

(1955) 11 BOM CK 0030
In the Bombay High Court
Case No : Criminal Appeal No. 812 of 1955

State	Vs	APPELLANT
Bassappa Chalappa Bekwad and Others		RESPONDENT

Date of Decision : 10-11-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 288, 297
Evidence Act, 1872 — Section 133
Penal Code, 1860 (IPC) — Section 342

Citation : AIR 1956 Bom 341 : (1956) CriLJ 605

Hon'ble Judges : Vyas, J;Shah, J

Bench : Division Bench

Advocate : Y.V. Chandrachud, Addl. Assist. Govt. Pleader, for the Appellant; A.A. Mandgi (Appointed) and V.A. Mandgi, for the Respondent

Judgement

Shah, J.—This is an appeal by the State of Bombay against an order of acquittal passed in Sessions Case No. 90 of 1954 by the Extra Additional Sessions Judge, Belgaum. The case was tried before the learned Sessions Judge with the aid of a Jury of five. The Jury brought in a majority verdict of 4 to 1 in favour of the accused. The learned Sessions Judge held that the verdict could not be regarded as perverse or unreasonable. He, therefore, accepted the verdict of the Jury and acquitted all the accused.

The State had preferred an appeal against the accused. When the appeal was placed for admission before this Court the appeal was admitted as against accused 1, 2 and 9 and was dismissed as against the remaining accused. We have, therefore, before us the appeal against accused 1, 9 and 9 only.

2. Now, the case for the prosecution was that one Ramchandra Satwappa Wajantri had committed criminal breach of trust in respect of gold of considerable value. The quantity of gold entrusted to him was 100 gold bars or ingots each weighing 10 tolas, and Ramchandra had disposed of some of the bars of gold.

It was the case for the prosecution that some of the remaining bars and Rs. 10,000/- were by show of force and threats taken away from Ramchandra by the accused. As stated in the charge, accused 1 to 9 had between 12th February and 13th February 1954, extorted 53 gold bars each weighing 10 tolas and a cash amount of Rs. 10,000/- from Ramchandra and his brother Laxman and had thereby committed an offence punishable u/s 395, Penal Code.

Accused 1 to 9 were further charged that in furtherance of their common intention to commit the dacoity they had wrongfully confined the complainant Ramchandra when they compelled him to accompany them from his house at Dan-deli on 12-2-1954, to Chandgad and back to Dandeli on 13-2-1954, and had, therefore, committed an offence punishable u/s 342, Penal Code.

3. The prosecution examined a large number of witnesses in support of its case. The evidence led by the prosecution may be divided into three principal sections. The first section of the evidence related to the commission of the offence of smuggling gold bars by Ramchandra. Substantially that evidence was led for the purpose of proving that Ramchandra was at the relevant time possessed of 100 bars of gold.

The second section of the evidence related to the circumstances in which Ramchandra was put in fear of injury and deprived of the 53 bars of gold which he possessed and of the cash amount of Rs. 10,000/- which he had received by disposal of some of the gold bars. This evidence also was intended to show that on 12th and 13th February 1954, Ramchandra had been wrongfully detained.

The third section of the evidence related to the disposal of property of considerable value by the accused at diverse times. The evidence was that gold had been disposed of by the accused to various witnesses or that they had got ornaments prepared out of gold from various witnesses. The accused denied having committed the offences charged against them and they set up title to various ornaments which were found from their possession.

4. This being an appeal against an order of acquittal, we can set aside the verdict of the Jury and the consequent order passed by the

learned Sessions Judge only if we are satisfied that the verdict of the Jury was vitiated on the ground of mis-directions or non-directions amounting to misdirections. We will, therefore, direct our attention to what are contended on behalf of the State to be misdirections or non-directions.

5. The first misdirection which is referred to by the learned Assistant Additional Government Pleader as having vitiated the verdict of the Jury is to be found in para 16 of the learned Sessions Judge's charge to the Jury. The learned Sessions Judge told the Jury that the evidence of the complainant Ramchandra "should be approached with the utmost possible caution and scrutiny, though not with distrust".

He pointed out to them that there was no presumption that a hardened thief or a

cheat or a gambler always spoke falsehood. He, however, told them that it was unsafe to rely upon oral testimony of the witnesses unless there were independent witnesses to corroborate the story.

