

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.381 OF 2010

1. Mohammad Irfan Usman Mulla,
Age 29 years, occu. : Service,
R/at Kargil Nagar, Near Kalika
Mata Temple, Rashmi Nivas,
Room No.3, Virar (E), Tal.Vasai,
Dist.Thane.
2. Abdul Jana Mulla,
Age 21 years, Occu. : Labour,
R/at Kargil Nagar, Rashmi Nivas,
Virar (E), Tal.Vasai, Dist.Thane. ... **Appellants**

V/s.

The State of Maharashtra
Through Virar Police Station ... **Respondent**

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Mr.Yogesh Rawool with Mr.S.S.Redekar, Advocate for the
Appellants.

Mr.Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 23RD JUNE 2015

ORAL JUDGMENT :

1. This appeal is directed against the Judgment and
Order dated 05/04/2010 delivered by the Additional Sessions

Judge, Vasai in Sessions Case No.54 of 2008 convicting the appellants, who were the accused in the said case of an offence punishable under Section 489-B of the Indian Penal Code and sentencing them to suffer Rigorous Imprisonment for five years and to pay fine of Rs.1,000/- each, in default to suffer imprisonment for a period of three months. When the appeal came up for final hearing it was revealed that the appellants have already been released from prison after having undergone the entire sentence imposed by the trial Court. Nevertheless, the learned counsel for the appellants were desirous of advancing arguments in support of the appeal, which, any way, was required to be decided on merits, and could not be treated as disposed of because the appellants had already undergone the sentences imposed upon them. As such, the appeal is being decided after hearing the learned counsel for the appellants and the learned Additional Public Prosecutor, and by perusing the record of the case.

2. The prosecution case, as put forth before the trial Court, was as follows :

That, on 16/03/2010, on receipt of information that two persons possessing counterfeit currency notes were to come to Kalika Mandir, the police party and panchas went there. The police party found the appellants there. The appellants were apprehended and on their personal search, 20 counterfeit currency

notes of Rs.1,000/- denomination were found from each of them.

3. In order to establish its case, the prosecution examined four witnesses during the trial. The appellant No.1 examined himself as defence witness.

4. The first witness for the prosecution - Sharad Dhande - a police naik, the third witness Sanjit Tonpi Inspector of Police and the fourth witness Pradip Mane Inspector of Police, are all members of raiding party. Pradip Mane (PW4) is also the Investigating Officer. The second witness Dilip Giridhar is a panch witness who is supposed to have witnessed the apprehension of the appellants and the recovery of the counterfeit currency notes from the possession of each of them.

5. With the assistance of the learned counsel for the appellants and the learned Additional Public Prosecutor, I have gone through the entire evidence, that was adduced during the trial. I have also carefully gone through the impugned Judgment.

6. After carefully going through the evidence of the prosecution, as was adduced during the trial, I do not find it satisfactory or convincing. There are a number of infirmities in the prosecution evidence.

7. Sharad Dhande (PW1) states about the receipt of the information from one '*Deshmukh Saheb*', but this '*Deshmukh Saheb*' has not been examined as a witness. Anyway, his version is that after getting this information, Police Inspector Mane (PW4) called two panchas and that, the police party and the panchas then went towards Kalika Mandir.

8. The version of the witnesses about the mode of transport is not uniform or same. According to Dhande, the police and the panchas went towards Kalika Mandir by *a private vehicle*. In the cross-examination, however, he said that the police had gone to the said place i.e. Kalika Mandir by four to five auto rickshaws.

9. The panch Dilip Giridhar (PW2), however, states that police had gone there by *two private vehicles i.e. two Qualis Jeeps*. He, however, expressed his inability to give the number of the said Qualis Jeeps. It transpires from his cross-examination that he had previously acted as panch at least in two cases i.e. a murder case and a rape case. In further cross-examination, he admits that he 'is in habit of giving evidence as a panch witness'.

10. Sanjit Tonpi (PW3) and Pradip Mane (PW4) both speak about going to the spot, but Mane does not state anything about the vehicle by which the police party went there. In the

cross-examination, he states that he did not remember about it. He even did not remember how many vehicles were there. He did not remember who was or were the drivers. Sanjit Tonpi (PW3) merely speaks about having gone to the spot by a private vehicle, without any further or other details with respect to the said vehicle.

11. There is also a discrepancy about the place from where the appellants came from. This knowledge is supposedly derived by the prosecution witnesses from the appellants themselves. The prosecution case is that the appellants are from Bangladesh. However, though Sharad Dhande (PW1) who lodged the FIR states so, the panch (Dilip Giridhar) claims that the appellants said that they were from Andhra Pradesh and not Bangladesh. The other witnesses speak about the appellants telling the police that they were from Bangladesh.

12. It is quite interesting to note that except the counterfeit currency notes nothing else is said to have been found with the appellants. No genuine currency was found with them. Not only this, but also no other ordinary articles such as handkerchief, comb, cell phone, wallet, etc. were found with the appellants or any of them. That, the appellants should possess only counterfeit currency notes and nothing else, is rather strange.

13. No entry was made by the police with respect to the receipt of the information in question. No entry was made by the police about their laying of a trap and proceeding to the place for apprehending the suspects.

14. Since the case was based only on the evidence of the police witnesses, who had taken part in the operation of apprehending the appellants; and since their evidence was got supported only by the evidence of a habitual panch witness, it was unsafe to rely on the version of the prosecution. This was particularly so, because even the police record was not said to be given in evidence for supporting the testimonies of the police officers. The testimonies of the police officers and the panch did not agree with one another and there were discrepancies about the manner of visiting the spot, the mode of transport, the information that was allegedly received from the police, etc.

15. These discrepancies in the prosecution evidence were noticed by the learned trial Judge, but he thought them to be inconsequential. He was of the view that 'the police had no *adverse interest* against the appellants'.

16. The learned Judge also appears to have gathered some facts not from the evidence, but from the police report. This was not in accordance with law.

17. The learned Judge noted that the panch was a habitual panch, but complimented him for his fairness by observing that he was 'fair enough in admitting that he acted as a panch in a murder case and in a rape case'. The learned trial Judge overlooked that this 'fairness' was displayed by the panch witness only in the cross-examination.

18. The learned Judge did not find it necessary to think over as to why the police selected such a panch, while acting on an alleged information. The learned Judge also did not consider what prevented the police from making an entry about the receipt of the information or at least about their laying a trap in the Station House Diary or other relevant records. The learned Judge also observed that whether the appellants were from Bangladesh or Andhra Pradesh was not material, overlooking that, that there should be a discrepancy about it, was what was material. What was material was that different prosecution witnesses had given different versions of supposedly the same happenings, and whether, therefore what the prosecution witnesses said about what the police allegedly told them, was reliable or not.

19. In my opinion, the prosecution evidence was not sufficient to hold the appellants guilty. There were a number of suspicious features of the prosecution case. Certainly, there was a reasonable doubt which remained unexplained about the truth of

the prosecution case. The appreciation of the evidence as done by the learned trial Judge and his reasoning is not in accordance with law. This was a case where the appellants should have been given the benefit of doubt that arose about the truth of the prosecution version and should have been acquitted.

20. The appeal is allowed.

21. The impugned Judgment of conviction and the sentences imposed upon the appellants are set aside.

22. The appellants are acquitted.

23. Fine, if paid, be refunded to the appellants.

(ABHAY M. THIPSAY J.)