
(1985) 08 BOM CK 0021

In the Bombay High Court

Case No : Criminal Revision Application No. 363 of 1984

Shaukat Mohd. Shikalgar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-08-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 380, 457

Citation : (1986) 1 BomCR 436

Hon'ble Judges : D.N. Mehta, J

Bench : Single Bench

Advocate : S.L. Dange, for the Appellant; R.Y. Mirza, Public Prosecutor, for the Respondent

Judgement

D.N. Mehta, J.—The petitioner Shaukat Mohd. Shikalgar has filed this Criminal Revision Application impugning the Judgment and Order dated 28-2-1984 passed by the learned II Extra Additional Sessions Judge, Satara dismissing his Appeal and confirming his conviction and sentence under sections 457 and 380 of the Indian Penal Code.

2. The petitioner herein, who will hereinafter be referred to as "the accused", was charged with the offence of housebreaking and theft committed in the house of complainant Mohan Dharamchand Bhatiya in Sadar Bazar, Satara, on the night between 30-3-1982 and 31-3-1982 in the Court of the learned Chief Judicial Magistrate, Satara. The learned Chief Judicial Magistrate by his judgment and Order dated 29-9-1982 accepted the prosecution evidence as reliable and trustworthy and convicted the accused u/s 457 and section 380 of the Indian Penal Code and sentenced the accused to suffer rigorous imprisonment for three years and to pay a fine of Rs. 500/-, in default thereof, to suffer further rigorous imprisonment for three months on each count. The substantive sentences were directed to run concurrently and further that the substantive sentences were directed to run concurrently with the sentences passed in Criminal Case No. 80

of 1982 and Criminal Case No. 81 of 1982 on the file of the learned Chief Judicial Magistrate, Satara.

3. The accused, being aggrieved by the said conviction and sentence passed against him, appealed to the learned II Extra Additional Sessions Judge, Satara. The learned II Extra Additional Sessions Judge by his judgment and Order dated 28-2-1984 dismissed the Appeal and confirmed the conviction and sentence passed on the accused. The accused has now approached this Court in revision impugning the Judgment and Order of the learned Chief Judicial Magistrate, Satara, as also of the learned II Extra Additional Session Judge, Satara.

4. The facts of the prosecution case are the following :

Complainant Mohan Dharamchand Bhatiya resided in House No. 805, Sadar-Bazar, Satara, with his wife. On the night between 30-3-1982 and 31-3-1982 a person broke into the house of complainant Bhatiya and stole his wrist watch, cash of Rs. 800/- which was kept in a tin box in a cupboard, jewellery consisting of earrings and anklets cumulatively valued at Rs. 1,100/-. On the next morning i.e. on 31-3-1982 the complainant lodged a complaint with the Police at Satara.

5. The accused was arrested on 24-5-1982. On 6-6-1982 the accused made a statement in the presence of panchas u/s 27 of the Evidence Act. The accused stated that he had thrown a pair of fake gold bangles in a cactus bush on the banks of Koyna river and that he would show the place to the Police and the panchas. Thereafter in the presence of the panchas, one of them being Kisan Kale, the accused brought out a pair of fake gold bangles from under the cactus bush and handed it over to the Police. The bangles were attached under a panchnama, Exhibit 30. The bangles were identified by complainant Bhatiya and his wife Saroj as belonging to them.

6. The accused was charge-sheeted in the Court of the learned Chief Judicial Magistrate, Satara, and was tried by the learned Chief Judicial Magistrate, Satara, and was convicted and sentenced as aforesaid.

7. It is pertinent to point out that the accused was tried in four different cases, being Criminal Cases Nos. 80 of 1982; 81 of 1982; 82 of 1982 and 83 of 1982 in the Court of the learned Chief Judicial Magistrate, Satara. In all the four cases the accused was tried either u/s 457 read with section 380 I.P.C. or section 380 I.P.C. The learned Chief Judicial Magistrate was pleased to convict the accused in all the four cases.

