

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.696 OF 2024

Chandrakant Tukaram Kunjir
Age 57 years, Occ : Service,
R/at Flat No.K-100, Bharati Vihar,
Katraj, Pune

...Appellant

V/s.

1) The State of Maharashtra
At the instance of Bharati Vidyapeeth
Police Station, Pune

2) Sheetal Dattaraya Humbe
Age 35 years, Occ : Service,
R/at Flat No.407, Bhekari Nagar,
Fursungi, Hadapsar, Pune

...Respondents

Mr. Sujay Gangal for the Appellant.
Ms. S. G. Talhar APP for the Respondent-State.

CORAM : SHYAM C. CHANDAK, J.

DATE : 09th MAY, 2025

JUDGMENT :-

. Present Appeal filed under Section 372 of the Criminal Procedure Code has been directed against the Judgment and Order dated 31/10/2023, in Criminal Appeal No.291 of 2019, passed by the Court of the learned Additional Sessions Judge, Pune which upheld the Judgment and Order dated 07/05/2019, in Regular Criminal Case

No.738 of 2012, passed by the learned Judicial Magistrate First Class, Court No.4 at Pune thereby acquitting Respondent No.2/Original accused for the charge of offence punishable under Section 379 of the Indian Penal Code has been upheld.

2) Heard Mr. Gangal, the learned Advocate for the Appellant and learned A.P.P. for Respondent No.1-State.

3) Facts giving rise to this Appeal are that initially, the Appellant-first informant filed a Report with Bharati Vidyapeeth Police Station alleging theft of his Car bearing registration No.MH-12-ET-7830 in the night intervening 26/09/2011 and 27/09/2011. However, the police did not take any action on the said Report. The Appellant, therefore, filed another Report with the Police Commissioner, Pune City, alleging theft of the said car, a laptop, Mobile handset, LCD projector, one Gold Chain of 5 *Tolas*, Cell phone, cash of Rs.21,000/- and 150 answer papers. On the basis of this subsequent Report, Crime No.161 of 2011 was registered for the offence punishable under Section 379 of I.P.C. against Respondent No.2. During the course of investigation, the Investigating Officer recorded the statement of witnesses and seized the alleged stolen article, except the gold chain and the cell phone. The investigation

culminated into filing of charge-sheet against Respondent No.2.

4) On appearance of Respondent No.2, the charge was framed against her at Exh.16 to which she denied and claimed to be tried.

5) In order to bring home the guilt of Respondent No.2, the prosecution has examined 13 witnesses. After closure of the prosecution evidence, the trial Court recorded the statement of Respondent No.2, under section 313 of Cr.P.C. The defence of Respondent No.2 was of denial and false implication.

6) On analysing the oral and documentary evidence, the trial Court held that the charge was not established, hence, acquitted the Respondent No.2 by the Judgment and Order dated 07/05/2019. Being aggrieved and dissatisfied, the Appellant filed the Criminal Appeal No.291 of 2019, impugning the said Judgment and Order of the trial Court. On re-appreciating the evidence, the Appellate Court upheld the acquittal. Hence, Appeal.

7) Mr. Gangal, the learned Advocate for the Appellant emphatically submitted that there is ample evidence on record which established that Respondent No.2 committed the theft of the articles belonging to the Appellant. The recovery of certain stolen articles

corroborated the evidence as to the theft. However, the trial Court did not appreciate the prosecution evidence in correct perspective and acquitted the Respondent No.2 for baseless reasons. Yet, the Appellate Court upheld the said Judgment and Order. As such, the impugned Judgment and Order is liable to be set-aside.

8) Ms. Tendulkar, the learned APP submitted that considering the material on record, appropriate order may be passed.

9) The testimony of the Appellant-Chandrakant Kunjir (PW1) is that 27/09/2011, at about 5.00 a.m., he found that his car was missing from the society where he was residing. On inquiry with his wife and son, they expressed ignorance. Thereafter, he inquired with the watchman Mr. Rajpure, who told him that Respondent No.2 and two unknown persons with her, had taken away the car sometime between 11.30 p.m. to 12.00 a.m. The Appellant deposed that the watchman Mr. Rajpure had informed him in the morning of 27/09/2011 itself that Respondent No.2 had stolen the car. However, the initial Report Exh.37 filed by the Appellant did not refer to that circumstance. Further, as stated in Report Exh.37, the Appellant came to know on 27/05/2011, at 7.00 p.m. that the car was with Respondent No.2. However, the source of getting that information

was not disclosed. Therefore, a question that arises is, why the Appellant did not file prompt Report after getting knowledge of the theft. Further, the learned Additional Sessions Judge noted that the valuables stated in the report Exh.38 filed with the higher police authority were not disclosed in the Report Exh.37, which was prior in time. Therefore, it is legitimate to infer that said valuables and other articles disclosed in the Report Exh.38 were not in the car and were mentioned, as after thought etc. Another possible inference is that, the Appellant was not aware that the said articles were in the car.

