

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1569 OF 2011

1) Laxman Govind Negi

2) Iliyaj Yasin Shaikh .. Appellants

Versus

The State of Maharashtra .. Respondent

None for the appellants.

Mrs.P.P. Bhosale, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 11th JANUARY 2016

ORAL JUDGMENT :-

1 The appellants were the accused nos.1 and 3 respectively in Sessions Case No.423/09 tried by the Addl. Sessions Judge for Greater Mumbai. They were prosecuted on the allegation of having committed offences punishable under section 399 of the IPC and 402 of the IPC r/w section 34 of the IPC, as also the offences punishable under the Arms Act and the Bombay Police Act (now, Maharashtra Police Act). The learned Addl. Sessions Judge found them not guilty of the offences punishable

under Section 399 of the IPC and 402 of the IPC, and acquitted them of the said offences. He also found them not guilty of an offence punishable under Section 135 of the Bombay Police Act r/w Section 37(1)(a) thereof. He, however, held them guilty of offences punishable under the Arms Act. He convicted the appellant no.1 of an offence punishable under Section 25 of the Arms Act r/w section 3 thereof and sentenced him to suffer Rigorous Imprisonment for 2(two) years and to pay a fine of Rs.10,000/-. He convicted the appellant no.2 of an offence punishable under Section 25 of the Arms Act r/w section 4 thereof, and sentenced him to suffer Rigorous Imprisonment for 1(one) year and to pay a fine of Rs.10,000/-. The appellants being aggrieved by their conviction in respect of the aforesaid offences and the sentences imposed upon them, had approached this Court by way of the present Appeal.

2 Though the matter was appearing on board for final hearing, none appeared for the appellants when the matter was called out. On an earlier occasion also, though the matter was listed on board and was called out, none had appeared for the appellants. Under these circumstances, the Appeal is being decided after going through the Record and Proceedings, and

more particularly, the evidence adduced during the trial and the impugned judgment; and after hearing the learned Additional Public Prosecutor.

3 The prosecution case, as put forth before the trial court, was that Mahadev Nimbalkar (PW 5) API attached to DCB CID, Unit-8 received certain secret information on 15th January 2009. The information was to the effect that some persons had made preparations to commit dacoity, and that, they were armed with weapons at a jewellery shop near Chetana College, Bandra (East). Nimbalkar narrated the information to his superiors, where-after a trap was arranged. Two persons – Kalim Shaikh and Akram Shaikh – were called to act as panchas during the trap. When the police party and the panchas were waiting at the bus-stop near Chetana College, the culprits arrived on the spot by two different rickshaws. They were totally five. They were attempted to be apprehended, but only three of them could be apprehended, and the remaining two ran away. The appellants are said to be two of the three persons who were caught. A revolver with two live cartridges was allegedly found with the appellant no.1 Laxman, whereas one 'Sura' was allegedly found with the appellant no.2 Iliyaj.

4 The prosecution examined totally six witnesses during the trial. All of them are policemen. The panch witnesses who were associated with the trap, were not examined.

5 The learned Addl. Sessions Judge did not believe the story of the prosecution to the effect that the appellants and the other accused had made preparations to commit dacoity and had assembled at a particular place for the purpose of committing dacoity. It may be observed that the story of the prosecution was that the conversation between the appellants was heard by the police party and the panchas by going closer to them, and that this conversation was to the effect that one of them was telling the others that the jewellery shop situated there, was to be robbed. The story is too artificial, and in my opinion, the learned Addl. Sessions Judge was right in disbelieving such a story.

6 The question is whether when the learned Addl. Sessions Judge for valid and sound reasons, doubted the version of the prosecution which was to the effect that the appellants and other accused had made preparations to commit dacoity and had assembled for the purpose of committing dacoity, was he right in holding that the appellants were found in possession of arms and weapons. In my opinion, the answer has to be in the negative.

7 In the first place, when the main story of the prosecution was rendered unbelievable, it was not proper to just believe a part of it particularly when there was no proper or satisfactory reason to hold that the evidence, so far it related to that part, was reliable. The learned Addl. Sessions Judge himself observed – and rightly so – that the evidence of assembling of the appellant and other accused as given by the prosecution witnesses was inconsistent and failed to corroborate the evidence of one another. The learned Addl. Sessions Judge rightly observed that the version of the police witnesses about what was the conversation between the appellants and the other accused was not uniform and clear. The learned Judge also observed that no name of the jewellery shop was reflected in the prosecution evidence though the case appeared to be that the jewellery shop was situated just across the place where the appellant and the other accused had assembled. It is, therefore, surprising that the learned Judge should accept the evidence of the policemen only about arms and weapons having been found with the appellants.

8 When such evidence of recovery was not supported by any independent witnesses, and when the prosecution witnesses who were the policemen were not believed by the trial Judge

resulting into the acquittal of the accused persons in respect of the offences punishable under Section 399 IPC and 402 IPC, the learned Judge ought not to have believed the prosecution story only to the extent that the appellants were found in possession of arms and weapons.

9 This was a case where there certainly was a reasonable doubt about the guilt of the appellants. The appellants should have been acquitted.

10 The Appeal is allowed.

11 The impugned judgment and order is set aside.

12 The appellants are acquitted.

13 Their bail bonds are discharged.

14 Fine, if paid, be refunded to them.

15 Appeal is disposed of accordingly.

(ABHAY M.THIPSAY, J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**