

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.12 OF 2020

The State of Maharashtra,
Through, Police Inspector,
Police Station, Rahuri,
District Ahmednagar

.. Applicant

Versus

1. Hemant Kishor Wagh
2. Shahabaz Raheman Shaikh
3. Vishal Balasaheb Rahinj
4. Sumit Shubash Kotkar
5. Rushikesh Narendra Pardeshi

.. Respondents

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Mr. A. M. Phule, APP for the applicant – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 11th July, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 13.09.2019 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.129 of 2018; thereby acquitting the respondents from the offence punishable under Section 395 of the Indian Penal Code.

2. Heard learned APP Mr. A. M. Phule for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The prosecution story in short is that the informant P.W.1 Yunus Shaikh is resident of village Valan, Taluka Rahuri, District Ahmednagar. He is in the business of sale and purchase of cotton. One Deepak Mehetre P.W.5 is his friend. Informant had gone to Ahmednagar on his motorcycle for taking payment from merchant Chetanbhai Patel around 5.00 p.m. on 27.12.2017. He collected amount of Rs.6,73,400/- and kept it in a sack. He started his return journey to Rahuri around 7.00 p.m, with his friend Deepak. They were proceeding from Ahmednagar - Manmad road. Deepak was driving the said vehicle, whereas informant was the pillion rider. He was holding the sack containing cash. They came near Digras Phata around 8.30 p.m., at that time, one red colour Ford Figo car came without registration number from Ahmednagar side in high speed. The said car dodged them, due to which they fell down. The car was stopped at a distance. Six persons between the age group of 25 to 30 alighted from the car and came near informant. One person was holding knife. He put that knife on the neck of the informant and attempted to snatch the sack. Informant resisted, however, accused was successful in snatching the same as well as the mobile handset of the informant. Those persons then boarded

in the car and the car went towards Manmad. Informant had then given a phone call to his brother and disclosed the incident. Within half an hour, his brother came to the spot. Thereafter informant went to Rahuri Police Station to lodge the report, however, his FIR was not taken. It was recorded on 29.12.2017. After the offence was registered, investigation was conducted, however, in the meantime, it was transferred to the local crime branch of Ahmednagar and that department has completed the investigation. It also appears that the accused persons came to be arrested on 22.01.2018 by P.W6., Police Inspector, Dilip Pawar after he had received secret information that the accused persons were likely to come to Kedgaon bypass. The accused persons were taken in custody. From their possession one Hyundai I-20 car, Mahindra XUV car, two motorcycles, mobile handsets and cash amount of Rs.3,49,000/- came to be seized by drawing panchanama Exhibit-51. The identification parade was held and then the offence under Section 395 of Indian Penal Code came to be added. During the further investigation cash amount of Rs.2,00,000/- was seized from the accused – Hemant Wagh, Rs.1,50,000/- was seized from accused Shahabaz Shaikh, Rs.2,83,000/- was seized from accused Rushikesh Pardeshi and Rs.2,67,000/- was seized from accused Sumit Kotkar.

4. After committal of the case, trial was conducted. The prosecution has examined in all six witnesses to bring home the guilt of the accused.

After considering the evidence and hearing both sides, the learned Trial Judge has acquitted all the accused from all the charges. Hence, present application.

5. The first and the foremost fact to be noted is that P.W.1 Yunus and P.W.5 Deepak Mehetre are the main witnesses though P.W.1 Yunus - informant has totally supported the prosecution. Both of them have supported each other and the prosecution story, however, the panchas to the spot panchanama and the discovery and seizure panchanama i.e. P.W.2 Santosh Dhadge, P.W.3 Sajid Pathan and P.W.4 Habib Khan have turned hostile. It is to be noted that the informant and his friend P.W.5 Deepak Mehetre were not knowing the accused prior to the incident. The identification parade has been conducted, but in the cross-examination P.W.1 has stated that in all twenty persons were made to stand in one room at the time of Test Identification Parade and they were of different characteristic, different age group, different complexion, different height and different physic. In the nutshell, the rules governing Test Identification parade appears to have not been followed by the Executive Magistrate. Another aspect to be noted is that as per the testimony of P.W.1 Yunus as well as P.W.5 Deepak, the cash amount was collected from Chetanbhai Patel by Yunus, but said Chetanbhai Patel has not been examined by the prosecution. No documentary evidence appears to have been collected and

produced by the informant. In his examination-in-chief, the informant has stated that seized amount of Rs.5,49,000/- has been returned to him as per the order passed by the Court. That means it was under Section 457 of the Code of Criminal Procedure. That amount was not produced before the Court at the time of deposition. As per the testimony of the investigating officer, not only Rs.6,73,400/-, but more than that amount was seized. At the cost of repetition, we would like to say that amount of Rs.3,49,000/- is stated to have been seized from the accused persons at the time of their arrest and, thereafter, amount of Rs.2,00,000/-, Rs.1,50,000/-, Rs.2,83,000/- and Rs.2,67,000/- was seized. The account of all this amount has not been given by the investigating officer. Therefore, there are many doubts as regards the investigation that has been carried out.

6. Now, turning towards the testimony of P.W.1 Yunus and P.W.5 Deepak, it is stated by them that after the car dodged them, it went ahead and stopped and then six persons came towards them after alighting from the car. The knife was placed near the neck of the informant and then there was attempt to snatch the sack, which was resisted, but the accused were successful in the same and immediately then the accused persons went to the car boarded in it and went towards Manmad. Neither the prosecution nor the defence has asked as to what was the duration of the incident at the spot. The way it is described it has been taken by the learned Trial

Judge that it would not have taken much time. When there were six persons, how in such situation face of all those accused persons was remembered by these two witness. Another fact to be noted is that P.W.1 Yunus says that he had gone to police station on the same day to lodge the report along with his brother-in-law, but his FIR was not taken. This is surprising. He states that he was constantly visiting police station, but his FIR was not recorded till 29.12.2017. When such huge amount is said to have been robbed from him, how he could keep quiet for two days is a question. He had not attempted to file a complaint application to the superior authorities during the said period of two days and, therefore, it creates doubt as to whether the said incident had taken place on the date, time and place as now told by them. The learned Trial Judge has rightly raised doubts and acquitted the accused persons. There is no perversity in the order passed by the learned Trial Judge. The application stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm