

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.386 OF 2012

ANAND ANIL RAIMOKAR)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.Prasanna K. Shahane h/f. Mr.Milind Deshmukh, Advocate for the Appellant.

Mr.Vinod Chate, APP for the Respondent - State.

WITH

CRIMINAL APPEAL NO.975 OF 2015

RAMESH NARSING BHOSALE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Ganesh Bhujbal, Advocate for the Appellant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

**DATE : 16th AUGUST 2017 &
18th AUGUST 2017**

ORAL JUDGMENT :

1 Criminal Appeal No.975 of 2015 is by the appellant who was accused no.1 before the learned trial court where as Criminal Appeal No.386 of 2012 is by the appellant who was original accused no.3 before the learned trial court. It is seen that, though Sessions case bearing No.573 of 2010 arising out of Crime No.92 of 2010 registered against these appellants and other co-accused was heard by the learned trial court, at the stage of recording statement under Section 313 of the Code of Criminal Procedure, the appellant / accused no.1 Ramesh Bhosale absconded, and therefore, initially said Sessions case bearing no.573 of 2010 came to be decided on 24th January 2012 by the learned Additional Sessions Judge, Pune, by separating trial of appellant / accused no.1 Ramesh Bhosale. While deciding the said sessions case on 24th January 2012, the appellant / accused no.3 Anand Raimokar came to be convicted of the offence punishable under Section 411 of Indian Penal Code (IPC) and he is sentenced to suffer rigorous imprisonment for 3 years apart

from direction to pay fine of Rs.6,000/- and in default, to undergo further simple imprisonment for 3 months. Hence, this appeal bearing no.386 of 2012 by convicted appellant / accused no.3 Anand Raimokar. Subsequently, appellant / accused no.1 Ramesh Bhosale came to be apprehended and after recording his statement under Section 313 of the Code of Criminal Procedure (Cr.PC.) and after hearing the parties, the learned Additional Sessions Judge, vide his judgment and order dated 20th August 2015 in the said Sessions Case No.573 of 2010, has been pleased to convict the appellant / accused no.1 Ramesh Bhosale of the offence punishable under Section 394 of the IPC and he is sentenced to suffer rigorous imprisonment for 6 years and to pay fine of Rs.2,000/-, in default, to undergo simple imprisonment for 1 month. That is how Criminal Appeal bearing no.975 of 2015 came to be filed by him challenging his conviction and sentence. As evidence in the matter is common, though judgments are delivered on different dates, both these appeals are being decided by this common judgment.

2 Briefly stated, facts leading to the institution of the present appeals at the instance of appellant / accused no.1 Ramesh Bhosale and appellant / accused no.3 Anand Raimokar are thus :

(a) First informant / PW1 Vandana Ugale is resident of Gujarmala in Shirur Taluka of Pune District. Her family comprises of her husband – PW2 Daulat Ugale and two sons by name Aadesh and Rushikesh.

(b) After having dinner on 17th March 2010, the first informant PW1 Vandana Ugale and her family members slept at about 10.30 p.m. The first informant / PW1 Vandana Ugale woke up at about 2 a.m. in the night intervening 17th March 2010 and 18th March 2010 to see one person standing near the cupboard, whereas another waiting at the door of the house. Being frightened, she cried loudly awakening her family members. One of the culprits took keys of the locker from her husband on the point of knife. The robbers then opened locker of the cupboard and took out money and ear rings. Thereafter they had forcibly taken

mangalsutra (mini ganthan) from the first informant PW1 Vandana Ugale and also snatched her mobile phone. While on their way out, as PW2 Daulat Ugale followed them, robbers assaulted him by means of iron rod. When PW1 Vandana Ugale attempted to save her husband, she was also assaulted. After looting gold ornaments, mobile phone and cash amounting to Rs.5,000/-, robbers fled from the spot.

(c) PW1 Vandana Ugale then accompanied by her husband PW2 Daulat Ugale immediately went to Police Station Shirur and lodged report Exhibit 61, at about 3.45 a.m. of 18th March 2010. Accordingly, Crime No.92 of 2010 for the offence punishable under Section 394 of the IPC came to be registered against unknown robbers. The investigation was then set in motion. During the course of investigation, with the help of PW4 Atmaram Dighe – panch witness, spot of the incident came to be inspected and spot panchnama Exhibit 70 was recorded. PW1 Vandana Ugale and her husband PW2 Daulat Ugale were sent to Rural hospital at Shirur where they were treated by PW5 Dr.Kailas Batte.

