

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.185 OF 2013

The State of Maharashtra,
(Through Railway Security
Force, Virar)

..Appellant

Versus

Manoj Gangaprasad Dubey,
Age 26 years,
R/o Room No.203,
Sai Siddhi Apartment,
Mira Road (East),
District Thane

..Respondent

....

Mrs. P.P. Bhosale, APP, for the Appellant – State.
Mr. Manoj G. Dubey, respondent present in-person.

....

CORAM : A. R. JOSHI, J.

DATE : 16th JULY, 2015

JUDGMENT :

1. Heard learned APP for the State. Also heard the learned respondent in person.

2. This is the appeal preferred by the State challenging the acquittal of the respondent in the matter of offences punishable under Section 3 of the

Railway Property (Unlawful Possession) Act. The impugned judgment and order was passed by the J.M.F.C., Railway Court, Virar on 23.9.2011.

3. The case of the prosecution in short is that on 9.6.2001 when the Station Master of Virar Railway Station attended his office, he found that the money-safe was in an open condition. He suspected some foul play and in presence of panchas brought by the Railway Protection Force (RPF), a panchnama was drawn and when the total cash in the safe was counted an amount of Rs.51,000/- was found less instead of the expected amount of Rs.7,67,033/-. As such, case was registered against the present respondent as during enquiry he volunteered to make a statement and also stated that he had removed the cash from the cash box after taking the keys from the drawer of the table of the Station Master. As such, the investigation was conducted and after recording the statements of officers from the railway office, charge-sheet was filed and the

respondent was tried before the Railway Magistrate.

4. The entire case of the prosecution rests only on three alleged voluntary statements given by the respondent. According to the case of prosecution out of said amount of Rs.51,000/- part amount was deposited by him towards his LIC premium. According to the prosecution, out of Rs.51,000/- the respondent took out Rs.15,500/- and by adding Rs.305/- from his own salary payment he deposited an amount of Rs.15,805/- in the LIC office at Nalasopara. Also according to the prosecution the respondent also made a statement and produced the remaining cash of Rs.35,500/- kept in the cupboard in his house. Accordingly during the investigation the panchnama was conducted and the said remaining amount was taken charge of which was having some identification marks.

5. What weighed with the trial Court was the failure of the prosecution to establish that there was in

fact total cash of Rs.7,67,033/-. Secondly, the trial Court came to the conclusion that there is no nexus between the amount which was deposited with the LIC and the amount which was stolen from the Station Master office. The defence of the respondent that due to the arrangement of marriage in his family certain amount was brought to his house, was accepted by the trial Court on probabilities. Moreover the defence of the accused that in order to raise more funds he has sold his two wheeler was also accepted. Thirdly, the trial Court did not accept the said statements allegedly voluntarily given by the respondent for the reason that the starting of the said statements was with the sentence "on asking by the officers to me". By pointing out this, the trial Court came to the conclusion that there was no voluntariness in the statements and as such they cannot be taken against the respondent.

6. Considering the effect of the substantive evidence of the prosecution witnesses and the

anomalies brought on record by the trial Court and the reasoning given by the trial Court in the impugned judgment and order, in the opinion of this Court, the view taken by the trial Court cannot be considered as of pervert nature so as to interfere with the order of acquittal. There is nothing to take a different view on the material available before the trial Court, than that taken by the trial Court while acquitting the respondent/accused. Under these circumstances, there is nothing to entertain the present appeal challenging the acquittal and as such the present appeal is dismissed and disposed of. The judgment and order of the trial Court is maintained. The amount of Rs.51,000/- which was directed to be given to the respondent/accused be immediately given to him. Necessary action be taken to that effect by the concerned trial Court.

(A. R. JOSHI, J.)