10) The evidence indicates that the Report Exh.38 was written on 29/09/2011. However, it was handed over to the higher police authority only on 04/10/2011. There is no explanation for the said delay of 4/5 days. Admittedly, certain answer papers written by the students of the Government college were allegedly stolen alongwith the car. The Appellant was serving in the Government Engineering College, Pune. Therefore, he was having custody of the answer papers. Presumably, the Appellant was aware about the ill effect on his career of misplacing such answer papers. As such, the Appellant was expected to be alarmed by the theft of the answer papers, and acting naturally, to state about the theft of the answer papers in the Report

at Exh.37 itself. Thus, the non-mentioning about the stolen articles in Report Exh.37 and belatedly handing over the Report Exh.38 to the higher police authorities raised serious doubt about the truthfulness of the allegations leveled in the said Reports.

11) In the cross examination, the Appellant admitted that the premises of the housing society, where he was residing and the parking there, both were well secured with gated area. There were security guards. The society had huge iron gate of 10 to 12 ft. height. Register was maintained by the Security Guard for the persons visiting the society. Watchmen were appointed to prevent theft in the premises of the society. Therefore, it is really difficult to understand as to how Respondent No.2-woman and her two associates entered in the secured/guarded premises and committed the theft as alleged, but without entering their names in the visitors' register, unobstructed by the watchmen and unnoticed by others. It is not discernible as to why the watchman kept silent about the theft till the morning.

12) It was not the case of the prosecution that the Appellant had parked the car keeping its key, inside; that, Respondent No.2 had key of the car; and that, when the car was seized, its lock was broken or damaged. That apart, it is not understandable as to why the

Appellant parked the car keeping his valuables and answer papers inside, and unattended in the night time. It is common experience that cell phone and gold chain are generally carried on one's person. However, the Appellant thought it proper to leave those valuable articles in the car itself that too without giving any reason or explanation for the same in either of the Reports. In similar casual manner he left the answer papers in the car. Thus, very unnatural conduct has been claimed by none other than the Appellant himself, which also casts serious doubt about genuineness and veracity of the prosecution case as introduced by way of two different Reports.

13) the testimony of PW2-Sunil Kate is that, somewhere in 1st or 2nd week of November, 2011, his watchman contacted him on phone and told that Respondent No.2 had come to the premises of the class and talked with him and told that she had to keep some goods of the Appellant. The box was containing laptop, few models etc. Therefore, the watchman kept the box inside the class. Police seized said articles from PW2 under Panchnama (Exh.88). However, PW2 has not mentioned in his testimony about the stolen answer papers. PW2 deposed that on 26/11/2011 he searched inside the class and found the answer papers kept in a cupboard at an inconvenient place.

In the cross-examination, PW2 admitted that before the alleged incident, he had never seen to Respondent No.2. Yet, he allowed her to keep the goods of the Appellant in the class. PW2 stated that after 24/11/2011 he did not meet the Investigation Officer. However, the answer papers were allegedly seized from him on 26/11/2011. In this background, the Appellate Court doubted the seizure of the answer papers, which is not erroneous.

14) As alleged, the stolen car was seized from PW6-Mr.Dattatraya Kale, in the campus of Cambridge School belonging to the wife of the Appellant. The Appellant admitted that PW6 was his wife's relative. But PW6 did not support the prosecution case. PW12-ACP Yadav deposed that on 20/12/2011, PW13-Gaikwad-Police Havildar found that PW6 was driving the stolen car when he was patrolling near Cambridge School, but PW13 stated that PW12-ACP Yadav/then PI informed that the stolen car was near the Cambridge School. Therefore, the Appellate Court held that the seizure of the car was doubtful and it cannot be held that at any point of time the car was in possession of Respondent No.2.

15) PW3-Asha Kunjir has been examined on the point of extra judicial confession made by Respondent No.2. However, her

testimony has been suffering from omissions brought on record in her cross examination. She admitted that she deposed at the instance of the Appellant. There was delay in recording her statement under Section 161 of Cr.P.C. She deposed that the extra judicial confession was made before her in September 2011 but she remained silent until the police approached her in November 2011 to record her said statement. The Appellate Court noted that, there was no such relationship between PW3 and Respondent No.2 so as to give the latter sufficient confidence to make the extra judicial confession.

16) The evidence of PW4-Ramkrupal Upadhyay, the watchman of the classroom of PW2 stated that after talking with PW2 on phone, he kept the box brought by Respondent No.2. According to PW2, this happened in 1st or 2nd week of November meaning thereby Respondent No.2 kept the box around 15th November. PW4 deposed that, on the next day, PW2 carried that box to the police. However, the box was seized on 26/11/2011. That apart, as noted by the Appellate Court, PW4 admitted that the portion marked 'B' in his statement before the police is correct. Said portion indicates that on observing the goods produced in the police station, certain valuable articles and the answer papers were not found in it. Therefore, the

claim of PW4 that PW2 carried the answer papers to the Police Station on the very next day, i.e., on 24/11/2011, was not reliable.

17) Conspectus of the above discussion is that, the trial Court as well as the Appellate Court both have appreciated the evidence on record in its correct perspective and then concluded that the prosecution failed to establish its case. The said conclusion by both Courts is not suffering from any infirmity thereby warranting interference by this Court to upset the impugned Judgment and Order.

18) Necessary corollary of the aforesaid discussion is that, there is no substance in the Appeal and the Appeal is liable to be rejected and is rejected, accordingly.

19) Appeal stands disposed of.

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(SHYAM C. CHANDAK, J.)