

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 505 OF 2017

Vishnudas Jagatmal Sainani
Age : 53 years, Occ. Business,
R/o Near Tamboli Jin, Amalner,
Taluka Amalner, District Jalgaon.

... **Appellant**

Versus

The State of Maharashtra
Through Police Station Dharangaon,
Taluka Dharangaon, District Jalgaon.

... **Respondent**

Mr. G.S. Rane, Advocate for the Appellant.
Mrs. P.V. Diggikar, A.P.P. for the Respondent/State.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 15.11.2017
DATE OF PRONOUNCING THE JUDGMENT : 27.11.2017**

...

JUDGMENT: *(Per Mangesh S. Patil, J.)*

. Admit.

2. This is an appeal under Section 454 of Cr.P.C. by the original informant, being aggrieved and dissatisfied by the judgment and order dated 19.09.2015 thereby refusing to return the ornaments at the conclusion of the trial under Section 452 of the Cr.P.C.

3. We have heard the learned Advocate for the appellant and the learned A.P.P. We have also perused the record and proceedings including the impugned judgment and order.

4. According to the learned Advocate for the appellant, the appellant is the original informant at whose instance the criminal law was set into motion registering the offences punishable under Section 395 of the Indian Penal Code. The learned Additional Sessions Judge has grossly erred in ignoring the fact that the appellant had filed the report (exhibit-46) and during the deposition as PW-1 has stuck to his original version about the dacoity. Even his wife Punam (PW-2) was examined and she has also supported the prosecution *inter alia* regarding commission of dacoity. They had specifically described all the ornaments of which they were robbed of but even without discarding their testimony or for that matter their title to the articles seized during investigation, the learned Additional Sessions Judge has not directed the ornaments to be returned to the appellant under Section 452 of the Cr.P.C. at the conclusion of the trial. He also adverted our attention to the fact that a similar application was moved by the appellant during the pendency of the trial under Section 451 of the Cr.P.C., however, it appears that the application was dismissed in default and in the revision preferred against

that order, even that was not pressed and it is thereafter that the appellant had filed an application under Section 452 bearing Criminal Application No. 6 of 2017 before the learned Additional Sessions Judge claiming the property but that was not pressed perhaps because already in the impugned judgment and order the learned Additional Sessions Judge had passed the order and the remedy was available to the appellant to prefer appeal under Section 454 of Cr.P.C. Thus, according to the learned Advocate, the appellant is entitled to get back the property which he was robbed of and there is no counter claim by anybody.

5. The learned A.P.P. prayed to pass a suitable order.

6. At the outset, it is necessary to note that the request of the appellant is rather innocuous. It is a common ground that the offence was registered when he filed the report (exhibit-46) about the dacoity and loss of various articles, ornaments gold and silver. It is also a common ground that he and his wife did support the prosecution and the report was duly proved by him during the course of trial. Even the Investigation Officer Mr. Tiwari (PW-5) has stated about recovery of various gold and silver ornaments from various accused. In spite of such state of affairs, the learned Additional Sessions Judge has refused to

return the Muddemal articles (A to E) by making following observations:

“23) So far as the seized Articles i.e. A to E is concerned, no one including the informant and his wife came forward so as to claim their right to have the possession thereof. Therefore, I am of the opinion that, the same deserves to be credited to the State.”

Pertinently, the learned Additional Sessions Judge has not held that these articles belong to someone else.

7. Ex facie, the observations are perverse and capricious. When the appellant had stepped in the witness box and had admitted about having lodged the report (exhibit-46) and on the basis of which the prosecution had charge-sheeted the accused, there was no question of the appellant lodging a claim to the property independently. The learned Additional Sessions Judge was obliged to pass a suitable order under Section 452 of the Cr.P.C. at the conclusion of the trial.

8. Be that as it may, the report of the Police Inspector, Dharangaon Police Station, District Jalgaon addressed to the Additional Public Prosecutor of this Bench states that the gold and silver ornaments

are robbed from the appellant and the police have no objection for returning the same to him albeit on presentation of receipts and bills.

9. In view of such state of affairs, the appellant is entitled to receive the articles. However, since we do not know if the State is intending to prefer any appeal against acquittal, it would be just and proper to direct the return of the property to the appellant subject to his furnishing a personal bond of the value of the ornaments. Hence, we pass the following order.

10. The Appeal is allowed. The impugned order to the extent of refusing to return the seized valuable Muddemal to the appellant is quashed and set aside.

11. The Muddemal articles (A to E) be returned to the appellant on his furnishing indemnity bond before the learned trial Judge for Rupees One Lakh subject to the condition that he shall produce the Muddemal as and when directed.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]