(d) The Investigating Officer got information that appellant / accused no.1 Ramesh Bhosale is arrested in Crime No.85 of 2010 for offence punishable under Section 394 of the IPC, and therefore, under orders of learned JMFC, Shirur, he got custody of the appellant / accused no.1 Ramesh Bhosale transferred in Crime No.92 of 2010 and accordingly, he came to be arrested on 1st May 2010. Co-accused Tanhya Kale was reportedly arrested in Crime No.64 of 2009 for the offence punishable under Section 302 of the IPC by Police Station Shrigonda and accordingly, the Investigator sought his transfer in Crime No.92 of 2010 and arrested him on 7th May 2010. On the basis of voluntary disclosure statement of co-accused Tanhya, gold ornaments allegedly looted in the crime by accused persons came to be seized on 10th May 2010.

(e) It is the case of prosecution that appellant / accused no.3 Anand Raimokar is habitual receiver of the stolen property and he had purchased the same from co-accused Tanhya Kale. On discovery of this fact from confessional statement of co-accused

Tanhya Kale, looted gold ornaments came to be seized from appellant / accused no.3 Anand Raimokar. He came to be arrested. On completion of routine investigation, accused persons were charge-sheeted.

(f) The learned Additional Sessions Judge, Pune, initially framed and explained charge for the offence punishable under Section 395 of the IPC to appellant / accused no.1 Ramesh Bhosale and co-accused except appellant / accused no.3 Anand Raimokar, against whom the charge for the offence punishable under Section 412 of the IPC came to be framed and explained. Subsequently, additional charge for the offence punishable under Section 397 of the IPC came to be framed and explained to accused persons including appellant / accused no.1 Ramesh Bhosale but excluding appellant / accused no.3 Anand Raimokar. Accused persons pleaded not guilty and claimed trial.

(g) In order to bring home the guilt to appellants / accused, the prosecution has examined in all eleven witnesses. First Informant

Vandana Ugale is examined as PW1. The First Information Report (FIR) lodged by her is at Exhibit 61. Her husband Daulat is examined as PW2. Ramesh Chaudhary – a panch witness to memorandum statement and recovery panchnama – Exhibits 66 and 67 respectively is examined as PW3. Atmaram Dighe – a panch witness to the spot panchnama is examined as PW4 and the spot panchnama is at Exhibit 70. Medical Officer of Rural hospital, Shirur, Dr.Kailas Batte, is examined as PW5 and reports of medical examination of PW1 Vandana Ugale and PW2 Daulat Ugale are at Exhibits 74 and 75 respectively. Rushikesh Shelke, Naib Tahsildar, had conducted the Test Identification Parade (TIP) for getting accused persons identified by PW1 Vandana Ugale and PW2 Daulat Ugale on 3rd August 2010. He is examined as PW6. Memorandum of the TIP is at Exhibit 78. PW7 Ramesh Kawade is a panch witness to the TIP. PW8 Bapu Shinde is another panch witness to the TIP conducted by PW6 Rushikesh Shelke. Vishnu Pawar, P.I. Of Shirur Police Station, is examined as PW9. He had investigated the crime in question. PW10 Bajirao Hargude was the Duty Officer with Shirur Police Station, who had registered the

FIR lodged by PW1 Vandana Ugale. PW11 Ashok Wandekar, PI., had conducted initial investigation of the crime in question by visiting the spot and drawing the spot panchnama.

(h) Defence of accused persons was that of total denial.

(i) After hearing the parties, by impugned judgments and orders, the learned trial court was pleased to hold that the prosecution has successfully proved guilt of appellant / accused no.1 Ramesh Bhosale for the offence punishable under Section 394 of the IPC and that of appellant / accused no.3 Anand Raimokar for the offence punishable under Section 411 of the IPC and accordingly they are sentenced, as indicated in the opening paragraph of this judgment.

