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Decided on : 01/04/2008

Duration : Y. M. D.

IN THE COURT OF JUDICIAL MAGISTRATE F.C.,OMERGA
DISTRICT OSMANABAD.

(Presided over by S.M. Takalikar)

Reg. Criminal Case no. 57 of 2008.

Exh.No.

The State of Maharashtra,
Through Satish Vitthalrao Survase,
age 28 years, Occup. Business,
R/o Bhim nagar, Omerga,
Tq. Omerga.

.....COMPLAINANT

VERSUS

Sambhaji @ Sambhu Rakmaji Gaikwad,
age 30 years, Occup. Laborer,
R/o Kumbharpatti, Omerga,
Tq. Omerga, Dist.Osmanabad.

.....ACCUSED.

CHARGE: Under section 457, 380 of I.P.C.

.....
Shri. K.D. Gadade, APP for State.
Shri. Bansode, Advocate for accused.

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JUDGMENT

(Delivered on 1/4/2008)

1. Accused is facing trial of offence committed punishable under sections 457, 380 of Indian Penal Code.

2. Facts in short of prosecution case are as follows:

That complainant Satish Vitthalrao Survase is resident of Omerga is running business of Automobiles by name and style as Gajanan Automobiles. He himself and his brother are looking after the said business. That on 22/10/2007 he was in his shop. At about 9.30 p.m. he closed his shop and went to the house. Thereafter, on 23/10/2007 at about 8.00 a.m. as usual he opened his shop. At that time he found that upper side tin sheet was cut. The drawer of the counter was open. He also found that some important documents, cheque book, one hand bag and cash amount of Rs. 3500/- were stolen. So also a theft has been committed in the adjacent shop owner Suresh Bhimsha Pujari by breaking a wall. Thereafter he went to Police Station, lodged report of the incident. On the basis of his report C.R. No. 203/07 for offence punishable under section 457, 380 of Indian Penal Code came to be registered.

3. Police Head Constable Shri. Jadjav of Omerga Police station took up investigation. During investigation he went to spot, prepared spot panchanama, recorded statement of witnesses, arrested accused, seized cash amount from the possession of accused. As there was sufficient evidence against accused, he submitted charge sheet against him.

4. Shri. A.S.I. Perampalli, I/c Judicial Magistrate, F.C., Omerga framed charge against accused for offence punishable under sections under sections 457, 380 of Indian Penal Code vide charge Exh. 5. Contents of charge appears to have been read over

and explained to the accused in Marathi to which he pleaded not guilty and claimed to be tried. His defence is of total denial.

5. To prove its case prosecution has examined in all six witnesses. P.W. 1 Prakash Devidas Hundekari at Exh.8, P.W. 2 Ladsaheb Gulabsaheb Murshad at Exh.10, P.W. 3 Satish Vithalrao Survase at Exh. 12, P.W. 4 balaji Bhalchandra Nangare at Exh. 13, P.W. 5 Ram Madhavrao Somwanshi at Exh. 14, P.W. 6 Rajendra Irappa Jadhav at Exh. 15. Complaint is at Exh. 9, spot panchanama is at Exh. 11, seizure panchanama is at Exh. 16.

6. From the above facts, circumstances and evidence adduced by the prosecution following points arise for my determination and I have noted my findings thereon for the reasons stated below.

POINTS

FINDINGS

1. Whether it is proved by the prosecution that, at midnight of 22/10/2007 and 23/10/2007 in the shop of complainant name and style as Gajanan Automobiles at Omerga, Tq. Omerga accused committed the offence of house-breaking after sunset and before sunrise by entering into the shop for the purpose of committing an offence punishable with imprisonment and having committed an offence therein?

In the negative.

2. Whether it is proved by the prosecution that on the said date, time and place accused committed theft in above shop of complainant and in a shop name and style as Hari Oil Agencies owned

In the negative.

by Suresh Bhimsha Pujari used for business a certain property namely important documents, cheque book, cash amount of Rs. 3750/- and one hand bag?

3. What order?

As per final order.

REASONS

AS TO POINTS NO. 1 and 2 ;

7. P.W. 1 Prakash Devidas Hundekari appears to be a PSO who has recorded the complaint of complainant. His evidence is only to prove that on 23/10/2007 Satish Vitthalrao Survase came to Police Station and lodged report.

8. P.W. 2 Ladsha Gulabshaha Murshad is a panch witness on spot panchanama. He deposed that on 23/10/2007 Police called him at Chaurasta for spot panchanama. Satish Survase shown spot of incident and Police prepared panchanama. It is at Exh. 11. In his cross examination he stated that on that date at 12 noon Police called him, 30 to 35 minutes were required for preparation of panchanama. He also stated that he could not state boundaries of the shop of Satish Survase and on the say of Police he put his signature on panchanama.

9. P.W. 3 Satish Vitthalrao Survase complainant deposed that before two months the incident of theft had taken place and he came to know about it on the next date morning. He found that tin sheet of his shop was cut, one cheque book, hand bag and cash amount of Rs.3500/- were stolen from his shop. Then he

went to Police Station, lodged report of the incident. The said report is at Exh. 9. He did not know about anything of the thieves.

