

1. This is an appeal preferred against the judgment and order dated 17/12/1999 delivered in Criminal Appeal No. 15 of 1997 by 2nd Additional Sessions Judge, Raigad, Alibag, thereby

acquitting respondents of the offence punishable under Section 392 read with Section 34 of the Indian Penal Code. Briefly stated, facts of the case are as under.:

The complainant in this case is one Nazim Lasne r/o village Vihur, Tq. Murud, Distt. Raigad. On 05/10/1994, intending to purchase some gold in preparation of marriage of his brother and sister, he had visited a jewelry shop of Murud. There he learnt from one Rawnak Ulde that one foreigner intended to sell gold and that he had asked him to look for suitable customer. Complainant expressed his interest in purchasing of gold from the said foreigner and, therefore, he approached respondent No.3 Abdul Rajjak on the say of Rawnak Ulde. Respondent No.3 then told complainant that he would be required to come over at a place known as Khokhari with cash amount of Rs.40,000/-. The said place fell within the jurisdiction of Murud police station.

Accordingly, on 07/10/1994, complainant Nazim Lasne along with his friend Riyaz Davare proceeded to said place on motorcycle. They had carried with them cash amount of Rs.40,000/-. On their way, they were signaled to stop by respondents No. 1 and 2, who were then police constables. The cash amount was kept in the dickey of motorcycle. When the dickey was checked, respondents No. 1 and 2 noticed the cash

amount and they removed the same from the dickey. Complainant protested, but, respondents No. 1 and 2 threatened him that if he continued with his protest, respondents No. 1 and 2 would detain him in Alibag jail. Thus, respondents No.1 and 2 robbed the complainant of the amount of Rs.40,000/-.

Thereafter, complainant went back to village Vihur and on the next day approached one Abdul Karim Modi, who was social worker and narrated him the incident. On his advise, the complainant together with Rawnak Ulde went to police station, Murud at about 10.30 p.m. on 08/10/2014. On way, they met Police Sub Inspector, S. S. Tathwade, who was then in-charge of the police station. They also met Karim Modi and together with Rawnak Ulde, complainant and Karim Modi went to the house of PSI Tathwade, where they narrated the entire incident to P.S.I. Tathwade. P.S.I. Tathwade then called police constable Pawar, i.e. respondent No.2 and asked him about the incident. He admitted of taking away the amount and assured to return the same. Thereafter, complainant and Karim Modi told P.S.I. Tathwade that they would settle the matter and would not lodge any complaint against the respondents. As decided in between the complainant and respondent No.2, complainant received back an amount of Rs.30,000/- through Karim Modi. However, on

11/10/1994, complainant went to Alibag and lodged a report against the respondents alleging that they had robbed him of an amount of Rs.40,000/-. The investigating officer submitted his report to Superintendent of Police, Raigad and on instructions issued by Superintendent of Police, offence of robbery punishable under Section 392 I.P.C. was registered against the respondents on 17/02/1995. Thereafter, investigation was carried out and a charge-sheet came to be filed against the respondents in the Court of J.M.F.C., Murud.

As respondents No. 1 to 3 pleaded not guilty to the charge framed against them and claimed to be tried, they were tried in accordance with law for the offence punishable under Section 392 of the Indian Penal Code. On merits of the case, learned Magistrate concluded that prosecution had proved beyond reasonable doubt the offence of robbery alleged against the respondents and, therefore, holding them guilty, he convicted and sentenced them to undergo rigorous imprisonment for one year each together with fine amount of Rs.1,000/- each accompanied by default sentence of six months each by his judgment and order dated 15/5/1997.

The respondents challenged said judgment and order by preferring an appeal being Criminal Appeal No. 15 of 1997 before

the Sessions Court of Raigad at Alibag. The appeal was heard on merits by 2nd Additional Sessions Judge, Raigad. Learned Additional Sessions Judge found that prosecution evidence was inconsistent and discrepant in nature in as much as there was unexplained delay in lodging of first information report and, therefore, by his judgment and order dated 17/12/1999, acquitted all the respondents of the offence punishable under Section 392 of the Indian Penal Code. Not being satisfied with the same, now the State is before this Court in the appeal filed under Section 378 of the Criminal Procedure Code.

2. I have heard Ms Mulekar, learned A.P.P. for the State. None appears for the respondents. I have carefully gone through the impugned judgment and order and the record of the case.

3. Learned A.P.P. for the State submits that judgment of the trial Court, i.e. the Court of J.M.F.C., Murud, was correct in law as well as on facts and, therefore, learned Additional Sessions Judge, while exercising his appellate jurisdiction, ought not to have interfered with the judgment and order of the trial Court. She submits that even though there was delay in lodging of the FIR and that there was no specific mention about the reason for belated lodging of the FIR in the FIR itself, the delay stood explained by the facts and circumstances of the case. She also

submits that evidence of the prosecution witnesses particularly P.W.-2 Nazim Lasne, the complainant, P.W.-6 Abdul Karim Modi, social worker and P.W.-7 S. S. Tathwade, P.S.I., Murud police station, when considered together would only show that the prosecution has proved its case against the respondents beyond reasonable doubt. She, therefore, urges that the impugned judgment and order be quashed and set aside.

