

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

**CRIMINAL APPEAL NO. 321 OF 2017**

1. Rakeshkumar Saniram Kanchan  
Age: 24 years, Occu.: Business,  
R/o Rajiovnagar, Nagara,  
House No.1362/D, Zanshi, Utter Pradesh.
2. Marry @ Sunita John Petrit  
Age: 30 years, Occu.: Household,  
R/o - TRS Colony, Room No.951 E/Nagara,  
Zanshi, Utter Pradesh. ..APPELLANTS

VERSUS

State of Maharashtra  
For the Loni Police Station, Loni  
Tq. Rahata, Dist. Ahmednagar. ..RESPONDENT

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Mr. A.S. Gandhi, Advocate for appellants.  
Mr. K.D. Mundhe, A.P.P. for respondent - State.

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**CORAM : SANGITRAO S. PATIL, J.**  
**DATE : JANUARY 18, 2018**

**ORAL JUDGMENT :-**

The appellants have taken exception to the judgment dated 11<sup>th</sup> July, 2017 delivered in Sessions Case No. 96 of 2015 by the learned 2<sup>nd</sup> Additional Sessions Judge, Kopargaon, whereby each of them has been convicted for the offence punishable under Section

392 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer rigorous imprisonment for a term of five years and fine of Rs.3,000/- with default clause.

2. The informant – Prabha @ Baby, resident of Prem Nagar, Zanshi, Utter Pradesh had came to Shirdi on 23<sup>rd</sup> May, 2015 alongwith appellant no.2, who also was resident of Zanshi and known to her. They stayed in room no.201 in Sai Ganga Hotel at Shirdi. In response to the telephonic call of appellant no.2, appellant no.1 also came there and stayed with appellant no.2 in that room in that night. The informant slept on the terrace of that hotel in that night. On 24<sup>th</sup> May, 2015 at about 12 noon, the informant and the appellants went to Shani-Shinganapur. When they were going back to Shirdi in a private car, appellant no.2 stopped the car near a bridge of village Kolhar (Bk.) at about 5.30 p.m. on the say that she wanted to go for easing. The

informant also accompanied her and went behind the bushes near that bridge. Appellant no.1 also went behind the informant and appellant no.2. He took out a rope from his bag and tied it around the neck of the informant. Appellant no.2 caught hold of legs of the informant. Appellant no.1 severely beat the informant by fist and kick blows. He took out cash amount of Rs.5,000/-, gold Mangalsutra weighing 3 to 4 gms. and AADHAR card from the person of the informant. The informant became unconscious. After she regained consciousness, she went to the road and gave calls to the nearby persons. After sometime, police came there and took her to the hospital at Loni. She was examined by the Medical Officer, who noticed certain injuries on her person. The informant lodged report against the appellants in Police Station, Loni, on the basis of which Crime No. I-95 of 2015 came to be registered against them for the offences under Sections 307 and 397 of the Indian Penal Code.

3. Investigation followed. Spot panchnama was prepared. Statements of witnesses were recorded. Appellant no.1 came to be arrested on 29<sup>th</sup> May, 2015, while appellant no.2 on 04<sup>th</sup> July, 2015. Cash amount of Rs.5,000/- came to be seized from the cupboard in the house of appellant no.2, pursuant to her disclosure statement on 08<sup>th</sup> July, 2015. After completion of the investigation, the appellants came to be charge-sheeted for the above mentioned offences.

4. The learned trial Judge framed charges against the appellants for the offences punishable under Sections 307 and 392 of the I.P.C. vide Exh. 5 and read over the contents thereof to them in vernacular. The appellants pleaded not guilty and claimed to be tried. Their defence is that of total denial and false implication.

5. The prosecution examined nine witnesses to establish guilt of the appellants for the above

mentioned offences. After scrutinising the evidence, the learned trial Judge did not find sufficient and dependable evidence to hold the appellants guilty for the offence punishable under Section 307 of the I.P.C. He, therefore, acquitted them of the said offence. However, the learned trial Judge found sufficient, cogent and consistent evidence to hold them guilty for the offence punishable under Section 392 of the I.P.C. He, therefore, convicted and sentenced them for the said offence as stated above.

6. The prosecution did not challenge acquittal of the appellants of the offence punishable under Section 307 of the I.P.C. Thus, the said part of the judgment has attained finality.

