

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 477 OF 2001**

The State of Maharashtra .. Appellant
(original complainant)

...VERSUS...

(1) Mohammed Ibrahim Chirav Ansari

(2) Santoshprasad Ramlal Gujar

(3) Krishnamurari Babulal Sharma

(4) Champaklal Lalchand Jain .. Respondents
(original accused)

.....
Mr. D.P. Adsule, APP for the Appellant-State,
None for the Respondents.
.....

CORAM : S.B. SHUKRE, J.

DATED : 30th JULY, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 31.7.2000 passed by the learned Additional Chief

Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in C.C. No.181/P/1999, thereby acquitting the respondent nos.1 to 3 of the offences punishable under Sections 457, 380, 381 r/w 114 of the I.P.C. and acquitting the respondent no.4 of the offence punishable under section 411 of the I.P.C.

2. Briefly stated facts of the case are as under :

The offence alleged against the respondents was committed in the midnight of 14.11.1993 at the railway godown known as General Stores Mahalaxmi, Western Railway Godown, Shakti Mills Lane, Mumbai. At that time, the respondent nos.2 and 3 (accused nos.3 and 4) were attached to Railway Police Force and they were posted as security guards at the gate of said godown.

3. It is alleged that the respondent no.1 (accused no.1) and one more accused Nazir @ Abdul Rashid Bachonu Shaikh, with the help of respondent nos.2 and 3, committed house breaking by night at the said godown by using duplicate keys at the midnight hours of 14.11.1993 and committed a theft of scrap copper wires, valued at Rs.5,43,463/-. It is also alleged that the respondent no.4

(accused no.5) dishonestly received the said stolen copper wires belonging to the Indian Railway knowing them to be the stolen property.

4. The theft of crime was discovered by the godown incharge Unnikrishnan Jarardhan Pillai on 23.1.1993. On that day, he had visited the godown and after opening it, had also opened the strong room. After opening of the strong room, he found that the copper wire was missing. He inspected the lock of the strong room and suspected that it was manipulated and opened by some keys. He reported the matter to his superior officer and, thereafter, inspection of the strong room was taken and the estimated value of the missing copper wire was ascertained. Two days after i.e. on 27.11.1993, Unnikrishnan Pillai lodged a report with the police, whereupon offences relating to commission of house breaking by night and theft were registered. The matter was investigated and complicity of the respondents together with one more accused Nazir Shaikh was discovered. After completion of the investigation, a charge-sheet was filed. Charge for the offences punishable under Sections 457, 380 r/w 114 of the I.P.C. as against the

respondent nos.1 to 3 together with one more accused Nazir Shaikh, for offence punishable under Section 381 r/w 114 of I.P.C. as against respondent nos.2 and 3 and offence punishable under Section 411 of I.P.C as against respondent no.4 was framed to which the respondents pleaded not guilty and claimed to be tried, as per law.

5. On merits of the case, the learned Magistrate found that the prosecution failed to prove beyond reasonable doubt the offences that were charged against these respondents and accordingly, by his judgment and order dated 31.7.2000, acquitted the respondents of the same, which is the same judgment and order which are under challenge in the present appeal.

6. These respondents in this appeal are original accused no.1, accused nos.3, 4 and 5 respectively. The appeal as against respondent nos.1-Mohd. Ibrahim Ansari and accused no.3-Krishnamurari Sharma has also been dismissed by this court by order passed on 8.11.2006. The appeal has not been filed against another accused Nazir Shaikh (original accused no.2), as it appears that his name did not find mention in the operative portion

of the order dated 31.7.2000. With these facts present on record, now the appeal survives only as against respondent no.2 Santoshprasad Ramlal Gujar and respondent no.4 Champaklal Lalchand Jain, original accused nos.3 and 5 respectively. Accordingly, this appeal has been heard as against respondent nos.2 and 4 only.

7. I have heard the learned APP for the State. None appears for the respondent nos.2 and 4. I have carefully gone through the record of the case and the impugned judgment and order. Learned APP for the State has submitted that the evidence available on record needs to be carefully assessed and appropriate conclusions in the matter will be drawn.

8. On going through the evidence available on record and the impugned judgment and order, I find it difficult to disagree with the inference drawn by the learned Magistrate in recording the verdict not guilty as against respondent nos.2 and 4.

9. Respondent no.2 was, at the relevant time, a guard and used to be posted on various dates at the gate of the godown in question. The offence of house breaking by night and theft had

occurred in the midnight of 14.11.1993. The allegation against respondent no.2 is that as a security guard posted at the godown in question he had helped original accused nos.1 and 2 in taking away the stolen property from the godown and that without his connivance it was not possible for any one to take the stolen property out of the gate of the godown. However, no evidence has been adduced by the prosecution to show that at the relevant time i.e. in the midnight of 14.11.1993, respondent no.2 Santoshprasad Gujar was posted as security guard at the gate of the godown in question.

10. According to PW1 Unnikrishnan Pillai, the godown was lastly closed on 2.11.1993 and opened for the first time on 23.11.1993, during which period of time, the keys of the godowns were kept in the safe of time keeper and that he was not aware as to how many times the keys might have been used by time keeper or somebody else duly authorized by the time keeper for opening the godown in between 2.11.1993 and 23.11.1993. This evidence would create a doubt, as to exactly when the godown was opened by using the keys between 2.11.1993 and 23.11.1993 and how

many times. It would also create a doubt as to whether it was lastly opened on 14.11.1993 and whether or not the original accused nos.1 and 2 were instrumental in opening the same.

11. In the circumstances, I am of the view that the prosecution has failed to prove beyond reasonable doubt, the charge against respondent no.2, the original accused no.3 that at railway godown he assisted the original accused nos.1 and 2 in commission of the offences of house breaking by night and theft.

12. If the offences of commission of house breaking by night and theft have not been proved beyond reasonable doubt by the prosecution, there would be no question of proving of the offence of being conscious receiver of stolen property punishable under section 411 of the I.P.C. as against respondent no.4.

13. The findings of innocence recorded by the learned Magistrate as against respondent nos.2 and 4 are in accordance with law and warrant no interference with them. The appeal deserves to be dismissed. The appeal stands dismissed.

JUDGE