



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.70 OF 2020

The State of Maharashtra,
Through Police Station Officer,
Police Station, Gandhi Chowk, Latur,
Tq. and Dist. Latur.

... Applicant

Versus

Suresh S/o. Baburao Kale,
Age : 32 years, Occu. Labour,
R/o. S.O.S. Colony, Jay Nagar,
Zopadpatti, Latur.

... Respondent
(Orig. Accused)

...
Mr. A. M. Phule, APP for Applicant/Appellant.
...

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

DATED : 5th OCTOBER, 2023

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Aggrieved by the judgment and order passed by learned Sessions Judge, Latur dated 24.01.2020 in Sessions Case No.35 of 2019, thereby acquitting respondent - original accused from charge under sections 395 and 397 read with section 34 of Indian Penal Code (IPC), vide instant application State is seeking leave to prefer appeal.

2. Learned APP submitted that, PW2 Balaji, who is an informant was carrying cash of Rs.28,400/- which were sale

proceeds of crop yield. While he was proceeding to pay telephone bill, he was intercepted by thieves and after holding his neck, amount in his pocket was snatched. That, prompt report was lodged. Investigating machinery has arranged T.I. parade. After completing investigation, accused were charge-sheeted. However, only present respondent was available for trial and his companions co-accused being absconding, he alone was tried. Informant had identified him, not only T.I. parade, but even in court. The authorities, who conducted T.I. parade have been examined. However, still learned trial court has disbelieved the story of prosecution and has acquitted accused. Therefore, the judgment being contrary to the evidence on record and being perverse, it is submitted that, State intends to prefer appeal and has every hope of success, and therefore, leave is prayed for.

3. We have examined the papers before us. It is revealed that, in support of its case prosecution has examined in all 8 witnesses and has relied on documentary evidence, like FIR, T.I. parade, panchanama etc.

4. In our opinion, evidence of PW2 Balaji victim is very crucial. Therefore, we have examined the same at Exh.19. Informant has deposed that he had been to market yard around

11:00 a.m. that day, to the shop of Baburao Mane to take the amount of soyabean i.e. Rs.28,400/- and while he was proceeding to pay phone bill, he had stopped on the side of road to ease himself, that time, some thieves came there. According to him, they caught hold of him by his neck and snatched the amount from his pocket. He further deposed that again one person came there, held him by his neck and made him fall down. Even said person took amount from his watch-pocket. According to him, there were five persons and they all ran away. According to him, currencies were in denominations of 100 and 500. Therefore, he went to police and lodged the report, which he identified to be at Exh.20.

5. His cross shows that, he had sold 30 bags of soyabean crop, but he is unable to give the rate of each of the bag. According to him, the receipt of sale of said crop was also taken away by accused. He is unable to give the amount of telephone bill, he was suppose to pay. He admitted that, he did not file copy of the said bill also. He admitted that, he had been to Nirbhay Rukme and had obtained Rs.5,000/- from him to pay telephone bill.

Omissions are brought regarding one person coming and catching him by neck and making him fall down. He admitted that, in his statement he gave the strength of persons as three.

6. PW4 Somnath is the shop owner and according to him on 05.11.2016 PW2 Balaji, who came to him for sale of soyabean crop. That, on 07.11.2016 he again came to collect the amount and this witness gave Rs.28,400/- to him. Even according to him, he gave currency in denominations of 100 and 500 at around 3.00 p.m. Above witness in cross is unable to state weight of the crop and exact amount of the said crop.

Rest of the witnesses are doctor as well as pancha and authorities, who conducted T.I. parade. Apparently, T.I. parade is conducted on 09.12.2016 i.e. almost after one month of the registration of the FIR. Even medical examination of informant PW2 Balaji seems to have been done on 07.11.2016.

7. What is emerging from above evidence is that, in FIR PW2 Balaji has stated that, on 07.11.2016, while he was urinating, initially one person came running, forwarded by two more persons, and thereafter, two more persons came. According to him, the first person gave him fist blow on his face and so he fell down, and thereafter, two of them came near him and out of them one again gave fist blow, whereas the other accompanying him gagged him. The first person caught hold of his neck and his associate took out Rs. 28,400/- and they all ran away. According to him, because of ill health he lodged report on 08.11.2016.

8. Admittedly, report is against unknown persons. T.I. parade as discussed above is got done on 13.12.2016 i.e. almost after one month. PW3 Sanjay, pancha to T.I. parade deposed that T.I. parade was conducted five times. Informant observed all persons and pointed out to one of them as accused. He further stated that informant identified four accused persons and in one identification parade, he could not identify them.

9. PW6 Shivaji Palepad, Naib-Tahsildar, who conducted T.I. parade, is unable to give the names of the pancha. Subsequently, he gave the name as Chiwade, but, here name of pancha is Sanjay Jadhav (PW3) and not Chiwade. He admitted that, he was not knowing the accused, but he further admitted that in the memorandum statement names are given and the panchanama is in printed format.

10. Therefore, taking survey of available evidence, here, only four persons are identified by PW2 Balaji, that too after a month of the occurrence. The informant has not given description of any of the four persons, nor their probable age group. In view of charge under sections 395 and 397 of IPC, there has to be five or more accused persons. Even testimony of informant and contents of FIR are not consistent. It is expected that prosecution to prove the charges beyond reasonable doubt.

11. As stated above, there are several shortcomings, and therefore, when prosecution failed to establish the charges against present respondent alone, learned trial court has committed no error in acquitting accused. There being no merits and no perversity being brought to our notice in appreciation of the evidence at the hands of learned trial court, we refuse the relief sought by the State. Resultantly, we proceed to pass following order :-

ORDER

Application is hereby rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)