3 I have heard the learned advocates appearing the appellants / accused. The learned advocate appearing for appellant / accused no.1 Ramesh Bhosale vehemently argued that evidence of the First Informant as well as the FIR lodged by her

shows that robbers had covered their faces with scarf and as such, there was no possibility of their identification by prosecution witnesses in the TIP. He further argued that description of appellant / accused no.1 Ramesh Bhosale and that of accused no.2 Tanhya Kale was different, and therefore, PW6 Rushikesh Shelke ought not to have conducted their TIP together. He further argued that nothing came to be recovered from appellant / accused no.1 Ramesh Bhosale and only on the basis of confessional statement of accused no.2 Tanhya Kale, he came to be arrested.

4 The learned advocate appearing for appellant / accused no.3 Anand Raimokar argued that though prosecution witnesses have claimed to have identified looted articles, but the prosecution has not collected ornaments of similar nature to confront prosecution witnesses during dock identification of seized ornaments. In his submission, similar ornaments ought to have been produced before the trial court and from amongst several such ornaments of similar nature, prosecution witnesses

should have identified looted ornaments. On this count, he relied on the judgment of learned Single Judge of Allahabad High Court in the matter of **Subhan and Others vs. Rex**¹. He further argued that seized articles were grouped in “A”, “B” and “C” category. The prosecution witnesses must have been confronted with all seized articles in order to enable them to identify looted articles. He further argued that grouping of ornaments is not explained by prosecution witnesses or the Investigating Officer. Common recovery panchnama came to be prepared by the Investigator with the help of PW3 Ramesh Chaudhary and the appellant / accused no.3 is falsely implicated. The learned advocate further argued that there can be several such ornaments which may be available in the market and therefore, identification of the ornaments by prosecution witnesses is of no consequence.

5 As against this, the learned APP contended that memorandum statement of co-accused Tanhya Kale shows involvement of appellant / accused no.1 Ramesh Bhosale in the crime in question. He further argued that in the TIP conducted by

1 1949 DGLaw (All) 245

PW6 Rushikesh Shelke, the appellant / accused no.1 Ramesh Bhosale is identified by PW1 Vandana Ugale and her husband PW2 Daulat Ugale. The learned APP placed reliance on the judgment of the Madras High Court in the matter of S.H.O. vs. Subramani @ Jeeva @ Kullajeeva² as well as judgment of Hon'ble Apex Court in the matter of State of Maharashtra vs. Sukhdev Singh³ to submit that dock identification is a substantive evidence and evidence of TIP is a corroborative evidence, which is admissible in law. With the aid of these two judgments, the learned APP submitted that identity of appellant / accused no.1 Ramesh Bhosale as one of the culprits is duly proved by the prosecution, and as such, he is rightly convicted. The learned APP further supported the impugned judgment and order of conviction of appellant / accused no.3 Anand Raimokar.

6 I have carefully considered the rival submissions and also perused record and proceedings including oral as well as documentary evidence adduced by the prosecution.

² Criminal Appeal No.769 of 1996 decided on 2nd February 2005

³ (1992) 3 Supreme Court Cases 700

7 At the outset, let us examine whether there was robbery at the house of First Informant PW1 Vandana Ugale in the night intervening 17th March 2010 and 18th March 2010, during the course of which, cash, gold ornaments and mobile phone came to be looted. On this aspect, evidence of victims of crime, i.e., PW1 Vandana Ugale and PW2 Daulat Ugale is of great importance. They both unanimously deposed that on 17th March 2010, after having dinner, they slept in their house situated at Gujarmala area of Shirur Taluka, in Pune District. Their congruous evidence shows that in the night intervening 17th March 2010 and 18th March 2010, at about 2.00 a.m. to 2.30 a.m., they saw two persons in their house holding a knife and an iron bar. It is in evidence of PW1 Vandana Ugale and PW2 Daulat Ugale that by threatening them at the point of knife, robbers had taken key of the cupboard from them. It was then opened and currency notes amounting to Rs.5,000/- and a set of ear rings was taken therefrom by robbers. PW1 Vandana Ugale testified and PW2 Daulat Ugale corroborated that thereafter robbers had snatched

the mangalsutra (mini ganthan) as well as mobile phone from PW1 Vandana Ugale. When they were going out, PW2 Daulat Ugale followed them which resulted in assault on him by means of an iron rod. PW1 Vandana Ugale also deposed the same fact and stated that when she went to save her husband, she was also assaulted by robbers. As per version of PW1 Vandana Ugale, there were three to four persons, who indulged in robbery at her house.

