

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 555 OF 1998

The State of Maharashtra,
Through: P.S.O. Vishrambag,
Police Station, Sangli.

... Appellant.
(Org.Complainant)

V/s.

Shashikant Sagan Tirmare, Age 27,
Police Constable B.No.574, Umadi -
Police Station, Tal. Jath, Dist. Sangli.

... Respondent.
(Org. Accused)

Mrs. M. M. Deshmukh, APP for the Appellant – State.
None for the Respondent.

CORAM : A. M. BADAR, J.

DATE : 22nd APRIL, 2016.

ORAL JUDGMENT :

1 By this Appeal, under section 378 (1) of the Criminal Procedure Code, 1973, the Appellant-State has challenged the judgment and order dated 3rd March, 1998 passed by the learned Judicial Magistrate, First Class, Sangli in Regular Criminal Case No. 319 of 1989 thereby acquitting the Respondent/Accused of the offence punishable under section 394 of the Indian Penal Code, 1860.

2 Brief facts giving rise to the present criminal Appeal are thus :

i) According to the prosecution case, Respondent / Accused-Shashikant Sagan Tirmare was working as Police Constable at Police Station, Umadi, Tal. Jath, Dist. Sangli and he was absent from duty from 4th May, 1989 to 23rd July, 1989 on which date he was arrested in the crime in question. According to the prosecution case, while on sick leave the Respondent/Accused had robbed PW-1- Akbar Hasan Mulani of Rs. 1760/- after slapping him near the new settlement area of Sangli Town at about 10.15 p.m. of 22nd July, 1989. According to the prosecution, informant Akbar Mulani (PW-1) accompanied by his friend Shivaji Thorat (PW-2) had been to Sangli for marketing. After finishing the marketing, they were going towards Amrai corner from Gokulnagar when the Respondent / Accused intercepted them. There Respondent/Accused questioned both of them as to whether they are coming from Gukulnagar area. Respondent/ Accused started threatening informant -Akbar Mulani (PW-1) and his friend Shivaji Thorat (PW-2). Shivaji Thorat (PW-2) went to make a phone call and at that time Respondent/ Accused slapped informant Akbar Mulani on his cheek and extorted an amount of Rs. 1760/- from him. Soon

thereafter, Shivaji Thorat (PW-2) returned back to the informant. According to the prosecution case, Shivaji Thorat (PW-2) had informed informant Akbar Mulani that the person who had extorted amount is a police personnel by name -Shashikant Tirmare. The duo started searching him and on the way, they met Vasant Rao Shankar Musana (PW-5), who advised them to undertake search for the accused in the morning hours. Thereafter, the informant and his friend resumed search for accused in the morning hours. PW-5 Vasant Rao Musana was stated to be accompanying them at about 5.30 a.m. to 6 a.m. of 23rd July, 1989 when they found the accused standing near pan-patti shop adjacent to Hotel Navaratna. The trio then caught-hold of the accused and took him to the police station, Sangli where the subject Crime No.209 of 1989 under section 394 of the Indian Penal Code came to be registered against the Respondent /Accused by P.S.O. Shri Easi. Further investigation was taken over by the Police Inspector Pandurang Chavan (PW-6).

ii) After routine investigation, charge-sheet came to be filed against the Respondent/Accused and charge for offence punishable under section 394 of the Indian Penal Code came to be framed against the Respondent /Accused. After due trial, by the impugned judgment and order passed on 3rd March, 1998 in Regular Criminal Case

No.319 of 1989, the learned Judicial Magistrate, First Class, Sangli at Sangli, was pleased to acquit the Respondent/Accused for the offence punishable under section 394 of the Indian Penal Code. This judgment and order is impugned in the present appeal by the Appellant State.

