

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO. 714 OF 1999**

Ashok Kumar Parekh )  
aged 40 years, residing at 104, Koteswar )  
palace, Jiva Mahal Marg, Andheri (E), )  
Mumbai 400 069. ).. Appellant

Vs.

1. The State of Maharashtra )
2. Pravin Kumar Bhurjibhai Gosai )  
at present lodged in Arthur Road, )  
Central Prison, Mumbai. )
3. Mahendra Vithal Parad, )  
aged 21 years, residing at )  
Shree Krishna Nagar, Haji )  
Mohalla Chawl, Hariyal House, )  
Kalyan. )
4. Rajappa Shankarappa Gunjeti ) R.No.4 name deleted  
Age 23 years, residing at Bada ) as per Court's order  
Gouregaon, Village: Basav ) dated 26.8.02.  
Kalyan, Dist. Bidar, )  
Karnataka State. )
5. Rajan Jatan, )  
at present lodged in Arthur Road, )  
Central Prison, Mumbai. ).. Respondents

with

**CRIMINAL APPEAL NO. 563 OF 1997**

1. Pravinkumar Bhurjibhai Gosai )
2. Mahendra Vithal Parad ).. Appellants  
(Orig.Accused No.1 & 2)

vs.

State of Maharashtra .. Respondents

Mr. Sunil S. Chitre, Advocate for the appellant.

Ms. A.A.Mane, APP, for the State.

**CORAM: SMT. SADHANA S.JADHAV, J.**

**RESERVED ON : 6th May, 2016.**

**PRONOUNCED ON: 20<sup>th</sup> September, 2016**

**JUDGMENT:**

1. This is an appeal praying for return of property in Sessions Case No.648 of 1992. The present appellant is the original complainant. He was running a jewellery shop in the name and style of Vinayak Jewellers, situated at Shop No.12-D, Vile Parle (East), Mumbai.

2. It is the case of the prosecution that on 28.4.1991, 5 – 6 persons had entered into the shop of the present appellant at about 2.00 p.m. and had asked for a silver finger ring. The appellant had requested them to give after 3 p.m. one of the accused had returned at 3.30 p.m. he was followed by others who were armed with deadly weapons. The shop was looted by the accused persons and they had taken away the golden ornaments and other valuable articles displayed for sale. The appellant had apprehended the vehicle in which the accused had fled away. Some of the stolen articles were found scattered inside the vehicle . The police had taken custody of the ornaments and the van. The complainant was assaulted by the accused.

3. The police had found Maruti Van at Irla Dhobi Ghat. In December, 1991, some of the accused were apprehended. The complainant had identified all the accused. The complainant had also identified the ornaments seized from the vehicle as the stolen articles.

4. The complainant PW-1 had prayed for return of the property and upon execution of the documents, the property was returned. In the cross-examination, it was revealed that the accused were habitual offenders.

5. At the trial, 14 witnesses were examined. The learned Sessions Judge by a judgment and order dated 28.6.1999 was pleased acquit respondent Nos. 2 to 5. Accused Nos. 1 to 5 were in custody on 28.6.1999 and they were directed to be released forthwith.

6. The learned Sessions Judge had observed that test identification parade was not followed in accordance with the procedure laid down in the Criminal Manual and had therefore observed that the test identification parade cannot be relied upon. As far as the disposal of the property is concerned, the learned Sessions Judge had passed the following order :-

**“ORDER REGARDING DISPOSAL OF PROPERTY**

*Articles 1 (colly), 2 (colly), 3, 4 (colly), 5 (colly), 6 (colly), 7 (colly) and 8 be returned to PW 1 Vimal Champalal Parekh.*

*Articles 9, 10 (colly), 11 (colly), 12 (colly), 13 (colly), 14 (colly), 16 (colly), 17 (colly), 18 (colly), 19 (colly), 20 (colly), 21 (colly), 22 (colly), 24 (colly) and 25 be confiscated to the State.”*

7. The learned Sessions Judge has specifically observed that the property which was identified by the complainant were returned to him during the pendency of the trial on execution of bond. It is observed by the learned Sessions Judge that in absence of satisfactory identification, the learned magistrate ought not to have returned the property during the pendency of the trial. The operative order is challenged before this Court.

8. It is pertinent to note that in the course of investigation, it had revealed that there were in all 8 accused persons. The case against accused No.2 was separated as he was not found. Accused No.5 was discharged. The case against rest of the accused i.e. original accused Nos. 1, 3, 4, 6, 7 and 8 was disposed of by the Judgment dated 30.7.1997 and muddemal property had been returned to the complainant until the disposal of the case against the absconding accused.