The learned Sessions Judge had pointed out to the Jury that Ramchandra on his own admission had committed criminal breach of trust in respect of property which was entrusted to him and that he had disposed of a part of the property. Ramchandra had also admitted that he was indulging in gambling at Kolhapur.

We do not think that the learned Sessions Judge was in error when he stated that the oral testimony of a person, who was on his own admission of cheating, guilty of criminal breach of trust, could dispose of stolen property and who was a confirmed gambler, required some independent corroboration before it was accepted.

The learned Sessions Judge did not set out as a rule of law that the evidence of a person who was a cheat, who had committed criminal breach of trust and who was given to gambling, cannot at all be accepted in the absence of independent corroboration. What he appears to have stated is that as a rule of prudence some corroboration was necessary before his testimony could be accepted.

We do not think that there was any misdirection which vitiated the verdict of the Jury. The learned" Judge then told the Jury in the same paragraph that the manner in which Keshavrao Nakhare and Devrai Revankar, who had disposed of 20 gold ingots entrusted to them by Malhari, indicated that they knew that it was stolen property.

Now, it may be stated that Ramchandra, the complainant had handed over a few gold ingots to one Malhari Ghodke, who was examined as a witness for the prosecution, and Malhari had handed over to Keshavrao and Devrai those gold Ingots for disposal. It appears from the evidence that Keshavrao and Devrai had disposed of the gold ingots in a manner which created a suspicion that they must have known that it was stolen property.

Now, all this evidence was led by the prosecution only for the purpose of showing that Ramchandra was possessed of property which he was made to part with. It is true that the observations made by the learned Sessions Judge telling the Jury that Keshavrao and Devrai may be regarded as "accomplices" appear to be out of place. Keshavrao and Devrai could not be regarded as "accomplices" in the commission of the offence with which the accused were charged.

The rule of prudence, which is now recognized as a rule of law, that evidence of accomplices before it is utilised for convicting an accused person must be corroborated in material particulars in so far as it involves the accused, can have no application where the evidence is led only for the

purpose of proving that the complainant was in possession of some property which is alleged to be stolen.

But ultimately, the learned Judge has pointed out to the jury that it was for the jury to consider whether the prosecution evidence which was led before the Court satisfied the jury about the truth of the story of the complainant that at the time of the alleged dacoity he was in possession of 53 gold ingots and Rs. 10,000/- or Rs. 12,000/- in cash.

Even if the statement made by the learned Sessions Judge that Keshavrao and Devrai may be regarded as accomplices may not be accurate, as he ultimately told the jury at the end of para 16 that it was for the jury to satisfy themselves as to whether the story of the complainant that he was possessed of property which he ultimately lost in the dacoity was true we do not think that the verdict can be regarded as vitiated by the statement made before the jury that the witnesses Keshavrao and Devrai were accomplices.

6. Then it was urged that the statement made by the learned Sessions Judge in para 19 of his charge to the jury relating to the testimony of Jagannath Vishnu Jadhav amounted to misdirection. Now the learned Sessions Judge told the jury that Jagannath Vishnu Jadhav was an independent witness who was not related to the complainant.

He also asked the jury to consider the evidence of Jagannath carefully and to give it tries utmost consideration. These directions were in favour of the prosecution and not against the prosecution.

It is true that the learned Sessions Judge has stated "All that can at the most be said against Jagannath Vishnu Jadhav is that he is under the thumb of the police because they have not prosecuted him for taking his car on hire without a taxi license".

It appears to have been admitted by Jagannath that he had taken his taxi for hire even though he did not hold a license and the learned Sessions Judge pointed out to the jury that the-only thing which could be said against the testimony of the evidence of Jagannath was that he might be under the thumb of the police because the police did not charge him with having committed the offence which on his statement he appeared to have committed.

We do not think that such an observation can be regarded as a misdirection which affects the verdict of the jury to the prejudice of the prosecution.