8 As seen from evidence of PW1 Vandana Ugale, after the incident, she accompanied by her husband PW2 Daulat Ugale, had been to Shirur Police Station immediately to lodge report Exhibit 61. Thereafter, they were sent for medical treatment to Rural hospital at Shirur.

9 Cross-examination of PW1 Vandana Ugale reveals that she has disclosed to police that robbers had wrapped their face by handkerchief and at the time of the incident, all lamps in the house except zero bulb were switched off. In her cross-examination, she further stated that two robbers were inside the

house whereas three were outside the house. She admitted that she was not called at the police station to identify articles. She deposed that mangalsutra (mini ganthan) taken by robbers was given to her by her father, after her marriage and it was not having any identification mark.

10 In the cross-examination, PW2 Daulat Ugale has stated that two persons had entered in his house, out of which, one had covered his face by handkerchief. He further stated that he had not seen seized articles after arrest of accused persons and there was no identification mark on those articles.

11 In order to ascertain whether there was incident of robbery at the house of these two prosecution witnesses, let us examine whether there evidence is corroborated by any other evidence on record. The first piece of corroborative evidence is FIR lodged by PW1 Vandana Ugale with promptitude. It has come on record from her cross-examination that she lodged the same at 3.30 a.m. of the night intervening 17th March 2010 and 18th March

2010. The incident took place at about 2.00 a.m. of 18th March 2010. Thus, within a short span of time, the FIR came to be lodged by PW1 Vandana Ugale, which has resulted in registration of Crime No.92 of 2010 against unknown accused persons. The FIR lodged with promptitude shows that there was dacoity at the house of prosecution witnesses PW1 Vandana Ugale and PW2 Daulat Ugale during that night and averments in the FIR corroborate version of PW1 Vandana Ugale.

12 PW5 Dr.Kailas Batte had medically examined PW1 Vandana Ugale and PW2 Daulat Ugale on 18th March 2010 itself and found that both of them were having injuries on their person caused by hard and blunt object. Evidence of these official witnesses is corroborated by contemporaneous certificates at Exhibits 74 and 75 respectively issued by him. This evidence of PW5 Dr.Kailas Batte corroborates version of PW1 Vandana Ugale and PW2 Daulat Ugale that there was robbery at their house during the course of which they were assaulted by iron rod.

13 Soon after the incident, the spot of the incident came to be visited by PW4 Atmaram Dighe – panch witness with the Investigator - PW11 P.I. Ashok Wandekar. Evidence of both these witnesses corroborated by spot panchnama shows that there was blood on the spot. Iron Almirah and its locker was found opened during the course of spot panchnama. Articles in the house were found in disorderly manner. Evidence of PW4 Atmaram Dighe coupled with the averments in the spot panchnama shows that bolt of the door of house of PW1 Vandana Ugale was found bent and central latch broken.

14 The evidence as mentioned and discussed supra is sufficient to hold that there was robbery at the house of PW1 Vandana Ugale and PW2 Daulat Ugale in the night intervening 17th March 2010 and 18th March 2010. Now let us examine whether the prosecution is successful in proving that it was appellant / accused no.1 Ramesh Bhosale with the aid of co-accused, who had committed that robbery during the course of which, hurt was caused to PW1 Vandana Ugale and PW2 Daulat

Ugale and whether appellant / accused no.3 Anand Raimokar had dishonestly received the extorted property in this robbery. In order to establish these facts, the prosecution has heavily relied on evidence of victims of the crime namely PW1 Vandana Ugale and PW2 Daulat Ugale, apart from evidence of recovery of gold ornaments at the instance of co-accused Tanhya Kale, so also, that of TIP conducted by PW6 Rushikesh Shelke. Let us, therefore, ascertain whether identity of appellant / accused no.1 Ramesh Bhosale as one of the robbers is established by cogent and trustworthy evidence and whether it is proved that appellant / accused no.3 has committed the offence punishable under Section 411 of the IPC.