9. Criminal Appeal No.563 of 1997 was filed by one of the accused, which was registered as Criminal Appeal No.563 of 1997. The

learned counsel appearing for the appellant in Criminal Appeal No.563 of 1997 has submitted that the appellant in Criminal Appeal No.563 of 1997 had died in Arthur Road Jail, while he was serving the substantive sentence. The family members had not taken any steps. Criminal Appeal No.563 of 1997 was abated and what fell for consideration before this Court is Criminal Appeal No.714 of 1999.

10. By an order dated 27.1.2000, this Hon'ble Court (Coram: Smt. K.K. Baam, J.) passed an order to the effect that the articles should be returned in terms of prayer clause (d) on bond on same terms and conditions as per the order passed by the Metropolitan Magistrate during the pendency of the appeal. The prayer in terms of prayer (d) was granted. Prayer (d) reads as follows :-

“(d) Pending the hearing and final disposal of this Appeal the Respondent No. 1 may be directed to return back the said Articles on bond to the Appellant.”

11. It is pertinent to note that prayer (d) was not distinguished between the articles which were identified and the articles which were not identified by the complainant.

12. On 24.7.2000, it was brought to the notice of this Court that the Principal Judge, City Civil & Sessions Court, Mumbai, had communicated to the Addl. Registrar, High Court that the property which is directed to be returned to the appellant is a subject matter in Sessions Case No.646 of 1992 and 91 of 1995 which was separated as against the absconding accused. In view of this, the order dated 27.1.2000 passed by this Court was recalled by Hon'ble Justice K.K.Baam to the extent of release of the property in favour of the appellant on executing a bond. On 29.11.2001, the appeal was dismissed for want of prosecution and the said order was recalled by an order dated 6.3.2002. This Court had called for a report in respect of the pendency of Sessions Case No.646 of 1992 and 91 of 1995. The learned Sessions Judge had communicated that the accused were still absconding and therefore the Sessions case had not proceeded. The same is the state of affairs as on today also.

13. On 15.4.2016, this Court (Smt. Sadhana S. Jadhav, J.) had directed the appellant in Criminal Appeal No.714 of 1991 to file a detailed list of articles which the appellant was seeking to be returned. The learned Counsel for the appellant has filed a list of articles which he seeks to be returned. It appears that the appellant is seeking return of the property

which is already confiscated by the Sessions Court.

14. The learned counsel for the appellant has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai v/s. State of Gujarat reported in (2002) 10 SCC 283**. The Hon'ble Apex Court was considering the issue of return of the property during the pendency of the trial under Section 451 of Cr.P.C. The Hon'ble Apex Court had observed that "it is manifest that there should be two sets when the property may be returned to the owner. In the first place, it may be returned during any enquiry or trial. This may particularly be necessary where the property concerned is subject to natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice." The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly, should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal.

15. In the present case, the learned Sessions Judge has scrutinized the evidence in its minutest details. The ornaments which were identified

by the complainant were directed to be returned. It is specifically observed that the recovery at the instance of Rajappa were not proved by the prosecution. That, there was recovery at the instance of accused Prem Kumar Gosavi. There was recovery at the shop of Kamlesh. That the said person had informed the Investigating agency that the property was converted into some other ornaments. The statements of Kamlesh were also recorded. The panchas to the seizure panchnama were not available and therefore the said recovery was held to be insignificant.

16. The accused Rajappa had given a statement on 9.9.1991 that 23 ear-rings and one golden ring were received by him as a share in the present crime and he had sold the same in Null Bazar at Mumbai. The accused had led the police to Building No.96, Ali Umar Estate. The accused had informed the police that he had sold such articles to Fayyaz Ibrahim Mansoori. On enquiry, it was revealed that he had sold the property through the servant Shamsuddin, who had further informed that the said articles were sold to a jeweller Mohanlal Soni. The investigating agency had approached Mohanlal Soni who had informed that the said articles were converted into a golden bar weighing about 47 grams.

17. The learned Sessions Judge has rightly held that since the said articles had undergone conversion and therefore, could not be identified by the witnesses and could not have been returned to the complainant. The learned Sessions Judge had rightly protected the return of property at articles Nos. 1 to 8 collectively in favour of Vinayak Jewellers.

18. It is apparent that the articles which have undergone change could not have been returned. The articles were converted into gold bars, the possibility that some other golden ornaments must have also been part of the golden bars cannot be ruled out. The said golden bars were confiscated by the Court and were sent, or liable to be sent, to the mint. It is pertinent to note that what were stolen were golden ornaments which could be identified and marked and what were recovered were gold bars/gold ingots which do not have a specific identity. Hence, it would be unjustified to return the same as the said articles are confiscated.

19. In view of this, the Appeal seeking return of unidentified articles not mentioned in the operative order of Sessions Case No.648 of 1992 is hereby dismissed.

**(SMT.SADHANA S.JADHAV, J.)**