand in the said crime. He admitted to show the place, wherein he has concede the golden ornaments of the present crime i.e. Crime No. 16/1997 and accordingly he showed the place i.e. the open space behind his house and by digging the earth, he pointed out one aluminium container in which the golden ornaments were found.

7. From the perusal of the impugned Judgments, it is clear that except this piece of material, there is no evidence or any other material against the present applicant. The place from where the articles were seized, is an open space. The prosecution was unable to point out that the applicant was having exclusive control and domain over the said place. The said place was thus open for public at large. Further, the aluminium container is not seized. The another aspect which can be weighed in favour of the applicant is that, according to the prosecution, on 01/03/1997 the first informant Sudhir Rampurkar, in whose house the robbery was committed, has

identified the articles. However, there is no panchanama to that effect was drawn by the Investigating Officer.

8. Further, in the cross examination, Sudhir Rampurkar – the first informant has stated as under, :

“ The police did not seize the german pot. I got prepared the golden ornaments from the goldsmith by name Ramchandra Bapurao Shete of Dharur. I did not obtain the receipt of the same. The golden ornaments were purchased 5-6 months earlier to the theft. No identification marks were put on the ornaments at the the time of purchase. ”

9. Thus, from the evidence of the first informant, it is clear that the golden ornaments were prepared by him from the goldsmith Ramchandra Bapurao Shete of Dharur. Said goldsmith is not examined by the prosecution for the reasons best known to it. The first informant is candid in his admission that there is no specific identification mark, from which it can be said that the seized articles are the same which were robbed. In such circumstances, it will be very

difficult to accept the claim that he identified the ornaments looking to the fact that the ornaments are the ear rings and chain.

10. There is inherent contradiction in the evidence of first informant Sudhir Rampurkar and his wife Ujawala. Ujawala has stated in her evidence that the accused did not give any threat to her while snatching the ornaments from her person, whereas Sudhir Rampurkar has stated that threats were extended and under the said threats, the ornaments were given to the accused.

11. It will be hazardous to record the conviction only on the basis of the memorandum statement of the applicant, especially when there is nothing on record to show that the applicant was one of the intruders in the house of the first informant. Further, in absence of proper identification of the golden ornaments, it is clear that the prosecution has failed to prove the case against the present applicant beyond reasonable doubt. In that view of the matter, the order of conviction passed by the learned J.M.F.C., Majalgaon dated 29/11/2000 in R.C.C. No. 60/1997 can not stand to the

scrutiny of law. Hence, the said order along with the Judgment and order dated 17/10/2001 passed by the learned Additional Sessions Judge, Beed in Criminal Appeal No. 8/2001 is hereby quashed.

12. The present Criminal Revision application is allowed. The applicant Sarjerao Rambhau Jadhav be set at liberty. The bail bonds of the applicant stand cancelled.

[V.M.DESHPANDE, J.]

KNP/Cr. Revn.Apln. 25.2002 - [J]