



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.104 OF 2020

The State of Maharashtra,
Through Police Inspector,
Nagar Taluka Police Station,
Tq. Nagar, Dist. Ahmednagar.

... Applicant

Versus

1. Chalashya Chander @ Sitaram Bhosale
Age : 48 years,
R/o. Sarola Kasar,
Tq. & Dist. Ahmednagar.
2. Rahul Niwashya Bhosale,
Age : 24 years,
R/o. Sarola Kasar,
Tq. & Dist. Ahmednagar.
3. Deepak Shantaram Jadhav,
Age : 18 years, R/o. Sarola Kasar,
Tq. & Dist. Ahmednagar.
4. Niwashya Chander @ Sitaram Bhosale,
Age : 58 years,
R/o. Sarola Kasar,
Tq. & Dist. Ahmednagar.
5. Somnath @ Somya Karashya Bhosale,
Age : 27 years,
R/o. Sarola Kasar,
Tq. & Dist. Ahmednagar.

... Respondents.
(Orig. Accused)

...
Mr. A. M. Phule, APP for Applicant – State.

...

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

DATED : 16th OCTOBER, 2023

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

1. Feeling aggrieved and dissatisfied by the judgment and order of acquittal passed by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.102 of 2018, thereby acquitting respondents from charges under sections 420 and 395 of Indian Penal Code (IPC), State is hereby seeking leave of this Court to prefer appeal.

2. Appraising this court about the nature of charge, learned APP would submit that, informant deals in the business of selling dry fruits. That, he had received call from a person informing about he to be also dealing in sell of dry fruits and offered to sell it to the informant. That, even samples were sent and were approved by informant. That, said person insisted informant come to his go-down at Sarola-Astgaon road. That, accordingly, on 06.05.2017, on calling of said person, informant accompanied by his father reached at spot. That, another person sat in the vehicle on assurance to take them to the go-down and he took them to pomegranate orchard. There, on signal other 4 to 5 persons came and by brandishing wooden log and knife, they snatched cash, gold ornaments and wrist watches worth of Rs.3,34,800/-. Hence, report was lodged.

3. According to learned APP, after investigation accused was charge-sheeted and tried by prosecution by examining 9 witnesses. There was cogent and reliable evidence. Evidence of prosecution witnesses virtually went unchallenged, but still learned trial Judge has disbelieved the prosecution story and had acquitted accused. Therefore, it is pointed out that, it is a fit case for re-appreciation and reanalysis in appeal. Hence leave is prayed for.

4. After hearing learned APP, we have gone through the testimonies of prosecution witnesses in the trial court. Surprisingly, there are charges of section 420 of IPC as well as dacoity.

Occupation of informant to be businessman is not disputed. Evidence of informant shows that there was mere telephonic conversation initially and on being called he and his father went to meet the caller. The caller posed himself to be dealing in said business and even allegedly sent sample for approval. PW7 Rohidas seems to be examined by prosecution on this count. However, his evidence does not show that at the instance of accused Somya Bhosale the said samples were dispatched. The boy who allegedly delivered the courier does not seem to have been examined by prosecution.

5. Further, it transpires that, PW2 Subhash has not given description of the persons to whom they met and the persons who looted them. In fact, PW3 Nilesh seems to have developed contact and conversation with person calling him on phone. There was no previous meeting between informant, his son and the said caller. Rather, it seems that, prior to FIR, photographs of some history sheeters are confronted and identity of accused is got confirmed. Such evidence, renders the case of prosecution itself weak. Though, T.I. parade is conducted, when prior to it identity of accused is known to the witnesses, the exercise of T.I. parade is rendered valueless. It is pertinent to note that, when the informant was called at Ahmednagar and there was persistent contact between informant and accused, then it was expected of prosecution to obtain CDR to prove that there was alleged conversation between informant and accused.

6. Therefore, with such quality of evidence, even if there is recovery, when the identity of accused is not established beyond reasonable doubt, such circumstance cannot be said to be incriminating one. Though ornaments are said to be seized at the instance of accused, there is no special identification mark provided by informant party.

7. Therefore, in the totality of the circumstances and quality of evidence, there is no convincing evidence on behalf of prosecution. Identity of actual accused is itself rendered doubtful. Under such circumstances, implication of present respondents in a serious case of dacoity not being supported by cogent evidence, in our opinion, learned trial Judge has committed no error in refusing to accept the case of prosecution. No perversity or infirmity is brought to our notice so as to consider the request for granting leave to file appeal. Resultantly, we pass the following order :

ORDER

Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)