

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

CRIMINAL REVISION APPLICATION NO. 75 OF 2018

Gautam Manohar Salve,
Age 30 years, Occ. Labour,
R/o. Baudhanagar, Jawahar
Colony, Tq. & Dist.Aurangabad.

... **Applicant.**

VERSUS

The State of Maharashtra,
Through Police Inspector,
Jawahar Nagar Police Station,
Aurangabad.

... **Respondent.**

...

Advocate for the Applicant : Mrs. Bhagyashree S. Kamble, h/f Mr.
S.B. Rajebhosale.

APP for the Respondent : Mr. B.V. Virdhe.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	21/09/2019
PRONOUNCED ON	:	18/10/2019

JUDGMENT:

Heard. Rule. The rule is made returnable forthwith. Learned
APP waives service for the respondent. On the request of both the
sides the matter is heard finally at the stage of admission.

2. The petitioner is the original accused who has been convicted
by the Magistrate for the offence punishable under section 379 of the
Indian Penal Code and sentenced to suffer rigorous imprisonment for

three months and fine of Rs. 1000/-, in default of payment of fine to suffer simple imprisonment for 15 days. The appeal preferred by him has also been dismissed by the learned Sessions Judge. Hence this revision.

3. Shortly stated the prosecution case is to the effect that informant Manisha (PW. 1) was proceeding on foot towards the school of her children on 22.12.2008. When she reached the spot which was in front of Gitanjali Apartment, Ulkanagari, Aurangabad, at about 12.30 p.m. the applicant allegedly snatched gold Mangalsutra from around her neck and started fleeing. When she raised alarm some passers by and even she chased him and he was nabbed red handed. Amit (PW. 3) was amongst the persons who helped in nabbing the applicant. He was taken to the police station and the gold Mangalsutra was seized from his possession at the police station under a panchnama (Exhibit 14) in presence of panch Anil (PW. 2) and Amit (PW. 3). He was arrested. The investigation was completed and in due course of time the charge-sheet was filed. As is mentioned herein above at the end of the trial he was convicted and the conviction is confirmed in appeal.

4. The learned advocate for the applicant submitted that there is no reliable and trustworthy evidence. The guilt has not been proved

beyond reasonable doubt. Mere suspicion cannot take the place of proof. Neither Manisha (P.W.1) nor Amit (P.W. 3) were knowing the petitioner prior to the incident and therefore there was serious dispute about identification of the culprit. He would further submit that no independent witness to the incident has been examined. The evidence is quite deficient to prove all the necessary ingredients of the offence. Both the Courts have failed to appreciate the evidence in proper perspective and have reached wrong conclusion.

5. The learned APP submitted that there is concurrent findings of facts and this Court cannot lightly interfere with the impugned judgments particularly when both the Courts below have meticulously scanned the evidence and have reached plausible conclusions. There is no perversity or arbitrariness so as to cause any interference in the concurrent findings. There was no previous animosity between Manisha (P.W. 1) and the applicant which ruled out the possibility of any false implication. The applicant was found/caught red handed with the stolen Mangalsutra which he has not been able to explain and has not been able to rebut the presumption. The revision may be dismissed.

6. I have carefully gone through the entire record and proceeding. Needless to state that since there is concurrent findings of

facts of the two Courts below the scope for this Court to interfere is circumscribed by trite principles. Unless there is gross illegality or perversity in appreciating the evidence this Court is not expected to step in.

7. Bearing in mind such legal position, if one proceeds to scan the material it is quite apparent that according to the prosecution the applicant has been caught red handed immediately after the incident. Manisha (PW. 1) has specifically stated about the manner in which the incident had taken place. She had stated about raising of alarm soon after the Mangalsutra was snatched the applicant started fleeing. She chased him as also several other persons also chased and accosted the applicant then and there.

8. Amit (PW. 3) has specifically stated that he new the applicant. He had acted in dual capacity, as a panch on the seizure panchnama (Exhibit 14) in which the Mangalsutra was seized from the custody of the applicant and also as an eye witness who had taken part in nabbing the applicant while he was attempting to flee away. It is thus apparent that the testimony of Manisha (PW.1) apart from being clean and cogent stands duly corroborated by the testimony of Amit (PW. 3).

9. The version of Amit (PW. 3) to the extent of seizure of

Mangalsutra from the custody of the applicant also stands corroborated by the other panch Anil (P.W. 2).

10. It is true that there could be few other persons who had taken part in giving the chase and accosting the applicant however it is for the prosecution to decide as to how many witnesses it wishes to examine at the trial. When it has already examined the victim Manisha (P.W.1) and Amit (P.W. 3) who has also taken part in accosting the petitioner soon after the incident, the prosecution could not have been expected to examine more witnesses if it has chosen not to. The entire evidence was quite reliable and convincing and has been rightly appreciated by the two Courts below independently.

11. It is to be borne in mind that the two Courts below have in fact erred in not referring to and relying upon couple of other circumstances which are cogent and relevant. If the prosecution version which now stands proved is to be accepted, the learned Magistrate and the learned Sessions Judge have not used and borne in mind the principle of *res gestae* as is recognized under Section 8 of the Indian Evidence Act. They have also failed to raise a presumption as to existence of a fact as is expected under Illustration (a) of Section 114 of the Indian Evidence Act. As can be gathered, when the Mangalsutra of Manisha (P.W. 1) was found in the custody of the applicant soon

after the incident, the Trial Court could have raised a presumption that he was a thief or had received it knowing it to be stolen and the onus was on him to account for its possession. No attempt was made by him to come out with any such explanation.

12. Therefore apart from the direct evidence in the form of testimonies of the prosecution witnesses, these two circumstances of *res gestae* and the presumption under Section 114, Illustration (a) of the Indian Evidence Act also would come in aid of the prosecution.

13. Be that as it may, I find no apparent perversity or illegality in appreciation of the evidence by the two Courts below and the concurrent findings reached by them are clearly borne out from its proper analysis. There is no ground which enables this Court to interfere with such concurrent findings.

14. The revision is dismissed. The applicant shall surrender before the Trial Court immediately pursuant to his bail. The rule is discharged.

(MANGESH S. PATIL, J.)

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