15 While in the witness box, PW1 Vandana Ugale has stated that she can identify robbers and accordingly she has identified appellant / accused no.1 Ramesh Bhosale before the court. Similarly, she has deposed that during the identification parade conducted by the Investigator, she had identified this accused. So far as identification of gold ornaments robbed from

her is concerned, while in the witness box, sealed packet containing seized articles came to be opened by the learned trial Judge and Article A i.e. mangalsutra (mini ganthan) weighing 15 gms. and one pair of ear rings was shown to PW1 Vandana Ugale. Her evidence shows that she identified those articles by stating that those were stolen from her in the incident dated 18th March 2010. The material elicited from her cross-examination on this aspect is already stated in foregoing paragraph. So far as PW2 Daulat Ugale is concerned, while in the dock, this witness identified appellant / accused no.1 Ramesh Bhosale. He had also identified co-accused Tanhya Kale. He was shown Article A i.e. mangalsutra (mini ganthan) and a set of ear rings and this witness had deposed that these are the same articles which were stolen by the thieves from his house.

16 The learned advocate for the appellant / accused no.3 Anand Raimokar had questioned the identification of gold ornaments by PW1 Vandana Ugale and PW2 Daulat Ugale while in the dock for the first time by contending that those articles were

not mixed with similar articles in order to enable prosecution witnesses to identify those articles. This court is not oblivious of the fact that identified gold ornaments were not having identification marks on them as admitted by PW1 Vandana Ugale and PW2 Daulat Ugale. There is no rule of law that seized ornaments must be mixed with several similar ornaments for enabling the prosecution witnesses to identify their ornaments. On the contrary in the matter of Earabhadrappa vs. State of Karnataka⁴ the Hon'ble Apex Court has noted that it is a matter of common knowledge that ladies have an uncanny sense of identifying their own belongings. In the case in hand, PW1 Vandana Ugale was owner of mangalsutra (mini ganthan) and a set of ear rings which was stolen from her house in the night of the incident. She has identified those articles while in the witness box, though these were not having any special identification mark. The mangalsutra (mini ganthan) shown to PW1 Vandana Ugale was an ornament of her daily use and her evidence shows that it was snatched from her person by robbers. Considering observations of the Hon'ble Apex Court in the matter of

⁴ AIR 1983 SC 446

Earabhadrappa (supra) it cannot be said that identification of seized ornaments by PW1 Vandana Ugale and her husband PW2 Daulat Ugale is in any manner doubtful.

17 Gold ornaments belonging to PW1 Vandana Ugale were seized on the basis of confessional statement of co-accused Tanhya Kale. That confession came to be recorded in presence of PW3 Ramesh Chaudhary – panch witness, by PW9 Vishnu Pawar, P.I. Of Shirur Police Station. Evidence of PW3 Ramesh Chaudhary and PW9 P.I. Vishnu Pawar unanimously shows that on 10th May 2010 co-accused Tanhya Kale made a disclosure statement to the effect that he will show the person and place to whom and where the gold ornaments were sold out by him. PW3 Ramesh Chaudhary, co-panch and police team accompanied by co-accused Tanhya Kale as seem from evidence of both these witnesses proceeded to Belwandi and co-accused Tanhya Kale then pointed out the appellant / accused no.3 Anant Raimokar. Evidence of these two witnesses shows that then appellant / accused no.3 Anand Raimokar produced gold ornaments which came to be

seized. Evidence of PW3 Ramesh Chaudhary and PW9 PI. Vishnu Pawar proves memorandum of statement and consequent recovery panchnama which are at Exhibits 66 and 67 respectively. Ultimately, looted ornaments are identified to be belonging to PW1 Vandana Ugale by her as well as her husband PW2 Daulat Ugale. As such, this recovery becomes a piece of relevant evidence in the matter.

18 Now let us examine whether the evidence of prosecution establishes that appellant / accused no.1 Ramesh Bhosale was one of the robbers who committed robbery. For this purpose the prosecution heavily relied on dock identification of appellant / accused no.1 Ramesh Bhosale as well as evidence of TIP wherein this appellant / accused is stated to have been identified by PW1 Vandana Ugale and her husband PW2 Daulat Ugale.

