

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 305 OF 2014

Mahesh Annarao Jedage.

Age : 19 years. Occ. Nil

No. C-16295, confined in Yerwada

Central Jail, Pune-6, Maharashtra. ..Appellant.

V/s.

State of Maharashtra. ..Respondent.

(At the instance of P.S.O., Faujdar
Chavadi Police Sttion, Solapur)

WITH

CRIMINAL APPEAL NO. 637 OF 2012

1 Dharmaraj Shivanna Shikalwad.

Age : 24 years, Residing at

H. No. 23, Ramwadi, Solapur.

2 Hanmantu Yamnappa Jadhav

Age : 27 years, Residing at

Colony No. 6, Solapur.

(Presently lodged at Yerwada

Central Prison, Pune) ..Appellants.

V/s.

State of Maharashtra.

(At the instance of P.S.O., Faujdar

Chavadi Police Sttion, Solapur) ..Respondents.

Mr. Nitesh S. Nevshe, advocate appointed for appellant in Criminal Appeal No. 305/2014.

Mr. Niranjana Mundargi, advocate for appellant in Criminal Appeal No. 637 of 2012.

Mr. Y.M. Nakhwa, APP for State.

Talwalkar

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 6, 2018.

JUDGMENT :

1 The appellants are convicted for the offence punishable under section 395 of the Indian Penal Code and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 2,000/- each I.d. to suffer S.I. for 6 months. The appellants are also convicted for offence punishable under section 397 of the Indian Penal Code and sentenced to suffer R.I. for 7 years by the III Ad hoc Addl. Sessions Judge, Solapur vide Judgment and Order dated 13th April, 2012 in Sessions Case No. 190 of 2009. Hence, this Appeal.

2 Such of the facts necessary for the decision of these appeals are as follows :

(i) That on 4/11/2008 at about 8.15 p.m. Dattanand Vernekar lodged a report at the police station that he happens to be a resident of Solapur. He was serving with Madhukar Palankar. Madhukar Palankar was running jewellery shop in the name and style as Mhalsa Jeweller.

(ii) It is alleged that on 3/11/2008 Madhukar Palankar had been to open the shop at 10 a.m, as Shailesh Palankar had been to Kolhapur to meet his relatives and hence, his father had been to open the shop at

Talwalkar

about 10 a.m.

(iii) When he was returning home alongwith Dattanand, some persons had thrown chilly powder in his eyes and snatched bag from him. His father was also assaulted and hence, he was admitted in the hospital.

(iv) The bag contained ornaments worth Rs. 7,30,000/-. His father had told him that he would identify culprits. On the basis of the said report, Crime No. 274 of 2008 against unknown persons under section 395 of the Indian Penal Code. Charge-sheet was filed on 17/1/2009. The prosecution has examined as many as 13 witnesses to bring home the guilt of the accused.

3 At the time of trial, P.W.1 Shailesh Palankar has deposed in consonance with the FIR. It is stated in the cross-examination that Dattanand Vernekar is also relative of the informant. In the cross-examination, it is admitted that Dattanand is addicted to liquor, but he did not consume liquor while on duty. He has expressed his inability to describe the ornaments in the bag at the time of incident, as he was out of station and the bag was carried by his father Madhukar.

4 P.W. 2 Jayprakash Tapadiya acted as panch. He was accompanied by Rajesh Pawar. Spot panchanama was conducted. He

Talwalkar

was summoned by the police. P.W. 2 was residing at Bale area and the offence was registered at Faujdar Chawadi Police Station.

5 P.W. 3 Vicky Revankar is a panch. He has deposed that he was called by Foujdar Chawadi Police Station in the course of enquiry of the said case, especially, seizure of the clothes. There were blood stains on the clothes of the accused, which were handed over to the police. He had acted as panch for the seizure of the clothes.

6 P.W. 4 Vishal Revankar acted as panch. He was jeweller by profession and he knew Vernekar as they happened to be goldsmith. He had jewellery shop at Damani Nagar. Jewellery shop of Vernekar is situated at Mangalwar Peth. It is also elicited in the cross-examination that PSI Mujawar had produced ornaments before the court which were from the jewellery shop. He had no knowledge whether the complainant is a jeweller. It is also admitted that there is an association of jewellers. That Girish Devarmani was the chairman of the association.

7 P.W.5 Madhukar Palankar happens to be the father of P.W.1. He has deposed before the Court that Dattaram Vernekar was his servant and used to accompany him on the scooty. According to him, on 4/11/2008 Dattaram and P.W. 5 were in the shop. They had verified the

