

(2017) 05 BOM CK 0024
In the Bombay High Court
Case No : 1544 of 2003

The State of Maharashtra

APPELLANT

Vs

Vinod Narayan Salunkhe Public Servant CID Inspector, Crime
Branch, Mumbai

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 420](#),
[Section 170](#), [Section 34](#) - Cheating
and dishonestly inducing delivery of property - Personating a public servant - Acts
done by several

Citation : (2017) 05 BOM CK 0024

Hon'ble Judges : P.N.Deshmukh

Bench : SINGLE BENCH

Advocate : Deepak Thakare, P.H. Gaikwad, Satyavrat Joshi

Final Decision : Dismissed

Judgement

1. This Appeal is preferred by State of Maharashtra against Judgment passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai in Criminal Case No. 226/P/2001 on 26th September 2003, whereby Respondent came to be acquitted for the offences punishable under Section 170 r/w Section 420 of the Indian Penal Code.

2. Facts of the case of prosecution in brief can be stated as under: That accused on 16th April 2001 at about 8 a.m. by personating himself to be as a Public Servant as a CID Inspector opposite Mumbai Central ST Bus Stand, Nagpada, Mumbai took away Rs. 51,500/- with dishonest intention from the complainant Ashfaq Wali Mohammed Shaikh. In view of case of prosecution as aforesaid charge is framed against Respondent for the offences punishable under Section 170 r/w Section 420 of the Indian Penal Code, accused pleaded not guilty and claimed to be tried.

3. In order to prove the case levelled against Respondent prosecution examined

in all four witnesses and commenced evidence by examining PW No.1 Laxman Punjaji Gorey, the Investigating Officer, PW No.2 Shri Ashfaq Wali Mohammed Chifa, Complainant, PW No.3, Shri Mohammed Nisar Isaq Khan and concluded the evidence by examining PW No.4 Naziruddin Abdul Rehman Khan, who has carried further investigation. Accused did not examine any witness in support of his defence. It is the specific case of accused that he came to be falsely implicated by the investigating officer since at that time Respondent who admittedly was in police service was under suspension and was facing departmental enquiry.

4. The learned Trial Judge after considering evidence and documents on record had acquitted accused. Hence this Appeal.

5. Heard learned APP for the State who has contended that the Trial Court has not evaluated evidence particularly of complainant whose evidence is found corroborated with the evidence of PW No.3 Mohammed Nisar Isaq Khan and that from his evidence involvement of Respondent is clearly established. However, the learned Trial Court without relying upon said evidence, acquitted the Respondent. It is further contended that there is nothing on record to disbelieve the version of complainant and PW No.3 Nisar Khan. As from their evidence, it is also submitted that identification of Respondent is established, who was identified by complainant from his photograph and has submitted that no identification parade was thus found to be necessary by the investigating officer. It is therefore prayed that Appeal be allowed.

6. Learned counsel for Respondent had in fact supported the impugned judgment and had contended that from the evidence of complainant, PW No.3 Nasir Khan, it cannot be said that involvement of Respondent is established by prosecution beyond reasonable doubt. It is also contended that no amount is recovered, alleged to be taken away by Respondent from the custody of complainant. It is contended that Appeal is therefore, liable to be dismissed.

7. The case of the Accused-Respondent is of false implication due to rivalry with the investigating officer is more probable as at the time of incident admittedly Respondent who was in police service was under suspension and was facing departmental inquiry.

8. Considering the case of prosecution, submissions advanced as aforesaid and on perusal of evidence of PW No.2, complainant, it has revealed that he visited Mumbai on 16th February 2001 along with PW No.3, Nasir Khan for some business purpose and at around about 7.30 a.m. when he was near tea stall waiting for taxi, two persons came from their behind in a taxi and on introducing themselves as CBI Police officers inquired complainant and said that complainant and his companion were thieves and by saying so, took them into their taxi and went towards Nagpada. It is the further case of the complainant that he was having one briefcase containing his cloths which on the directions of the alleged CBI officer was opened and the Respondent parted with amount of Rs.51,500/-

which was with him, saying to complainant that it was stolen property. It has further come in his evidence that on the directions of said alleged police officer he was then directed to occupy the front sit and for that purpose, when he alighted from the taxi to occupy the front sit, taxi left the spot in high speed. It is thus his case that he therefore visited Nagpada police station and lodged his report, which is at Exhibit P-5.