19 Fate of the prosecution case, as such, to a large extent hinges on identification of appellant /accused no.1 Ramesh

Bhosale by prosecution witnesses PW1 Vandana Ugale and PW2 Daulat Ugale in TIP conducted by PW6 Rushikesh Shelke on 3rd August 2010, so also on their evidence regarding his identification before the trial Court. Evidence of identity is required to be scrutinized giving all benefits of doubts to the accused, but if after thorough scrutiny, there appears to be nothing on record to suspect the testimony of identifying witnesses, the Court can base conviction on such evidence alone. The object of TIP is to ascertain ability of the prosecution witness to recognize the suspect and to eliminate the risk of erroneous identification. The evidence of Test Identification Parade lends corroboration to the evidence regarding dock identification. It is well settled that the TIP does not constitute substantive evidence. These parades are essentially governed by Section 162 of the Cr.P.C. What weight should be given to such evidence is to be determined by the court considering all circumstances of the particular case before it. In order to eliminate possibility of the accused being shown to prosecution witnesses prior to the TIP, it is desirable to conduct the TIP immediately. The learned APP has relied upon the Judgment

in the matter of **Subramani @ Jeeva @ Kullajeeva (supra)** decided by the Madras High Court in order to demonstrate that evidence adduced by the prosecution in respect of identity is reliable and trustworthy. In paragraphs 14 and 15 of the said Judgment, the Madras High Court relying on Judgment of the Hon'ble Apex Court has observed thus :

“14 The learned trial Judge failed to note the law laid down by the Supreme Court, in DANA YADAV v. STATE OF BIHAR [(2002) 7 SCC 295]. The Supreme Court has held that it is well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. The Supreme Court, posing a question as to the probative value of the test identification parade, answered by stating that identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen

earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. The Supreme Court further held that if a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence and further, after referring to an earlier judgment of the Supreme Court in STATE OF MAHARASHTRA v. SUKHDEV SINGH [(1992) 3 SCC 700], held that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. The Supreme Court also referred to the case of RONNY [(1998) 3 SCC 625], wherein it has laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held.

15 In the above judgment, the Supreme Court, quoted with approval, the following passages from its earlier judgment in RAMANBHAI NARANBHAI PATEL [(2000) 1 SCC 358]:-

“It, therefore, cannot be held, as tried to be submitted by learned counsel for the appellants, that in the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case.”

“the fact remains that these eyewitnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad daylight.”

and ultimately held that conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court.”

20 Similarly in the matter of Sukhdev Singh supra relied by the learned APP, the Hon'ble Apex Court has cautioned the trial court that great care must be exercised before acting on an belated identification in the court by a witness who cannot be said to be an independent and unbiased person. The Hon'ble Apex Court has held that it is not safe to place implicit reliance on the evidence of witnesses who had just a fleeting glimpse of the person identified or who had no particular reason to remember the concerned person in the case of total strangers. The Hon'ble Apex Court has reiterated the TIP if held promptly and after taking necessary precaution to ensure its credibility would lend the required assurance which the court ordinarily seeks to act on it. Let us examine the evidence of the prosecution keeping in mind these principles so far as the aspect of establishing identity of the accused is concerned.

21 Though PW1 Vandana Ugale – the First Informant in her chief-examination while in dock has identified appellant / accused no.1 Ramesh Bhosale and has also stated that she

identified this accused in the TIP, her evidence is conspicuously silent about identifying features or facial features of appellant / accused no.1 Ramesh Bhosale. The FIR lodged by her soon after the incident is also not disclosing any identifying features or facial features, so also description of either appellant / accused no.1 Ramesh Bhosale or his associates. The FIR lodged with promptitude, on the contrary, depicts that one of the robbers was having height of 5 feet and he had covered his face by handkerchief, whereas the another was having height of 5½ feet with face covered by a scarf. The FIR discloses that one of the robbers was wearing bluish coloured jerking whereas the another was wearing black coloured jerking. Except this, no description of robbers is finding place in the FIR. In oral evidence of PW1 Vandana Ugale, height or clothes or robbers is not finding its place. Rather, PW1 Vandana Ugale has not whispered a word about covering of faces by scarf by robbers, who entered her house in the night of the incident. She has suppressed this aspect, though the same is finding its place in the FIR lodged by her. This conduct of PW1 Vandana Ugale questions truthfulness of her

