

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.260 OF 2015

Shri.Champalal Chunilal Jain ... **Appellant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Bhalchandra Shinde with Sushant Prabhune, Advocate for the Appellant

Ms.Anamika Malhotra, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 24TH FEBRUARY, 2015

ORAL JUDGMENT :

1. This is an appeal under section 454 of the Code of Criminal Procedure. The appellant is the wife of the first informant – Champalal Chunilal Jain. On the basis of a report filed by the said Champalal Chunilal Jain with the police, a case was registered and investigation commenced. Three persons came to be prosecuted on the allegation of having committed offences punishable under Section 395 and 506 of the Indian Penal Code. The Additional Sessions Judge, who tried them vide Sessions Case No. 187 of 2009, found all the three guilty of the offence punishable under Section 395 of the IPC and sentenced each of

them to suffer Rigorous Imprisonment for five years and to pay a fine of Rs.500/-. All the three convicts have challenged their conviction and the sentence imposed upon them by filing an appeal in this Court, which is pending (Criminal Appeal No.422 of 2013). The said appeal had not yet been listed for final hearing.

2. In the course of investigation, the Investigating Agency had recovered the robbed property. There has been no dispute that it had been robbed from the possession of the said Champalal Chunilal Jain. The property was produced before the trial Court during the trial. At the conclusion of the trial, the learned Additional Sessions Judge passed the following order with respect to the disposal of the said property:

“(7) The Investigating Officer is directed to submit supplementary charge-sheet against the absconded accused. Till the trial of absconded accused, the Muddemal property be preserved.”(Emphasis supplied)

3. Thus, the learned Additional Sessions Judge directed the property to be preserved and retained with the Court, as all the culprits had not been apprehended.

4. The learned counsel for the appellant submitted that till today, the absconding accused have not been apprehended and no fresh/supplementary charge sheet had been submitted by the Investigating Agency against any of them. The correctness of this claim is not disputed by the learned Additional Public Prosecutor.

5. Though the order passed by the learned Additional Sessions Judge requiring the muddemal property to be retained in Court cannot be said to be improper, it is a fact that now about five years have passed and the absconding accused have yet not arrested. Therefore, in my opinion, the question regarding the disposal or the custody of the muddemal property is required to be considered afresh.

6. In the circumstances, it appears proper to remand the matter back to the learned Additional Sessions Judge with a direction to reconsider the question of disposal of the property in question, in the light of the fact that about five years have passed since the delivery of judgment by him and that, still the absconding accused are not yet arrested.

7. The appeal is partly allowed.

8. The order requiring the muddemal property to be preserved, as appearing in Clause (7) of the operative order passed by the learned Additional Sessions Judge, is set aside.

9. The learned Additional Sessions Judge shall reconsider the question of disposal of the muddemal property after giving an opportunity of being heard in the matter, to the appellant and the Investigating Officer.

10. In case, the learned Additional Sessions Judge decides to hand over the custody of the said property to the appellant, he shall give necessary directions to the Investigating Agency to take sufficient photographs of all the articles thereof, for the purpose of establishing the identity of the property. He may, if he comes to the conclusion that the property ought to be returned to the appellant, require the appellant to execute a bond binding the appellant to produce the property before this Court, if so required or directed by this Court.

11. The fresh decision with respect to the disposal of the property should be arrived at by the learned Additional Sessions Judge expeditiously, and within a period of three months from the date of receipt of this order.

12. Record and proceedings be sent back forthwith.

13. After passing the necessary order with respect to disposal of the property, the learned Additional Sessions Judge shall forward the record and proceedings again to this Court, as the appeal filed by the accused persons is pending.

14. Appeal is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY J.)