

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

CRIMINAL REVISION APPLICATION NO. 179 OF 2002

1. Abasaheb Janardhan Chavan
Age : 24 Yrs., Occ. : Agril.,
R/o : Khadke, Tq. : Newasa,
Dist. : Ahmednagar.
2. Arjun Sopan Gawali
Age : 28 Yrs., Occ. : Agril.,
R/o : Newasa, Tq. : Newasa,
Dist. : Ahmednagar.

**..... APPLICANTS/
[ORIGINAL ACCUSED]**

V E R S U S

The State of Maharashtra

..... RESPONDENT

.....

Mr. S.S.Wagh h/f Mr. S.T.Shelke,
Advocate for the Applicants.

Mr. V.D.Godbharle, A.P.P. for the Respondent.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 4th FEBRUARY, 2015

.....

ORAL JUDGMENT :

1. Exception is taken by the applicants to their conviction for the offence punishable u/s 379 of the Indian Penal Code by the learned Judicial Magistrate First Class, Newasa, district Ahmednagar by his Judgment and Order dated 11/06/2001 in R.T.C. No. 149/1998, which was confirmed by the learned 2nd Additional Sessions Judge, Shrirampur, district Ahmednagar by his Judgment and Order dated 06/06/2002 in Criminal Appeal No. 13/2001.

2. Heard Mr. S.S.Wagh h/f Mr. S.T.Shelke, the learned counsel for the applicants and Mr. V.D.Godbharle, the learned A.P.P. for the respondent – State. With their able assistance, I have gone through the record and proceedings.

3. Charge was framed against the present applicants and Sopan Gawali by the learned Judicial Magistrate First Class, Newasa on 10/02/1999 that they, in furtherance of their common intention, dishonestly removed 2 brass of sand amounting to ₹ 800/- [Rupees Eight Hundred

only] from the possession of the Government without the consent of the Tahsildar on 26/01/1998 and thereby committed an offence punishable u/s 379 of the Indian Penal Code. The accused persons pleaded not guilty and claimed that they be tried.

4. In order to bring home the guilt of the accused persons, the prosecution has examined in all 3 witnesses, they are Natha Shankar Kuttarwade [P.W.1], the first informant; Madhukar Changdeo Hapse [P.W. 2], panch and Pratap D.Shelar [P.W. 3], Head Constable – the Investigating Officer.

5. Natha Shankar Kuttarwade [P.W.1], who was Talathi of village Newasa [Kd.], received information on 26/01/1998 from 2 – 3 villagers when Kashinath Parite, Additional Talathi and Vishwanath Barde, Kotwal were with him. The villagers complained to Natha Shankar Kuttarwade [P.W.1] that some of the persons are lifting sand from the bed of river Pravara. On getting such information, he visited the said spot. He found that one blue colour tractor and red colour trolley was parked there and 4 – 5 persons were

loading the said trolley with sand. Upon enquiry, they were unable to show any permit in their favour issued by the Tahsildar, Newasa. The driver of the tractor was asked to take the said tractor in the Tahsil office.

6. On 27/01/1998, Natha Shankar Kuttarwade [P.W.1] gave report to the Tahsildar, Newasa. The said report is at Exh. 25. The perusal of Exh. 25 shows that the Tahsildar directed the Talathi to lodge the report. The said order is dated 28/01/1998. Accordingly, the report was lodged by Natha Shankar Kuttarwade [P.W.1] with police station Newasa against the present applicants. The said report was recorded as Crime No. 7/1998 for the offence punishable u/s 379 of the Indian Penal Code. The father of applicant No. 2 was joined as accused during the course of investigation.

7. The learned trial Court, after full dressed trial, recorded finding of guilt against the present applicants, who were accused Nos. 1 and 2, however acquitted accused No. 3. The order of conviction is dated 11/06/2001. By the said order, the applicants were convicted for the offence

punishable u/s 379 of the Indian Penal Code and they were directed to suffer rigorous imprisonment for six months and to pay fine of ₹ 2,000/- [Rupees Two Thousand only], in default of payment of fine, to suffer further rigorous imprisonment for one month.

8. Being aggrieved by the order of conviction, the present applicants carried Appeal in the Court of the Additional Sessions Judge, Shrirampur, district Ahmednagar. On 06/01/2002, the learned appellate Court partly allowed the Appeal filed on behalf of the present applicants. Though, the appellate Court confirmed the finding of guilt against the present applicants, the appellate Court has modified the sentence. The learned appellate Court directed that in stead of sentence of rigorous imprisonment for six months, the applicants are directed to suffer simple imprisonment till rising of the Court. In so far as the fine amount is concerned, it was maintained.