evidence regarding identify of robbers. In her cross-examination, this witness has accepted the fact that she had disclosed to police while recording her statement that robbers had wrapped their face by handkerchief. Another eye witness PW2 Daulat Ugale, who is husband of PW1 Vandana Ugale, has also failed to describe features of robbers while in the witness box. PW2 Daulat Ugale had not disclosed identifying or facial features of any of the robbers in his ocular evidence. He only stated that he identified appellant / accused no.1 Ramesh Bhosale and co-accused Tanhya Kale. PW2 Daulat Ugale further deposed that he had identified both of them during identification parade conducted at Yerwada prison. It is worthwhile to note that neither PW1 Vandana Ugale nor her husband PW2 Daulat Ugale while in the witness box had ascribed any particular role to appellant / accused no.1 Ramesh Bhosale and their evidence does not show that they had ascribed any particular role to co-accused standing trial. PW2 Daulat Ugale, in his cross-examination, has admitted that two persons had entered in his house, out of which one had covered his face by handkerchief. Who amongst those two persons had covered his

face with handkerchief and who was the other, who had not covered the face by handkerchief, is also not described by PW2 Daulat Ugale in his evidence before the court. Identification of accused persons as such, by prosecution witnesses seems to be mechanical and vague. Had prosecution witnesses really witnessed robbers while in the act, which continued for sometime and was constituting different transactions such as threatening, extortion, assault, then they could have actually ascribed role played by each accused during the course of robbery at their house. Evidence of these two prosecution witnesses is totally scanty on this aspect.

22 Now let us see whether in the incident which allegedly took place at about 2 a.m. – 2.30 a.m. of night intervening 17th March 2010 and 18th March 2010, whether sufficient light was available in order to have a full glimpse of robbers, in order to enable the prosecution witnesses to identify them either in the TIP or before the court. PW1 Vandana Ugale and PW2 Daulat Ugale are congruously deposing that after having dinner on 17th March

2010, they as well as their family members slept. There is no positive evidence by both these prosecution witnesses that they slept by keeping electric bulbs in their house in switch on position. In cross-examination of PW1 Vandana Ugale, the defence has brought on record that during that night, all lamps in the house were switched off except zero power bulb. PW2 Daulat Ugale is not giving any positive evidence in respect of availability of light at the time of the incident so as to enable him to see robbers and then to remember them. This aspect coupled with the fact that the FIR lodged with promptitude shows that two robbers had covered their faces by scarf and admission by PW2 Daulat Ugale that one of the persons who entered in their house had covered his face with a handkerchief, makes the evidence of prosecution witnesses regarding dock identification doubtful and untrustworthy, the benefit of which naturally goes to the defence, the doubt being a reasonable one.

23 Now let us scan the evidence of prosecution so far as TIP conducted by PW6 Rushikesh Shelke is concerned. The

appellant / accused no.1 Ramesh Bhosale came to be arrested in this crime on 1st May 2010 by Shirur Police Station. He was earlier arrested in Crime No.85 of 2010. The TIP was conducted on 3rd August 2010 i.e. after a period of more than three months. Section 167 of the Cr.P.C. mandates that arrested accused needs to be produced before the concerned Magistrate periodically in order to seek his remand which cannot be more than fifteen days on one occasion. This implies that appellant / accused no.1 must have been produced before the learned Magistrate periodically for seeking his remand by the Investigator. In order to eliminate the accused being seen by prosecution witnesses, it is trite law that the TIP should be conducted within reasonable dispatch. In the case in hand, the Investigator took time of more than three months for conducting the TIP. Accused / robbers were certainly strangers to the prosecution witnesses. Evidence on record indicates that all of them had covered their faces with scarf at the time of the incident. After arrest of appellant / accused no.1 Ramesh Bhosale, he must have been certainly kept at the Police Station and thereafter he must have been taken to the court of the

