

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.87 OF 2019

VICTOR FRANCIS FERNANDES)...APPELLANT

V/s.

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

Ms.Sapna Krishnappa i/b. Mr.Suresh Dubeym, Advocate for the Appellant.

Mr.V.B.KondeDeshmukh, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 22nd JULY 2019

JUDGMENT : (PER : A.M.BADAR, J.)

1 Heard. Admit. Heard finally by consent of parties.

2 In this appeal challenging the judgment and order of the trial court passed under Section 452 of the Code of Criminal Procedure, the appellant/victim of the crime in question has

contended that seized ornaments were belonging to him as well as his wife, who was murdered resulting in lodging of the First Information Report (FIR) by him as well as prosecuting the accused persons for offences punishable under Sections 302 and 392 read with 397 of the Indian Penal Code. As the appeal is limited to the challenge of the order regarding disposal of property on conclusion of trial and as accused persons, who ultimately came to be acquitted, have not claimed the seized property, we feel it not necessary to issue notice to them for deciding this appeal.

3 We have heard the learned counsel appearing for the appellant/First Informant/victim of the crime in question as well as the learned APP. The learned APP has reiterated the finding of the learned trial court to the effect that the appellant/First Informant has identified the seized valuable ornaments on 25th November 2012 when infact they came to be seized much later i.e. on 1st December 2012.

4 According to the prosecution case, appellant/First Informant Victor Fernandes along with his wife Rubetina Fernandes (since deceased) were residing at Flat No.703, B Wing, Versova, Mangela Machimar Sarvodaya Co-op. Hsg. Society, Juhu Versova Link Road, Andheri (West), Mumbai. When his wife was all alone in the flat on 21st November 2012, she came to be murdered by some unknown robbers. The police, accordingly, lodged First Information Report (FIR) which has resulted in registration of the offence and on investigation, charge-sheet was submitted, which ultimately resulted in registration of Sessions Case No.269 of 2013. The learned Additional Sessions Judge, by the impugned judgment and order, was pleased to forfeit the valuable ornaments to the State Government observing that nobody has claimed the gold ornaments, and therefore, they need to be forfeited to the State. The learned trial court has rightly concluded that the valuable ornaments were recovered on 1st December 2012 from accused no.3, and therefore, it is impossible that it was on 25th November 2012 that PW1 Victor Fernandes, the appellant, had been to the Police Station and identified the gold

ornaments which were found missing from the body of his deceased wife Rubetina Fernandes.

5 When we perused the evidence adduced by the prosecution in respect of recovery of these gold ornaments, we find that accused no.1 Vishal Tak, on 23rd November 2012, had made voluntary disclosure statement which was exhibited as Exhibit 54. On the basis of this voluntary disclosure statement of accused no.1 Vishal Tak, vide Recovery Panchnama Exhibit 54A broken gold chain apart from one Rampuri knife came to be seized from him. Similarly, after his arrest, accused no.3 Vikramsingh Bidlani had made voluntary disclosure statement on 1st December 2012. During the course of trial, it was proved and the same was exhibited as Exhibit 48. On the basis of this voluntary disclosure statement, rest of the valuable property viz. Gold earring, gold bangles etc. came to be seized vide Seizure Panchnama Exhibit 48A from Flat No.505 shown by accused no.3 Vikramsingh Bidlani.

6 During the course of his evidence, PW1 Victor Fernandes – the appellant/ First Informant has categorically identified these seized gold ornaments as allegedly belonging to his deceased wife Rubetina Fernandes, which were found missing from her dead body. During the course of recording of evidence, PW1 Victor Fernandes has duly identified seized gold ornaments to be belonging to his deceased wife. There is no cross-examination of this witness to doubt his version regarding ownership of gold ornaments seized during the course of investigation from accused persons. Similarly, it is not the defence of the accused persons that gold ornaments seized from them belonged to them. In their statement under Section 313 of the Code of Criminal Procedure, accused persons have not claimed any right, interest or title over the seized gold ornaments which PW1 Victor Fernandes had claimed to be belonging to him and his deceased wife Rubetina Fernandes.

7 In this view of the matter, we are unable to concur and endorse the finding of the learned trial court that the seized gold

ornaments were not claimed by anybody and therefore, they need to be forfeited to the State. Therefore, the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned judgment and order, so far as it relates to Clause (4) regarding disposal of the seized gold ornaments in terms of provisions of Section 452 of the Code of Criminal Procedure is quashed and set aside.
- iii) The muddemal valuable property Article No.1 gold chain, Article No.2 piece of gold, Article No.3 Collectively – one gold bangle and one earring and Article No.4 one gold earring is directed to be returned to the appellant/ First Informant Victor Fernandes, who happens to be husband of deceased Rubetina Fernandes.
- iv) The appeal is, accordingly, disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)