

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

rpa

CRIMINAL APPEAL (ST.) NO.9 OF 2014

Vilas Chandrakant Shirke	.. Appellant
Vs.	
The State of Maharashtra & Ors.	.. Respondents

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Mr.Prakash V. Vare, Advocate for the Appellant.
Mrs.S.V. Gajare, A.P.P. for Respondent – State.

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CORAM : ABHAY M. THIPSAY, J.

DATED : JANUARY 19, 2015.

ORAL JUDGMENT :

Heard Mr.Prakash Vare, the learned counsel for the appellant.

2 On the first information report lodged by the applicant, the respondent no.2 herein was prosecuted on the allegation of having committed theft of cash of Rs.2,34,772/- (Rupees Two Lac Thirty Four Thousand Seven Hundred and Seventy Two) from the premises of the Ratnagiri District Secondary Teachers Co-operative Society Limited, of which the appellant is the Secretary. In the course of investigation, the respondent no.1 was arrested and prosecuted.

The learned Magistrate found him guilty of offences punishable under Sections 457 and 380 of the Indian Penal Code (IPC). The respondent no.1 appealed and the learned Additional Sessions Judge who heard the Appeal, acquitted him. Being aggrieved thereby, the applicant has filed the present application seeking leave to appeal from the order of acquittal. As the appeal has been filed purporting to be an appeal filed by the victim under proviso to 372 of the Code, the Appeal is heard for admission.

2 With the assistance of the learned counsel for the appellant, I have gone through the Judgment delivered by the learned Magistrate, as also the Judgment delivered by the Additional Sessions Judge in Appeal.

3 The case against the respondent no.1 was based on a solitary circumstance viz :- '*the alleged recovery of the stolen property at his instance*'. The case was that after his arrest, the respondent no.1 had disclosed certain information, pursuant to which the stolen property came to be recovered from a locked room belonging to one Alka Chavan.

4 Apart from the other weaknesses in the prosecution case what was fatal for its success was that the property – currency notes – allegedly recovered at the instance of the respondent no.1, did not meet the description of the currency notes that were stolen. As per the prosecution case, the amount stolen consisted of 200 currency notes of Rs.500/- denomination, 1000 currency notes of Rs.100/- denomination, 600 currency notes of Rs.50/- denomination, 472 currency notes of Rs.10/- denomination, and Rs.72 in the form of coins of Rs.5, Rs.2 and Rs.1/-. What was recovered was, however, two currency notes of Rs.1000/- denomination, 295 currency notes of Rs.500/- denomination, 781 currency notes of Rs.100/- denomination, 47 currency notes of Rs.50/- denomination, 102 currency notes of Rs.20/- denomination, 52 currency notes of Rs.10/- denomination, and some coins.

5 The learned counsel for the appellant/applicant conceded before me that the description of the stolen property, and the recovered property does not match, and is different.

6 When such was the case, and when the respondent no.1 was sought to be connected with the theft and house breaking, 'only

on the basis that the robbed property was recovered at his instance', the Judgment of conviction was rightly reversed by the learned Additional Sessions Judge acquitting the respondent no.1.

7 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)