7. The learned Counsel for the appellants submits that there is no positive, consistent and dependable evidence produced by the prosecution to establish guilt of the appellants for the offence punishable under Section 392 of the I.P.C. He

submits that the evidence of the informant is full of material improvements, which makes it unbelievable. No incriminating article has been seized from the possession of the appellants which would connect them with the above mentioned offence. The incident, as has been narrated by the informant is not natural, probable and believable. Her evidence is not supported by the medical evidence. The medical evidence suggests that the injuries sustained by the informant were possible due to an accident. The discovery of Rs.5,000/- at the instance of appellant no.1 has not been established by the prosecution. The currency notes alleged to have been seized cannot be connected with the alleged stolen property. The evidence of P.S.I. Lokade (P.W.9) in respect of the alleged discovery of currency notes of Rs.5,000/- has remained uncorroborated, since no panch witness has been examined. He submits that the prosecution has failed to establish guilt of the appellants for the above mentioned offence, however, the learned trial

Judge has wrongly convicted them. He, therefore, prays that the appeal may be allowed and the appellants may be acquitted.

8. On the other hand, the learned A.P.P. submits that there was no reason for the informant to lodge false report and depose false against the appellants. Her evidence creates great confidence. The prosecution has examined the witnesses who had first seen the informant near the spot of the incident after the incident. They called the police to the spot of the incident after seeing the informant. Their evidence corroborates the version of the informant about the incident in question and rules out the possibility of there being any accident causing injuries to her. He then submits that P.S.I. Lokade (P.W.9) specifically states that at the instance of appellant no.2, the cash amount of Rs.5,000/- was recovered from the cupboard in her house. As such, stolen property has been recovered

from her. He submits that the learned trial Judge has rightly convicted the appellants.

9. The informant deposes at Exh. 11 that when she reached alongwith appellants at Shani-Shinganapur, appellant no.2 gave something to her as *Prasad* and after eating that, she got fainted. The driver of the car provided her a glass of lemon water and after drinking that she became normal. When all of them started going back to Shirdi from Shani-Shinganapur, both the appellants asked the driver of the car to stop it near a bridge. The appellants asked the informant to get out of the car. They paid hire charges to the driver and asked him to go away with the car. Thereafter, appellant no.2 caught hold of hand of the informant and asked to accompany her as she wanted to go for easing. Accordingly, she went to bushes standing on the bank of the river. She gave a water bottle to appellant no.2, but appellant no.2 threw away that bottle and stood up.

Thereafter, appellant no.1 came there and tied her neck by means of a rope. Appellant no.2 sat on her legs. Appellant no.1 then started giving fist and kick blows to her. Appellant no.2 took out some liquid from a bottle and threw it on her person, due to which she suffered from burning sensation on her face. Thereafter, she became unconscious and regained consciousness after one to two hours. She then realised that the amount of Rs.5,000/-, her gold ear rings, gold Morni, gold Mangalsutra, silver Taviz of Sai Baba and silver anklets were stolen away. She found that the appellants had fled away. She raised shouts. Some persons came there and called police. Initially police took her to a small hospital and then to a big hospital. Her statement was recorded by police, which was treated as F.I.R. (Exh.12).

10. As seen from the version of the informant, there was no eye witness to the incident narrated above. There is no dispute that the conviction can

be recorded even on the basis of the solitary uncorroborated testimony of a witness, provided it inspires confidence. As a rule of caution, the testimony of such witness has to be scrutinised cautiously and closely before accepting it as it is. If the evidence of the informant is considered with reference to her cross-examination, it will be clear that she has made a considerable improvements in her version. She admits that the fact that the appellants made her to eat *Prasad* at Shani-Shinganapur is not mentioned in her statement before the police. She did not state before the police that she got fainted after eating that *Prasad*. She did not state before the police that her gold ear rings, gold Morni, gold Mangalsutra, silver Taviz of Sai Baba and silver anklets were stolen away at the time of the incident.

11. The informant has denied that the contents of portions marked 'A' (Exh.35), 'B' (Exh.36) and 'C' (Exh.37) were stated by her before police. It seems

that the informant is either trying to contradict her own versions or somebody else is the author of the said versions.

12. The evidence of the informant suffers from improvements and material omissions. She had contradicted her own statements made before the police as recorded at Exhibits 35, 36 and 37. In the circumstances, it would be risky and hazardous to uncorroborate the testimony of the informant.

