

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

CRIMINAL REVISION APPLICATION NO.318 OF 2005

* Manohar S/o Ramrao Goud,
Age : 51 Years, Occ. Agriculture,
R/o. Chamarga, Taluka Shirur Anantpal,
District Latur.

..Applicant
(Orig. Complainant)

VERSUS

1. Shafi S/o Karim Qureshi,
Age : 30 Years, Occ. Butcher,
R/o. Hali, Taluka Udgir,
District Latur.

2. Nizamoddin S/o Jalaoddin Qureshi,
Age : 30 Years Occ. Butcher
R/o. As above

3.	Gulam Rashul s/o Karim Age : 42 Years, Occ. Business R/o. As above	Rule granted against respondent No.3 and 4 only as per order 16.2. 2006
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4. Pandit s/o Nagnath Gaud,
Age : 36 Years, Occ. Agriculture,
R/o Chambarga, Taluka Shirur Anatpal,
District Latur.

5. The State of Maharashtra,
Through Police Station Officer,
Chakur, District Latur

.. Respondents
(Nos.1 to 4 are original
accused No.1 to 4)

...
Advocate for Applicant : Mr. S S Manale
A.P.P for Respondent State : Mr. K. S. Patil

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CORAM : S. G. MEHARE, J.

DATE : 12.06.2023

ORAL ORDER :

1. Heard the learned counsel for the applicant and the learned A.PP for the respondent/ State who is supporting the appeal.
2. None present for the respondent/accused. They were given several opportunities but appeared interested in protracting the petition. The petition has been pending since 2005. The complainant should not be asked to wait for more. Hence the petition is finally heard. The respondents have been acquitted. If the judgment goes against them, they will have an opportunity of being heard before the appellate Court, as this Court cannot convert the acquittal into conviction under Section 401(3) of the Code of Criminal Procedure.
3. On the complaint of the applicant, a crime was registered under Sections 379, 429, and 201, read with Section 34 of the Indian Penal Code.
4. It is the prosecution case that four bullocks of the complainant were stolen. Two bullocks were seized from the custody of the accused, and two were cut.
5. The learned Magistrate appreciating the evidence, believed the

seizer of the stolen bullocks from the accused and, considering the presumption under illustration (a) of Section 114 of the Indian Evidence Act, held the accused guilty and convicted them to suffer simple imprisonment for three years and a fine.

6. Against the order of the conviction, the accused had preferred the Criminal Appeals separately bearing Criminal Appeal No. 32 of 2002, 33/2002 and 34/2002. The learned II Ad-hoc Additional Sessions Judge, Latur, set aside the judgment of conviction and acquitted the accused. Hence, the complainant is before this Court.

7. The learned counsel for the applicant would argue that the learned Ad-hoc Additional Sessions Judge has wrongly acquitted the accused on the ground that one of the witnesses has been belatedly examined under Sections 161 of the Cr. P.C. However, he ignored the presumption under illustration (c) of Section 114 of the Indian Evidence Act. The accused neither claimed possession nor ownership over the bullocks seized from their possession. The bullocks were seized far away from the house of the complainant. However, the learned Ad-hoc Additional Sessions Judge erroneously observed that unless there is strict proof about the conscious possession of accused

Gulam Rasool of said four bullocks it cannot be said that the presumption has to be raised under Section 114(a) of the Indian Evidence Act. He is not liable to give the account of stolen articles seized from his possession. Such observations are against the law.

8. Perused the record. It was a case of theft of bullocks, and the seizure of the bullocks from the possession of the accused has been proved. The witnesses have not been shaken, and nothing adverse has been brought in their cross-examination. The accused also did not deny the seizure of bullocks from their possession.

9. Section 114 of the Indian Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) of that Section is relevant that reads thus:-

“The Court may presume-

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession”.

10. Under the above Section, it is presumed that unless the account has been given for the possession of the stolen property, such person is presumed to be a thief or has received the goods knowing him to be stolen.

11. Soon after the seizure of the bullocks from the possession of the accused, the burden was on the accused to account for their possession. The accused did not explain the possession or claim that they were the owners of the bullocks seized from their possession. Considering the evidence available on record, the Court is of the view that the learned II Ad-hoc Additional Sessions Judge, Latur, has erred in discarding the presumption under clause (a) of Section 114 of the Evidence Act. He also misread the said clause and erroneously held that the accused are not liable to account for the possession of bullocks. The observations of the learned II Ad-hoc Additional Sessions Judge are apparently against the law.

12. As far as the delay in recording the statement of the one witness is concerned, he was the witness to the fact that he saw bullocks in the Animal Market. Then the bullocks were seized. The Court is of the view that considering the evidence in toto, his evidence did not make the prosecution case defective and doubtful. The complainant had

given the description of bullocks that were stolen from his house, and that description matched with bullocks recovered from the possession of the accused. Considering the reasons assigned by the learned Second Additional Sessions Judge, Latur, the Court is of the view that he has erred in setting aside the judgment and order of conviction of the learned J.M.F.C. Chakur in Regular Criminal Case No. 44 of 2002.

13. There appears to be an error on the face of the record of the impugned judgment and order of the learned 2nd Ad hoc Additional Sessions Judge, Latur. In view of power under sub-section 3 of Section 401 of the Criminal Procedure Code, the High Court cannot convert a finding of acquittal into conviction. Therefore, the sole power is to remit the case to the subordinate appellate Court for re-writing the judgment after giving an opportunity of hearing to both sides.

10. In view of the above, the Revision Application deserves to be allowed. Hence, the following order.

ORDER

(I) The petition is allowed.

(ii) The impugned judgment and order passed by the learned II Ad hoc Additional Sessions Judge Latur passed in Criminal Appeal No. 32 of 2002 Criminal Appeal No. 33 of 2002 and Criminal Appeal No. 34 of 2002 dated 6th April 2005 is quashed and set aside.

- iii) The case is remitted to the Court of II Ad-hoc Additional Sessions Judge Latur for writing the judgment afresh after giving an opportunity of being heard to the prosecution as well as the accused.
- (iv) Record and proceedings be returned to the Court of II Ad Hoc Additional Sessions Judge, Latur.
- (v) The learned II Ad-hoc Judge Latur shall dispose of the case within four months from the date of securing the presence of the accused.
- (vi) Bail orders of the accused be restored till the pronouncement of judgment.

(S. G. MEHARE)
JUDGE

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