9. On considering above peace of evidence, it is material to note that complainant's evidence does not disclose where was the amount of Rs.51,500/- kept by him. As according to his evidence the briefcase which he was carrying was having his cloths and he was directed by accused to produce money upon which he gave Rs.51,500/-. His evidence is not clear as to from where he has brought such a huge amount. It is further material to note that above evidence of complainant do not find corroboration from the evidence of PW No.3, Nisar Khan to support case of prosecution who was accompanying complainant at the material time. As on perusal of his evidence it is found to have deposed by him that he along with complainant arrived in Mumbai at around 7.00 a.m. and were present near the tea stall waiting for taxi when two persons came from their behind and had introduced themselves, as officers from the CBI and stated that complainant and his companion were thieves and therefore took away driving licence of Mohammad Nisar Khan along with some visiting cards and coins. At the same time took out Rs.51,500/- from complainant and went away.

10. Having considered evidence of alleged eye witness, same appears to be totally contradictory to the evidence of complainant as referred above.

11. In fact evidence of complainant also appears to be not convincing as it is found to be in the nature of improvements when complainant has admitted that there is no mention in his report that two persons came from behind in taxi and had introduced themselves as CBI police officers and took them in taxi upto some distance and had then taken his briefcase. He has further stated that though he has mentioned in his statement recorded by police that while he was sitting in the back side of the taxi he was directed to occupy the front seat. No such fact is mentioned in his statement. However, he is unable to give any reason for not recording so. Above omission has been totally proved by the accused from the evidence of PW No.4, the investigating officer, who has recorded his statement.

12. After considering above discussed evidence, therefore, it is noted that there is nothing to establish involvement of accused for the offence for which he has charged.

13. Another point which again doubts the case of prosecution is with regard to further evidence of PW No.2, the complainant, when he has admitted that in the TI parade he identified accused. As per his evidence the TI parade was held after three to four days of incident wherein three to four dummies were made to stand out of which he identified the accused. However, evidence of PW No.1,

investigating officer is to the fact that accused were identified by complainant on the basis of his photograph in the presence of Panch and as such he had not held any TI parade. Thus, above contradictory evidence of investigating officer and complainant also creates reasonable doubt in the case of prosecution. In fact no panchas are examined in whose presence complainant is stated to have identified accused. No reasons are found on record for non examination of panch witness. Even otherwise there are no independent witnesses examined during the course of investigation though according to the case of prosecution alleged incident took place at the tea stall situated near to Bombay Central Bus Stand at around 7.30 a.m. and as such there is every possibility of availability of other witnesses in whose presence alleged incident have taken place.

14. Evidence of PW No.4 established fact of complainant visiting Nagpada Police Station on 16th April 2001 and lodging his report Exhibit P-5 on the basis of which he registered offence vide Crime No. 125 of 2001 under Section 420, 170 read with 34 of IPC and after carrying part of investigation further investigation was carried out by PW No.1, Laxman Gorey, Police Inspector whose evidence establishes fact of identification of accused by complainant on the basis of photograph and recovery of Rs.200/- from the person of accused on obtaining his personal search. Admittedly no recovery of Rs.51,500/- involved in this crime has been effected. PW No.1 investigating officer has admitted during the course of investigation it revealed to him that that accused was in government service in police department and was under suspension and was facing departmental inquiry in some other crime.

15. In view of the evidence as aforesaid, prosecution is found to have miserably failed to establish charge levelled against accused, even otherwise according to the settled law while considering appeal against acquittal when two views are possible on the basis of evidence on record, one which is taken in favour of accused by the Trial Court should not be disturbed by the Appellate Court unless there are compelling circumstances such as non consideration of evidence on record by the Trial Judge. Even otherwise the scope of interference of Appellate Court in an Appeal is by and now well established that unless view taken by the Trial Judge is either impossible or perverse, it is not permissible to interfere therein. Upon perusal of the impugned judgment and material placed on record it is found that accused came to be acquitted by the Trail Court by passing well reasoned order.

16. In that view of the matter, there is no substance in the Appeal.

17. Hence the Appeal is dismissed.