10. P.W. 4 Balaji Bhalchandra Nangre deposed that on 6/12/2007 he came to know about the theft in the shop of Satish Survase and the theft has taken place before two months. This witness turned hostile to the prosecution and denied that Satish told him that the cash amount of Rs.2200/- has been seized by the Police from one Sambhaji Gaikwad.

11. P.W. 5 Ram Madhavrao Somwanshi also turned hostile to the prosecution and not supporting it that he came to know about the theft in the shop of Satish Survase.

12. P.W. 6 is Investigating Officer. He deposed that he went to the spot, prepared spot panchanama, recorded statement of witnesses, seized cash amount of Rs.2200/- from accused under panchanama. The said panchanama is at Exh. 16. Then he submitted charge sheet against the accused. He deposed that he recorded statement of Balaji Nagare and Ram Somwanshi as per their say.

13. Learned APP submitted to dispose of the case on merits. Learned Advocate for accused submitted that the recovery under section 27 of Indian Evidence Act has not been made, therefore, it is illegal recovery. The exact map of the spot not drawn, spot of the incident has not been proved. That the prosecution has failed to prove charges against accused.

14. While considering the evidence adduced by the prosecution

it is important to note here that complainant Satish Vitthalrao Survase in his chief examination asserted that before two months the theft has been committed in his shop. This witness is deposing on 1/3/2008. According to the prosecution story the incident had taken place in the midnight of 22/10/2007 and 23/10/2007. Therefore, it is highly impossible to believe the evidence of complainant. Further the complainant has not stated anything about the thieves. The evidence of complainant can only be taken into consideration that theft has been committed in his shop and one cheque book, hand bag and cash amount of Rs.3500/- has been stolen. Even though the Investigating Officer has recorded supplementary statement of this witness, but he denied that he came to know anything from the Police. P.W. 4 also deposed that on 6/12/2007 he came to know about the theft. In fact the theft has been committed in between 22/10/2007 and 23/10/2007. P.W. 5 Ram Madhavrao Somwanshi turned hostile and not supporting the prosecution case.

15. Presence of P.W. 2 at the time of spot panchanama appears to be doubtful. Admittedly, he deposed that on that date at 12.00 noon Police had called him and within 30 to 35 minutes panchanama was drawn. Upon perusal of spot panchanama Exh. 11, it appears that it has been drawn in between 3.00 to 4.00 p.m.. Therefore, at the time of spot panchanama at about 3.00 to 4.00 p.m. the presence of this witness is not possible. Further this witness is unable to state boundaries of the spot. If really he was present on the spot then he would have stated the boundaries. Further Investigating Officer P.W. 6 deposed that the spot was at

Gajanan Automobile and Hari Oil Agencies. He prepared spot panchanama. According to this witness he has prepared spot panchanama at Gajanan Automobiles and Hari Oil Agencies. It is not the case of prosecution that in Hari Oil Agency also theft has been committed, therefore, I am of opinion that prosecution has failed to prove spot of incident. The most important point in this case is recovery of cash amount from the possession of accused. It is pertinent to note here that the prosecution has not examined either of the panch witnesses on seizure panchanama. They have not explained the not availability of these witnesses. Investigating Officer P.W. 6 Rajendra Jadhav deposed that he seized cash amount of Rs.2200/- from the accused. He deposed that the said amount has been seized from the house of accused. Admittedly, in seizure panchanama there is no mention that the cash amount has been seized from the house of accused. Upon perusal of the record it appears that the accused has been arrested in C.R. No. 196/07. On 7/12/2007 he has been taken in C.R. No. 203/2007. Admittedly, investigation started after 7/12/2007, but the seizure panchanama Exh. 16 shows that the recovery has been made on 6/12/2007. As the Investigating Officer has taken the accused in custody on 7/12/2007 it is difficult to believe that on 6/12/2007 he has seized Rs.2200/- from the possession of accused. The recovery appears to be doubtful. Therefore, I am of opinion that the prosecution has failed to prove recovery of cash amount from the possession of accused. Even though the prosecution has proved the complaint then also it has failed to prove spot of incident, seizure of cash amount from the possession of accused.

Therefore, I am of opinion that the prosecution has failed to prove chain of circumstances. So I hold that the prosecution has failed to prove charges leveled against the accused. In the result I answer points no. 1 and 2 in the negative.

16. In view of above discussion on record I come to the conclusion that the prosecution has failed to prove guilt of accused beyond reasonable doubt. Therefore accused is entitle to an acquittal. Hence following order.

ORDER

1. Accused Sambhaji @ Sambhu Rakmaji Gaikwad is hereby acquitted under section 248(i) of Criminal Procedure Code for the offences punishable under section 457, 380 of Indian Penal Code.
2. Bail bond of accused stands calcelled.
3. Muddemal property cash amount of Rs.2200/- be credited to Government after appeal period is over.

(Dictated and pronounced in open Court)

Date :01/04/2008

Sd/- 1.4.08
(S.M. Takalikar)
Judicial Magistrate, F.C.,
Omerga.