Judicial Magistrate for seeking his remand. The TIP is certainly conducted belatedly. If the prosecution witnesses had an opportunity to see the accused prior to the TIP, then no importance can be attached to the TIP. It is enough if the accused brings on record cogent circumstances showing that he was or he could have been shown to the prosecution witnesses while he was in police custody or was produced before the court for the purpose of remand, then evidence regarding TIP loses its importance. In the case in hand, there is no positive evidence forthcoming from the side of the prosecution that the Investigator had taken every care to see that the prosecution witnesses were not in a position to see the appellant / accused no.1 Ramesh Bhosale after his arrest and at the time of seeking his periodical remand after his arrest and prior to conducting the TIP. A reasonable doubt lurks in the judicial mind that there was ample opportunity to prosecution witnesses to see the appellant / accused no.1 Ramesh Bhosale during the period of three months after his arrest on several occasions. In this view of the matter, evidence regarding TIP held by the prosecution after three months of arrest of the appellant /

accused no.1 Ramesh Bhosale does not seem to be trustworthy and reliable. As seen from the evidence of PW1 Vandana and her husband PW2 Daulat, robbers had covered their faces with handkerchief. In the result, as evidence regarding identity of the appellant / accused no.1 Ramesh Bhosale is found to be suspect, the benefit of doubt needs to be given to appellant / accused no.1 Ramesh Bhosale.

24 Now let us examine whether the charge for the offence punishable under Section 411 of the IPC can be held to be proved against the appellant / accused no.3 Anand Raimokar. Section 411 of the IPC reads thus :

Section 411 - Dishonestly receiving stolen property — Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

25 Bare perusal of this penal section makes it clear that the prosecution must establish that the accused had reason to believe that the property which he receives is a stolen property. The word “believe” used in Section 411 of the IPC indicates that it is necessary to point out that the circumstances were such that a reasonable man must have felt convinced that the property in which he is dealing is a stolen property. Even if it is established that the accused suspected that the property might have been a stolen property, he is not liable to be guilty of the offence punishable under Section 411 of the IPC. Carelessness on the part of the accused does not make him liable for penal consequences of Section 411 of the IPC. In the case in hand, it is the stand of the prosecution that appellant / accused no.3 Anand Raimokar is a goldsmith dealing in sale and purchase of gold ornaments, having a jewellery shop, named and styled as Shweta Jewellers. This implies that he must be purchasing and selling out gold ornaments and at the most one may infer that he was negligent in purchasing gold ornaments from the accused persons but it cannot be said

that he had reason to believe that the articles purchased by him was stolen property. As such, conviction of appellant / accused no.3 Anand Raimokar for the offence punishable under Section 411 of the IPC must fail.

26 In the result, the following order :

- i) Criminal Appeal No.386 of 2012 and Criminal Appeal No.975 of 2015 are allowed.
- ii) The impugned judgment and order passed by the learned Additional Sessions Judge, Pune, in Sessions CaseNo.573 of 2010 on 24th January 2012 so far as it relates to convicting appellant / accused no.3 Anand Raimokar for the offence punishable under Section 411 of the IPC and sentencing him to suffer rigorous imprisonment for 3 years and directing him to pay fine of Rs.6,000/- and in default, to undergo further simple imprisonment for 3 months, is quashed and set aside.

- iii) The appellant / accused no.3 Anand Raimokar is acquitted of the offence punishable under Section 411 of the IPC.
- iv) The impugned judgment and order passed by the learned Additional Sessions Judge, Pune, in Sessions CaseNo.573 of 2010 on 20th August 2015 so far as it relates to convicting the appellant / accused no.1 Ramesh Bhosale of the offence punishable under Section 394 of the IPC and sentencing him to suffer rigorous imprisonment for 6 years and directing him to pay fine of Rs.2,000/- and in default to undergo further simple imprisonment for 1 month, is quashed and set aside.
- v) The appellant / accused no.1 Ramesh Bhosale is acquitted of the offence punishable under Section 394 of the IPC.

vi) Both appellants / accused be released forthwith from the prison, if not required in any other case.

vii) Fine amount, if any, paid by them, be refunded to them.

27 In view of disposal of Criminal Appeal No.975 of 2015, Criminal Application No.351 of 2016 stands disposed of.

(A. M. BADAR, J.)