3 Heard Mrs. Deshmukh, the learned Additional Public Prosecutor for the State. None appeared for the Respondent /Accused. After taking me through the evidence of informant PW-1 Akbar Mulani, PW-2-Shivaji Thorat and that of PW-5-Vasantrao Musana, the learned Additional Public Prosecutor vehemently argued that evidence of all these three witnesses is totally consistent and version of the informant is fully corroborated by the versions of PW-2- Shivaji Thorat and PW-5 Vasantrao Musana. Learned Additional Public Prosecutor further argued that after apprehending the accused, he was taken to the police station and at the police station, looted amount was recovered from the Respondent/Accused and it came to be seized by preparing the seizure panchanama which is duly proved by PW-3 Salim Momin, a panch-witness. According to the learned Additional Public Prosecutor, guilt of the accused is established beyond reasonable doubt and, therefore, the learned trial court erred in acquitting the accused of the charges leveled against him. None appeared for Respondent No.2/ Accused.

4 With the assistance of the learned Additional Public Prosecutor, I have perused the entire record and proceedings and particularly evidence of witnesses recorded by the prosecution so also the documentary evidence placed on record.

5 At the outset, let us put on record the parameters of jurisdiction of this court while dealing with the appeal, challenging the acquittal of the accused. It is well settled that generally the order of acquittal may not be interfered with because the presumption of innocence of the accused is further strengthened by his acquittal after due trial. It is well settled that if two views are possible on appreciation of evidence in a case, the one pointing out the guilt of the accused and another recording his innocence, then the view which is favourable to the accused needs to be adopted. However, while exercising the appellate jurisdiction, this court can re-appreciate the evidence on record even when the accused is acquitted for the purposes of ascertaining as to whether the accused had committed the crime in question or not. However, the appellate court can exercise its jurisdiction by interfering with impugned judgment and order of acquittal when compelling and substantial reasons are pointed out for doing so. Keeping in mind these well established standards for appreciation of evidence and exercise of the appellate jurisdiction, let us now

determine whether the prosecution has proved beyond reasonable doubt that on 22nd July, 1989 at about 10.15 p.m. to 10.30 p.m., near the bridge of new colony, Sangli , Respondent / Accused voluntarily caused hurt to PW-1 Akabar Mulani and committed robbery by looting an amount of Rs. 1760/- from him.

6 It is in the evidence of PW-1 Akbar Mulani that he alongwith his friend PW-2 Shivaji Thorat had visited Sangli from their village Danoli on 22nd July, 1989 for the purpose of marketing and that after 9.30 p.m.. on that day, they were proceeding towards Amarai for taking juice. His evidence further states that when he had reached there at new settlement area, one person intercepted them and his name was told as “Shashikant Tirmare” by his friend Shivaji Thorat (PW-2). PW-1 Akabar Mulani then stated in his evidence that said person started threatening them by questioning whether they came from Gokulnagar area. Thereafter, his friend Shivaji Thorat went to make a phone call and during that time as per version of PW-1 Akbar Mulani, after slapping him on face, the accused robbed an amount of Rs. 1760/- from him. In his evidence PW-1 Akbar Mulani further stated that thereafter, immediately Shivaji Thorat came back and the duo started searching for the said robber.

7 Similar is the version of PW-2 Shivaji Thorat. However, he did not claim that amount of Rs.1760/- came to be robbed from PW-1-Akabar Mulani in his presence. He stated that after making phone calls to his friend, he joined company of his friend PW-1 Akabar Mulani, who told him that the Respondent /Accused has forcibly taken an amount of Rs. 1760/- from him.

8 PW-1 Akabar Mulani and PW-2 Shivaji Thorat unanimously stated that when they started searching the robber, they met PW-5 Vasantao Shankar Musana. As per version of PW-2 Shivaji Thorat, they met said Vasantao Musana near Amarai and the incident was narrated by them to said Vasantao-PW-5. As per the advise of Vasantao a search for the robber was stopped to resume in the morning hours.

9 Evidence of PW-1- Akabar, PW-2-Shivaji and PW-5 - Vasantao goes to show that in the morning hours on 23rd July, 1989 the said search was resumed and the accused was found standing at the pan-patti shop near Navaratna Hotel from where he was nabbed. All these three witnesses stated that the accused was then taken to the police station where the subject FIR came to be lodged and the amount was recovered from him.

10 In the normal circumstances, there was no reason to dis-believe such a consistent conversion of the prosecution witnesses to infer guilt of the accused in the crime in question. However, the learned trial court upon scrutinizing evidence of all these three witnesses came to the conclusion that their evidence cannot be said to be trustworthy and reliable in order to base conviction. The learned trial Court has given cogent reasons for disbelieving the versions of these three prosecution witnesses.