9. Worth to note is non filing of Appeal for enhancement of the sentence by the State. The applicants, who are before this Court, question the correctness of the

impugned orders of the Courts below for holding them guilty for the offence punishable u/s 379 of the Indian Penal Code.

10. The Charge is very specific that the applicants with the acquitted accused in furtherance of their common intention lifted 2 brass of sand.

On 26/01/1998, Natha Shankar Kuttarwade [P.W.1] has prepared panchanama for illegal excavation of minor minerals. The said panchanama is at Exh. 24. Natha Shankar Kuttarwade [P.W.1] has specifically admitted that he has not mentioned in Exh. 24, whether it was sand, earth or bricks in the tractor. On going through Exh. 24, it is noticed that there is nothing in the said document to show that what material was found to be dumped in trolley at the relevant time. In that back-drop, it will be useful to reproduce the following version from the evidence of Natha Shankar Kuttarwade [P.W.1] :

“ It is true that I have not specifically mentioned in Exh. 24, whether it was sand, earth or bricks in the tractor ”.

Since, Charge was very specific about lifting and excavation of 2 brass of sand, non mentioning the sand in contemporary document Exh. 24, which was prepared on the same day, assumes much importance. Further, Exh. 24 shows that the same was prepared in presence of panchas. However, none of the said panchas are examined by the prosecution for the reasons best known to them.

11. Further, though, according to the prosecution, sand was found to be lifted on 26/01/1998. The offence is registered on 28/01/1998. Thus, there is delay of 2 days. The learned A.P.P. submitted that the delay is properly explained. He invited my attention to Exh. 25 which is the report given by Natha Shankar Kuttarwade [P.W.1] to the Tahsildar. He submitted that in view of the order passed on the said report by the Tahsildar, the matter was reported to police on 28/01/1998 and thus, according to him, the prosecution has explained delay properly.

12. The document Exh. 25, the report from Natha Shankar Kuttarwade [P.W.1] to the Tahsildar is dated 27/01/1998. The document Exh. 24, the panchanama

dated 26/01/1998 was executed between 11.00 – 11.30 a.m. There is no explanation in the entire prosecution case as to why Natha [P.W.1] could not report the matter to the Tahsildar immediately on 26/01/1998. It is not the case that the Talathi was having office at different place than the office of the Tahsildar. On the contrary, both the offices are situated at Newasa. Therefore, non submission of the report to the superior i.e. the Tahsildar by the Talathi on very same day has its own impact on the prosecution case. Though the report was received by the Tahsildar on 27/01/1998, the Tahsildar has also consumed one day to pass order and then the matter was reported to police on 28/01/1998. When the revenue officers viz. Natha Shankar Kuttarwade [P.W.1] and the Tahsildar were aware about the commission of cognizable offence, they ought to have reported the matter to the police authorities immediately. The Tahsildar is also not examined in this case. In that view of the matter, the delay is not properly explained by the prosecution and, therefore, a serious doubt is cast on the truthfulness of the entire prosecution case.

13. Further, though Natha [P.W.1] has stated that

when he visited the spot on 26/01/1998, he was accompanied by Kashinath Parite, the additional Talathi and Vishwanath Barde, the Kotwal. However, these 2 persons are not examined by the prosecution. The villagers who intimated Natha [P.W.1] about the illegal lifting of sand are not examined, neither their identity is established during the course of the investigation. Thus, except P.W. 1 Natha's version, there is nothing on record to show that the tractor and trolley allegedly used by the applicants, were used for the commission of the offence. Looking to the over-all prosecution case, it will be unsafe to rely the uncorroborated testimony of Natha [P.W.1]. In that view of the matter, the applicants are entitled for benefit of doubt.

14. The present Revision Application is allowed. The Judgment and Order dated 11/06/2001 passed by the learned Judicial Magistrate First Class, Newasa in R.T.C. No. 149/1998 together with the Judgment and Order dated 06/06/2002 passed by the learned 2nd Additional Sessions Judge, Shrirampur, district Ahmednagar in Criminal Appeal No. 13/2001 holding present applicants guilty, is hereby set aside. The applicants are acquitted from the said charge.

Their bail bonds stand cancelled. The fine amount, if paid by the applicants, be returned to them.

[V.M.DESHPANDE, J.]

KNP/Crim. Revn. Apln. 179.2002 - [J]