13. Akshay (P.W.2) and Arban Shaikh (P.W.3) are the witnesses who claim to have seen the informant after the said incident of 5.30 p.m.. Akshay (P.W.2) states that he was going to river Pravara at Kolhar (Bk.) alongwith Arban Shaikh (P.W.3) when he saw the informant coming along bank of the river and requesting them in Hindi to extend help to her. Blood was oozing from her neck and mouth. Both of them immediately went to police station and informed the police.

14. Arban Shaikh (P.W.3) states that after seeing the informant, who was at the bank of the river, Akshay (P.W.2) and himself took her to Shani temple and then went to police station. He also states that there was a cut to her throat from which blood was oozing. The evidence of these witnesses about what they did after seeing the informant is not consistent. Akshay (P.W.2) does not state that Arban Shaikh (P.W.3) and himself took the informant to Shani temple. Arban Shaikh (P.W.3) admits in his cross-examination that the informant was standing on the bridge when they went to the bank of the river.

15. According to the informant the incident took place at about 5.30 p.m. She remained unconscious for about one to two hours after the incident. If that be so, it is difficult to accept the versions of Akshay (P.W.2) and Arban (P.W.3) that they saw the informant at about 5.30 p.m. Therefore, the evidence of those two witnesses would not be helpful to the

prosecution to corroborate the version of the informant.

16. Dr. Nita Nikalje (P.W.6)(Exh.26) states that she examined the informant on 25<sup>th</sup> May, 2015 at about 1.40 a.m. in the Rural Hospital, Loni and found the following four injuries:-

- 1) CLW over right elbow 3x2 cm, tenderness present.
- 2) CLW over the nose, suspected fracture of nose. So patient was referred for x-ray to higher center.
- 3) Contusion 2cm extending from one side of neck to the other side with blood clotted seen along with multiple small abrasion over chest and right upper side of chest.
- 4) Swelling over scalp 2x2 cm.

17. Dr. Baviskar (P.W.7)(Exh.26) examined the informant on 25<sup>th</sup> May, 2015 in Rural Hospital, Loni and found the following injuries :-

- 1) Multiple abrasion over the entire face.
- 2) Tenderness over the chest.
- 3) There was complaint of pains over the shoulder.
- 4) Contusion at left and right thigh.
- 5) Linear abrasion at the front side of neck.

18. Dr. Baviskar (P.W.7) states that he did not find any burn marks caused by any chemical substance on the face of the informant. He did not notice any fracture of any bone of the informant. He did not notice any blood clots over her body. He states that, the injuries found on the body of the informant were possible by road accident. Thus, his evidence suggests alternate possibility of sustaining injuries by the informant in an accident.

19. Pralhad (P.W.4) happened to be the panch to spot panchnama (Exh.20) prepared on 06<sup>th</sup> July, 2015. He states that the appellant no.2 gave a statement on 06<sup>th</sup> July, 2015 and offered to show the spot of the

incident. Accordingly, she took to the bank of the river at village Kolhar (Bk.). Police prepared panchnama thereof (Exh.20) in his presence. The evidence of this witness is of no help to the prosecution. The incident had taken place on 24<sup>th</sup> May, 2015. Spot panchnama (Exh.32) was already prepared on 25<sup>th</sup> May, 2015. Therefore, it cannot be accepted that the spot of the incident was discovered at the instance of appellant no.2. Moreover, nothing has been seized from the spot of the incident while preparing panchnama (Exh.20) which would indicate that the incident took place there only.

20. The prosecution examined Baban (P.W.8) who happened to be the Manager of the Sai Ganga Hotel at Shirdi. He states that the informant and appellant no.2 had stayed in room no.201 in his hotel in the night between 23<sup>rd</sup> May, 2015 and 24<sup>th</sup> May, 2015. He further deposes that appellant no.1 also had come there. All these three persons went to Shani-

Shinganapur on 24<sup>th</sup> May, 2015. Appellant nos. 1 and 2 only came back to the hotel at about 8 p.m. and left the hotel on the say that they were going to Mumbai. On being asked by him about the informant, they told him that the informant was sitting on the road. Thereafter, the informant and the police visited the hotel and on being enquired by the police, he informed that the appellants left the hotel at about half and hour. He gave photocopy of the extract of the register maintained in the hotel.

21. The learned Counsel for the appellants submits that there is nothing in the evidence of the informant or P.S.I. Lakade (P.W.9) that on 24<sup>th</sup> May, 2015, the informant and himself or any other police personnel visited Sai Ganga Hotel to enquire about the appellants. Therefore, according to him, the evidence of Baban (P.W.8) cannot be believed.