7. Then it was pointed out that in para 21 of his charge to the Jury the learned Sessions Judge placed an argument of Mr. Lele. Advocate for accused 1 to 9, that the gold Ingots which the complainant Ramchandra stated that he had parted with might have been delivered by him voluntarily and willingly to the accused. He told the jury :

"Gentlemen, if the complainant and his brother Laxman did voluntarily and willingly give some gold ingots and cash to these accused or any of them as suggested by Shri Lele, the accused cannot at all be held to be guilty of the offence alleged against them.

Use of force or violence is one of the essential ingredients of the offence of robbery and dacoity & if there was no use or show of violence by these accused or any of them they cannot be held to be guilty of having committed either robbery or dacoity".

Now the learned Sessions Judge was bringing to the notice of the jury an argument which was advanced on behalf of the accused. The suggestion made by the advocate was that the property might have been parted with willingly and voluntarily. It is to be noted that it was the gravamen of the prosecution charge that Ramchandra and his brother Laxman had been compelled to part with property of considerable value under threats and thereby an offence of extortion was committed and the extortion amounted to robbery and it was committed! by more than five persons it amounted to dacoity.

It was for the prosecution to establish that an offence of robbery was committed by committing extortion by putting Ramchandra and his brother Laxman in fear of injury or wrongful restraint. If a suggestion was made on behalf of the defence that in view of certain circumstances the property might have been delivered voluntarily and not under extortion, it cannot be said that the learned Sessions Judge's charge to the jury was vitiated by a misdirection.

8. It was then urged that in referring to the so-called confession Ex. 103, by the ninth accused in para 32 of his charge to the jury the learned Sessions Judge told the jury that the confession having been retracted; it could not be regarded as evidence against any of the co-accused and that it could not be taken into consideration even against them.

It is, however, to be noted that Ex. 103 cannot be regarded as a confession. The tenor of the statement is that Ramchandra and Laxman parted with property in their possession and delivered it to the accused but there is nothing to show that they were compelled to part with the property. The statement does not show that the accused or any of them either extorted property or committed theft in respect thereof.

It is impossible, therefore, to regard the statement Ex. 103 as a confession of the ninth accused and if it did not amount to confession it cannot be taken into consideration as against the remaining accused. The learned Sessions Judge has pointed out to the jury that the whole statement did not contain any admission of guilt in the sense that any force or violence was used to the complainant when he parted with the gold or cash.

We do not, therefore, think that, when the learned Sessions Judge told the jury that the statement could not be taken into consideration against the remaining accused, his observation amounted to a misdirection.

9. Finally it was urged that the learned Sessions Judge's charge to the jury suffered from a non-direction. In para 14 of his charge to the jury the learned Sessions Judge referred to the statement of one Ishwar Yallurkar which was

brought on the record u/s 288, Criminal P. C. In the Court of Session.

He told the jury that even though that was substantive evidence, the evidence should be approached with consideration, caution and scrutiny. He asked the jury to consider whether the evidence brought on the record should be accepted having regard to the fact that the witness had made inconsistent statements, one in the Court of Session.

The learned Assistant Additional Government Pleader has urged before us that when contradictions were elicited in the evidence of other witnesses, such contradictions being between the statements made in the Court of Session and before the committing Magistrate, the learned Sessions Judge should have told the jury that evidence brought on record u/s 288, Criminal P. C. was substantive evidence whereas the evidence utilised for contradicting witnesses for the prosecution was not substantive evidence.

We do not think that was necessary for the learned Sessions Judge to have so told the Jury. In any event failure to tell the jury that statements used merely for the purpose of contradictions were not substantive evidence cannot be regarded as a non-direction which amounted to a misdirection. Ultimately it was for the jury to appreciate the evidence. Such evidence as was before the Court was brought to the notice of the jury. The learned Sessions Judge appears in his long and elaborate charge to the jury to have told them as to how the evidence should be appreciated. We may observe that the tenor of the charge of the learned Sessions Judge to the jury is what is often called a "convicting charge". But the jury it appears did not accept the evidence of the witnesses for the prosecution and brought in a majority verdict of not guilty.

We do not think that the verdict of the jury can be regarded as vitiated on any of the grounds relied upon before us. We are bound to accept the verdict of the jury as the learned Sessions Judge was. We, therefore, dismiss the appeal filed by the State against accused 1, 2 and 9. The bail bonds to stand cancelled.

10. Appeal dismissed.