8. The accused was also tried in the three others cases, being Criminal Cases Nos. 101 of 1982, 96 of 1982 and 94 of 1982 in the Court of the learned Judicial Magistrate, First Class, Karad. In Criminal Case No. 96 of 1982 the accused was charged u/s 324 I.P.C.; in Criminal Case No. 94 of 1982 the accused was charged u/s 394 I.P.C. and in Criminal Case No. 101 of 1982 the accused was charged u/s 457 read with section 380 of the Indian Penal Code. In all the seven cases the learned trial Magistrate convicted the accused and sentenced him to varying

terms of imprisonments as also with fines.

9. The accused being aggrieved by the Order of conviction and sentence, filed Appeals in the Court of the learned II Extra Additional Sessions Judge, which were dismissed.

9-A. The accused has now filed seven Criminal Revision Applications in this courts, being Criminal Revision Applications Nos. 359 of 1984, 360 of 1984, 361 of 1984, 362 of 1984, 365 of 1984, 363 of 1984, 364 of 1984.

10. Criminal Revision Applications Nos. 359 of 1984, 360 of 1984, 362 of 1984, and 365 of 1984 were dismissed in limine by this Court in Criminal Revision Applications Nos. 361 of 1984, 363 of 1984 which is the present petition, and Criminal Revision Application No. 364 of 1984, this Court was pleased to issue rule.

11. I have set out the background of the prosecution cases against the accused because I find that in the Memo of Appeal filed by the accused from Jail, one of the grounds is that there was a common Panch in all the cases tried before the learned Chief Judicial Magistrate, Satara, and that the Panch was a professional or habitual Panch in the employ of the Police.

12. Shri Dange, the learned Advocate appearing on behalf of the accused, has submitted in this Criminal Revision Application that there was no direct evidence of house-breaking or theft against the accused. The only evidence which connected the accused with the theft was the evidence of discovery which took place on 6-6-1982, i.e. about three months from the date of offence and fifteen days from the date of the arrest of the accused. Shri Dange submitted that a pair of bangles made of fake gold was alleged to have been thrown by the accused in a cactus bush near the banks of Koyna river. Shri Dange stated that it was highly unlikely that a pair of bangles would remain in a cactus bush for a period of about three months or so after it had been thrown there and would not be found by anyone.

13. Secondly, Shri Dange submitted that the Panch witness Kisan Koli was a common Panch in several cases filed against the accused. He was therefore, a professional or habitual Panch of the Police at Satara and therefore, his evidence could not be relied upon.

14. Now, in the three Criminal Revision Applications which appeared before me, I find that Panch Kisan Koli was a common Panch whose services were requisitioned by the Police on different dates. There is, therefore, considerable justification in the submission made by Shri Dange that this Panch appears to be a habitual Panch, whose services were used by the Police at Satara.

15. In this case, as I have pointed out here before, the only evidence against the accused to connect him with the house-breaking or theft is the evidence of discovery of a pair of bangles. Neither the complainant nor his wife Saroj has identified the accused as the person who had broken into their house and

committed burglary.

16. There is another aspect which needs to be mentioned and considered in this case, i.e. that the accused is a young man and in all the seven cases he went undefended. The accused relied on his insufficient mental and legal equipment to defend himself. I am mentioning this fact because the learned Chief Judicial Magistrate found that the evidence of Panch witness Kisan Koli had not been adequately challenged in cross-examination. That, however, is to be expected when an indigent person, like the accused, defends himself.

17. On reading through the judgements of the learned trial Magistrate and the learned II Extra Additional Sessions Judge, I have had a gnawing feeling that the accused has not been properly defended and if he had been represented by an Advocate, perhaps the result might have been different. Apart from the fact of improper defence, I find that the evidence of discovery, which is secondary evidence, is slender and not sufficiently strong as to base a conviction thereon. I am of the view that this is an appropriate case where the revisional powers of this Court need to be exercised for the proper administration of justice and to prevent a failure of justice. The prosecution evidence in this case hangs on a slender thread and the conviction of the accused based thereon, is to my mind, improper.

18. In the result, the rule is made absolute. The conviction of the accused u/s 457 and section 380 of the Indian Penal Code is set aside and the sentence of three years rigorous imprisonment and a fine of Rs. 500/- in default, a further period of imprisonment for three months on each count is quashed. The accused shall be set at liberty forthwith unless required in some other case.

Rule made absolute.