22. The informant specifically states that after the police came to the bridge where she was standing,

she was taken to a small hospital and then to a big hospital. She does not state that she, alongwith police personnel, had gone to Sai Ganga Hotel at about 8.30 to 9 p.m. on 24<sup>th</sup> May, 2015. If the visit of the informant to Sai Ganga Hotel at the above mentioned time itself is doubtful, the evidence of Baban (P.W.8) about what was told by him to the informant and police personnel at that time cannot be believed.

23. P.S.I. Lokade (P.W.9) states that appellant no.2 gave a statement (Exh.33) and offered to show the spot where she had kept the money. Accordingly, she took the panchas and himself to TRS Colony at Zhanshi, Utter Pradesh and took out the cash amount of Rs.5,000/- from a cupboard which amount is seized vide panchanama (Exh.34).

24. The alleged seizure of currency notes of Rs.5,000/- at the instance of appellant no.2 is not

at all believable. The evidence of P.S.I. Lokade (P.W.9) in respect of the alleged statement (Exh.33) made by appellant no.2 and consequent discovery of cash amount of Rs.5,000/- has remained totally uncorroborated. No panch witness has been examined by the prosecution to prove the discovery statement (Exh.33) and seizure panchnama (Exh.34). The evidence of P.S.I. Lokade (P.W.9) about making of the alleged disclosure statement (Exh.33) by appellant no.2 is very vague and general. He does not state the date, time and place when such disclosure statement was made by appellant no.2. He further does not state the date and time of seizure of currency notes at the instance of appellant no.2. Moreover, the seized currency notes cannot be connected with the stolen property. The alleged incident took place on 24<sup>th</sup> May, 2015. The seizure panchnama (Exh.34) shows that it was prepared on 08<sup>th</sup> July, 2015. It is difficult to accept the case of the prosecution that appellant no.2 though committed

theft of Rs.5,000/- of the informant on 24<sup>th</sup> May, 2015, kept the said amount untouched till 08<sup>th</sup> July, 2015 so as to enable the police to show discovery of that amount at her instance. In the ordinary course, she would have spent that amount. There is no evidence to connect the seized currency notes with the currency notes alleged to have been stolen. As such, the amount of Rs.5,000/- allegedly seized at the instance of appellant no.2 from her house cannot be said to be the stolen property.

25. The case set up by the informant does not appear to be natural and probable. The appellants could have snatched the amount of Rs.5,000/- or other ornaments worth Rs.8,000/- from her, if they wanted to do so, in Hotel Sai Ganga or some other place, where they were together. For committing theft of the amount of Rs.5,000/- and ornaments worth Rs.8,000/- they would not have taken her to any place near the road, which was visible to all. The

informant certainly would have raised shouts to invite attention of others. The appellants would not have taken the risk of getting noticed by passersby by taking the informant to a place just near a village and visible from the road. All these facts and circumstances create a strong doubt as to whether the informant has stated the factual position.

26. Considering the material improvements and contradictions in the evidence of the informant, it is not possible to rely on her evidence in the absence of any independent corroboration. There is neither direct nor circumstantial evidence to corroborate the version of the informant. The incident as narrated by the informant does not appear to be natural and probable. In the circumstances, benefit of doubt will have to be given to the appellants and they will have to be acquitted.

27. The learned trial Judge did not appreciate the facts of the case as well as the evidence on

record correctly and properly. The learned trial Judge wrongly relied on the uncorroborated solitary statement of the informant which is not free from doubt. The appellants are entitled to get the benefit of doubt. The impugned judgment and order, therefore, will have to be quashed and set aside. The fine amount deposited by the appellants will have to be ordered to be refunded to them. Appellant no.2 has not claimed the seized amount of Rs.5,000/-. Consequently, the order for disposal of the said amount passed by the learned trial Judge will have to be maintained as it is. In the result, I pass the following order :-

#### **ORDER**

- 1) Appeal is allowed.
- 2) The appellants are acquitted of the offence punishable under Section 392 of the Indian Penal Code.

- 3) Appellants be set at liberty forthwith, if not required in any other case.
- 4) The fine amount of Rs.3,000/- deposited by each of the appellants on 11<sup>th</sup> July, 2017, be refunded to them.
- 5) Clause No. 3 of the impugned order is maintained as it is.
- 6) Appeal is accordingly disposed of.

**[SANGITRAO S. PATIL]**  
**JUDGE**