11 As such now let us examine whether versions of these three witnesses, as held by the learned trial Court, seem to be doubtful for basing conviction.

12 It was on 23rd July, 1989 the FIR came to be lodged by PW-1 Akabar Mulani against the Respondent/Accused. The FIR at Exh. 14 shows that as soon as the accused intercepted him and PW-2 Shivaji, PW-2 Shivaji informed the informant PW-1-Akabar that the accused (the person who intercepted them) is a police personnel. FIR further shows even after the incident, PW-2 Shivaji Thorat had disclosed informant PW-1 Akabar that the robber was a police personnel named Shashikant S. Tirmare. Even in his evidence, PW-1 Akabar Mulani has stated that at the time of incident of robbing him, he came to know from PW-2 -Shivaji that the name of the robber was Shashikant Tirmare, a police personnel. Soon

after the incident, both these witnesses met PW-5 Vasantrao, who hails from their village Danoli. Evidence of these three witnesses goes to show that they were well acquainted to each other. It is not their case that they were not aware of the location of the police station or need of lodging the FIR in such case. However, still these witnesses kept mum and did not approach the police station for lodging report against the accused. It is not their case that they were under fear of the accused, which prevented them from lodging the report. On the contrary, as per their versions, they have continued search of the accused in the morning hours of 27th July, 1989 and nabbed him at the panpatti. They then took him to the police station. This delay of lodging the FIR by PW-1 Akabar though he was knowing identity of the accused after the incident, was taken as a factor to disbelieve the versions of these three witnesses by the learned trial Court. In criminal cases, need of lodging FIR promptly need not be emphasized. Prompt lodging of FIR prevents adding of embellishment to the prosecution case. In the instant case, defence of the accused, as gathered from the material brought on record, is to the effect that he had quarreled with informant -Akabar Mulani on 10th July, 1989 over the issue of black marketing of the tickets and therefore, the informant got enraged against him and lodged the report. In cross-examination of PW-2 -Shivaji Thorat it is brought on record by the defence that the Manager of Swaroop Theater is his friend and he because acquainted

with the accused through the Manager of that theater. Considering the fact that the informant as well as his friends were well acquainted with the accused and that as per version of PW-2-Shivaji, this acquaintance was through the Manager of the Swaroop Theater, the defence has probalised its version that there was serious enmity between the informant and the accused over the issue of black marketing of the tickets. In this situation, the delay in lodging the FIR, despite knowing the identity of the accused, has become fatal to the prosecution case making it suspect. In such eventuality, the view taken by the learned trial court in disbelieving the version of these prosecution witnesses cannot be said to be a view which is not reasonably probable.

13 Learned trial court apart from doubting the conduct of the prosecution witnesses in causing delay in lodging the FIR, has also considered a prosecution case as an unnatural because of the averment that the accused was found at Pan-patti stall near Navaratna Hotel in wee hours on 23rd July, 1989. According to the prosecution case, the accused being the police personnel, who was well acquainted with the persons accompanying the informant, had no reason to be at the said place if he had really robbed the informant last night in presence of the persons acquainted to him. The improbability crept in the prosecution case makes it doubtful.

14 PW-2 Shivaji Thorat had disclosed in his evidence that they met PW-5 Vasantrya after the incident near Aamrai. As against this, PW-5 Vasantrya has stated in his evidence that he met informant Aakabar Mulani PW-1 and PW-2 Shivaji Thorat at the main road leading to the Bus Station where the incident was disclosed to him. Though this discrepancy is of a minor character, it assumes great importance because of the inconsistency in the prosecution versions about the incident in question.

15 For the foregoing reasons, it cannot be said that the acquittal of the accused recorded by the learned trial Court is an outcome of a perverse appreciation of the evidence on record. The view taken by the learned trial Court is a probable view based on evidence on record and there are no compelling or substantial reasons to interfere with the same.

16 In the result the following order :

The Criminal Appeal is dismissed.

(A. M. BADAR, J.)

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