4. Upon careful perusal of the impugned judgment and order and also the evidence available on record, I find it difficult to agree with the contentions of learned A.P.P. for the State, which have been referred to in the earlier paragraph. The reasons for this conclusion could be seen in the foregoing paragraphs.

5. Learned Additional Sessions Judge has found evidence of the material prosecution witnesses; P.W.-2 Nazim Lasne, P.W.-6 Abdul Karim Modi and also P.W.-7 PSI S.S. Tathwade, as inconsistent and discrepant in nature thereby creating a doubt about whole prosecution story as sought to be made out against the respondents and certainly not without any valid reason.

6. Basically it is the case of P.W.-2 Nazim Lasne, complainant, that after the incident which took place in the evening of 07/10/1994 he had returned to village Vihur and on

the next day had met with P.W.-6 Abdul Karim Modi, social worker and had narrated to him the entire incident. When the incident had taken place in the evening of 07/10/1994 and the incident apparently was of very serious nature, one is surprised over the fact that P.W.2 Nazim Lasne did not choose to approach police for lodging complaint of the incident on that day. P.W.-2 Nazim Lasne, after occurrence of the incident, in stead of going to police station, returned to his village and simply kept quite. P.W.-6 Abdul Karim Modi was also from the same village. At least, P.W.-2 Nazim Lasne could have met a social worker like P.W.-6 Abdul Karim Modi in the same evening and narrated to him the incident in order to seek his help. However, he appears to have met him only in the evening of the next day, i.e. of 08/10/1994. In the testimony before the Court, of course P.W.-2 Nazim Lasne has stated that he had met P.W.-6 Abdul Karim Modi on the same day, but it cannot be believed as it has not been endorsed by P.W.-6 Abdul Karim Modi. P.W.-6 Abdul Karim Modi states that P.W.-2 Nazim Lasne met him in the evening of the next day i.e. 08/10/1994.

7. According to P.W.-2 Nazim Lasne and P.W.-6 Abdul Karim Modi, both of them met P.W.-7 P.S.I. Tathwade in the night of 08/10/1994 and had narrated to him the entire incident which

fact has also been stated by P.W.-7 P.S.I. Tathwade. P.W.-7 P.S.I. Tathwade has stated that after such narration of the incident, he had called respondent No.2 and made enquiry with him. He has stated that respondent No.2 had admitted of forcibly taking away amount of Rs.40,000/- from the complainant, but had assured to return it to the complainant. But, P.W.-2 Nazim Lasne does not say anything about making of enquiry by P.S.I. Tathwade with respondent No.2. On the contrary, he has deposed that respondent No.3 Abdul Rajjak assured him to return the amount after recovering the same from both the police constables, i.e. respondents No.1 and 2.

8. So, we find that there are inconsistencies in material prosecution witnesses as discussed above and they are material in nature and therefore create serious doubt about the entire prosecution story which has been sought to be made out against the respondents. Therefore, versions of any of these witnesses, i.e. P.W.-2 Nazim Lasne, P.W.-6 Abdul Karim Modi and P.W.-7 P.S.I. Tathwade, cannot be believed unless there is corroboration to their versions from an independent witness. There was one such witness available and he was Riyaz Davare, friend of complainant, Nazim Lasne, who had accompanied Nazim Lasne and actually witnessed commission of alleged robbery of Rs.40,000/- by the

respondents. But, Riyaz Davare was withheld by the prosecution. He was never examined as prosecution witness and no explanation for his non-examination was given by the prosecution. An adverse inference, therefore, would have to be drawn against the prosecution and it would be that he was not examined only for the reason that he was not supportive of the case of prosecution against the respondents.

9. Then, there are other doubts about which no explanation is forthcoming from the prosecution, Even though, P.W.-7, P.S.I. Tathwade was informed of the incident at about 10.30 p.m. of 08/10/1994, P.S.I. Tathwade did not register any offence against the respondents. He also did not report the matter to his superior officers. No explanation for his such negligence or doubtful conduct has appeared on record. No action, as could be seen from the prosecution evidence, appears to have been taken against P.W.-7 P.S.I. Tathwade for his failure to perform his duty in registering the offence when he was informed about commission of cognizable offence by the complainant.

10. The incident had occurred in the evening of 07/10/1994 and F.I.R. has been lodged on 11/10/1994. No explanation either in the F.I.R. or nowhere in the circumstances appearing on record could be found. It appears that the first

information report that was filed against the respondents by the complainant was nothing but the product of afterthought on the part of the complainant churned out to settle some scores with the respondents.

11. In the circumstances, I find that the evidence brought on record by the prosecution in the instant case has been sketchy, discrepant and inconsistent and, therefore, highly of unreliable nature on which no conviction of the respondents could have been based. Therefore, learned Additional Sessions Judge has rightly interfered with the verdict of guilty recorded by the trial Court and acquitted the respondents of the offence punishable under Section 392 read with Section 34 of the Indian Penal Code with which they were charged in the instant case. No case has been made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed.

Appeal stands dismissed.

S. B. SHUKRE, J.