accounts. After closing the shop, they were proceeding towards their house on scooty by Solapur Road. They were followed by a motorcyclist and two others. That those persons had thrown chilly powder on his face and another person had snatched bag from him. Since he was not ready to part with the bags, he was slapped and thereafter, one person had given blow of knife on the left side of his ribs. According to him, since blood was oozing from the said injury on left side ribs, he was feeling giddy. By that time, the miscreants had snatched the bag and ran towards Solapur side. Thereafter, two persons came on motorcycle. P.W. 5 could identify Mahesh Jedge as he was previously working in his shop. Thereafter, his servant had taken him to Bale Police Chowky. He was then admitted to Sidheshwar Hospital. On 5/11/2008 his statement was recorded. According to him, value of the stolen ornaments was Rs. 7,35,000/-. He identified the ornaments shown to him. The said items were treated as Muddemal items and were produced before the Court. P.W. 5 was called for test identification parade to district prison, Solapur. He was accompanied by his servant Dattanand Vernekar. He had identified Raju Nattenur at the time of test identification parade. He was then confronted with accused Mahesh Jedge. He was thereafter, called for identification parade once again, but he could not identify anybody. The witness was engaged in manufacturing and selling ornaments of all types. He has admitted that Dattanand Vernekar was working with him

prior to 6 months prior to the incident. His son had executed bond for gold and silver ornaments before the court. It is pertinent to note at this stage that the ornaments were not shown to witness until it was taken into custody. The witness had remained indoor patient for 13 to 14 days. It is admitted that it was the son who provided information of the alleged incident to the police. P.W.5 had not provided any information to the police as he was operated on 5/11/2008.

8 In this case, the prosecution is relying upon the recovery of articles found in the course of investigation. No reliance can be placed on the evidence of P.W.7.

9 P.W.8 Dr. Rhutwik Jaykar has examined Madhukar Palankar. P.W.8 has proved injury certificate which is at Exh. 148. It is admitted in the cross-examination that while patient was admitted, hospital authorities had taken four opinions regarding the present patient. P.W.8 has categorically admitted that he had not given copies of the opinion of four doctors.

10 The case of the prosecution is that Shailesh Palankar had identified silver ornaments. The memorandum on the basis of which articles are recovered do not inspire confidence of the court.

Talwalkar

11 P.W.10 is the Investigating Officer Shivaji Shinde. The gist of his evidence is that he had not complied with the rules of recovery. That he had hastily made the investigation. He has admitted that he has not produced extract of register of Muddemal Property in the court also. Upon perusal of evidence, it is more than clear that the prosecution has failed to establish the fact that the accused/appellant would be liable for the offence that is committed. However, material collected in the course of investigation is not such that it could not be converted into admissible evidence.

12 As per the evidence of P.W. 13, the stolen articles were recovered under section 27 of the Indian Evidence Act at the behest of Raju Nattenur. He is not before the court and hence, the present appellant cannot be held guilty on the basis of the recovery of the articles at the hands of the co-accused.

13 At this stage, learned APP has drawn the attention of this Court to the evidence of P.W.14, who has deposed before the Court that silver ornaments and a knife was recovered at the instance of accused Hanmantu Jadhav. Upon perusal of the cross-examination by P.W. 14, it is clear that investigating agency has not complied with section 100 of

the Code of Criminal Procedure 1973. The police called specific panchas. No certificate is obtained from the goldsmith to show that the ornaments were silver ornaments. The house of the accused from where the silver ornaments were recovered, is in free settlement colony No. 6. There is nothing on record to show that the house was owned and occupied by the appellant Hanmantu Jadhav.

14 Learned Counsel for the appellant submits that the lacunas in the course of investigation are fatal to the prosecution. As against this, learned APP submits that the accused have failed to explain the possession of stolen articles and their defence is of total denial. They have maintained silence throughout the trial. In any case, the prosecution has failed to establish the role played by the accused/appellants. The panch witnesses are habitual witnesses.

15 It is the defence of the accused that on the day when P.W.1 Shailesh Palankar was shown as witness he was at Kolhapur. Moreover, P.W.9 Raju Pawar had identified Manjunath Jadhav as Hanmanthu Jadhav. It is true that the accused has maintained silence at the time of trial. In any case, it is incumbent upon the prosecution to prove its case beyond reasonable doubt. The prosecution has to stand on its own legs. At the time of enlarging the appellants Dharma and Hanmanthu on

bail, this Court in the order dated 28/1/2013 had remarked that no criminal antecedents are reported.

16 A report received from Yerwada Central Prison shows that the appellant in Criminal Appeal No. 305 of 2014 has undergone more than 7 years in custody in the present case.

17 In view of the above observations, the appellants deserves to be acquitted by extending to them benefit of doubt. In principal the accused has undergone substantive sentence imposed upon him by the learned Sessions Judge.

18 Advocate Mr. Nitesh S. Nevshe is appointed by this Court to espouse the case of the appellant in Criminal Appeal No. 305 of 2014. His professional fees are quantified as per rules to be paid by the High Court Legal Services Committee within 3 months from today.

19 Hence, following order is passed :

ORDER

- (i) The appeals are allowed.
- (ii) The conviction imposed upon the appellants vide Judgment and Order dated 13/4/2012 by the III Adhoc Additional Sessions Judge,

Talwalkar

Solapur in Sessions Case No. 190 of 2009 is hereby quashed and set aside. The appellants are acquitted of all the charges. They be released forthwith, if not required in any other offence.

(iii) The bail bonds of appellants stand cancelled. Fine amount, if paid, be refunded.

(iv) The Writ be issued expeditiously.

20 The appeals are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]