

Presented on :- 28.1.2010

Registered on :- 28.1.2010

Decided on :- 20.4.2011

Duration :- Y. M. D.
01 02 24

IN THE COURT OF JUDICIAL MAGISTRATE (F.C.)

KHADKI, PUNE.

(Presented before Mrs. Renuka M. Satav)

R.C.C.NO. 29/2010

Exh. No.

State of Maharashtra

Through Police Inspector,

Khadki Police Station, Pune

.....PROSECUTION

V/s.

1] Munna @ Salim @ Hamid Alihussain

Qureshi @ Khan, Age 34 yrs, [**Abscond**]

2] Janardhan Govind Pradhan, Age 22 yrs

Both R/a. Tatanagar Zopadpatti,

infront of Deonar Kattalkhana, Mumbai

3] Mohammad Kafil Mohammad Sohel Khan,

Age 28 yrs, R/a. Sakinaka, Andheri East,

Mumbai.

[**case split up to the extent of accused**

no.2 & 3 being under trial prisoner] ACCUSED

CHARGE:- For the offences Punishable under section 454
457, 380 r/w 34 of The Indian Penal Code.

Appearance :- A.P.P. Shri. Jamadar for the State.

Advocate Shri.Jawalkar for the Accused

J U D G M E N T

(Delivered on : 20.04.2011)

1] Accused stands charge sheeted for the offences punishable under section 454, 457, 380 r/w 34 of The Indian Penal Code. However, accused no.1 Munna Qureshi is abscond during trial, hence, case is split up to the extent of accused no.2 and 3 being under trial prisoner.

2] It is the case of prosecution that on 27.2.2008 informant Ketan Shah lodged first information report alleging that he is having his office at Preet Apartment and on 26.2.2008 he had been to his site and at about 6.30 pm his Manager closed the office and at about 9.30 pm informant got himself admitted in Ruby hall Clinic due to hyper tension at that time on 27.2.2008 at about 10.30 am he received phone call of his accountant Rika Panikar and she informed him about theft therefore, he after taking discharge reached to the office and found that there was a theft and one neckless of white gold of 32 gram and 2 ear rings, one chain with pendent, one silver jug, two bowl and two silver

glasses were stolen away by unknown thief from the iron cupboard of his bedroom and therefore, he lodged report against unknown thief.

3] On the basis of report lodged offence was registered vide C.R.No. 40/2008 and after completion of investigation charge sheet came to be filed against all accused.

4] Thereafter charge was framed against accused vide Exh-13. Meanwhile accused no.1 Munna @ Salim @ Hamidali Hussain Qureshi @ Khan was abscond. Other accused no.2 and 3 were in jail therefore, case was split up to the extent of accused no.2 and Janardhan Pradhan and No.3 Mohammad Kafil.

5] After completion of prosecution evidence, statement of accused Under Sec. 313 of The Code of Criminal Procedure were recorded at Exh-38 & 39.

6] Heard both the sides.

7] After considering facts of prosecution case and evidence adduced, following are the points arising for my determination, along with my findings thereon, for the reasons stated therein after.

POINTS

FINDINGS

- 1] Does the prosecution proves that in between 18.30 hrs of 26.2.2008 to 10 hrs of 27.2.2008 at Preet Apartment, A-wing 403 Wakdewadi, Pune the accused in furtherance of their common intention committed lurking house trespass by entering into the house of complainant by breaking its lock in order to commit offence of theft ? ..No.
- 2] Does prosecution proves that on the aforesaid date, time and place and in furtherance of their common intention committed the offence of lurking house trespass by night by entering in to the house of complainant which was used as a human dwelling and remaining possession thereof for the purpose of committing offence of theft ? ..No.
- 3] Does prosecution proves that on the aforesaid date, time and place and in furtherance of their common intention committed theft of gold as well as silver ornaments worth Rs. 38,200/- from the house of complainant which was used by him for dwelling purpose? ...No.
- 4] What order?As per final order.

REASONS

- 8] In order to establish the guilt of accused, the

prosecution has examined in all six witness PW-1 Sunil Shah examined at Exh-17, He is the informant. PW-2 Namdeo Kunjir examined at exh-26. He is the memorandum and discovery panch. PW-3 Anil Pawar examined at Exh-32. PW-4 Atmaram Sonawane examined at Exh-33. PW-5 Nivruti Avhad examined at Exh-35. PW-6 Shriram Paul examined at Exh-37. FIR is at Exh-18. Spot panchanama is at Exh-19, Seizure panchanama of cutter Screw is at Exh-27. Memorandum statement of Prakash Paul is at Exh-28 and Discovery panchanama of silver and gold Lagad is at Exh-29. The another panchanama of silver and gold Lagad is at Exh-30. Report for transfer of accused is at Exh-36.

9] Point No.1 to 3:

In order to establish the guilt of accused, the prosecution must prove that on aforesaid day, date, time and place accused the accused committed lurking house trespass by night and house breaking by entering into the house of complainant by breaking its lock in order to commit theft and committed theft of golden as well as silver ornaments worth Rs.38,200/- from the house of complainant which was used by him for dwelling purpose.

10] Now in the light of these essential ingredients if the deposition informant Ketan Shah (PW-1) is perused wherein he deposed about theft at his house. However his testimony shows that he has not stated the details of stolen property as to its weights, description, etc. Even he has not stated number of articles which were stolen. Though he deposed about the names of accused, however, he has not stated the names of other accused, except accused Munna Shaikh. Even he has clearly admitted that he came to know the names accused from police and he do not know who committed theft. Even he has also admitted that nothing has been seized from anybody in his presence. The FIR is also against unknown person. Under such circumstances the evidence of informant Ketan Shah is helpful to the prosecution only to prove the lodging of FIR.

11] The prosecution has examined PSI Anil Pawar (PW-3) however, his role is only to the extent of arresting the accused and nothing else. The prosecution has examined Nivruti Avadh (PW-5) he is the Police Officer of Anti Decoity Squad and his testimony reveals that on 20.5.2008 their Squad arrested all accused alongwith one Mohammad Akhtar and seized some

properties from them and thereafter sent the same in respective CR No.77/07 and 40/08 registered at Khadki PS. However, his testimony no where reveals that exactly which property was seized from which particular accused and how much property was involved in each crime. So also it no where reveals exactly which property is involved in the present crime. Moreover he has not stated the details of the seizure panchanama under which he seized the gold and silver nuggets and diamonds, therefore, his testimony is also not helpful to the prosecution to prove the guilt of accused.

12] The prosecution has examined API Shriram Paul(PW-6) However, he has not stated as to how accused are connected with the present offence and what was the evidence which he found against accused to file chargesheet against them. He has deposed that he recorded statements of Rika Panikar, Kumar Mane and Vishal Pillay. However, the prosecution has not examined said witnesses. Moreover the Investigating Officer API Paul has not stated the details of panchanama and the details of seized property, so also has not deposed about from which particular accused it was seized, therefore, he is a formal witness

and nothing came on record from his testimony showing the nexus of present accused with alleged offence.

13] As per prosecution on 3.5.2008 the Anti-Decoity Squad of Pune City received information about abscond accused Munna @ Salim Qureshi and therefore, they arrested accused Munna Qureshi alongwith other accused and his one Ford I-con Car and thereafter they found one Hexa blade and screw driver and they seized it under panchanama Exh-27 and thereafter Nashik Police recorded statement of one Prakash Paul, who was the accused in crime of Rajwada Police Station and thereby came to know that present abscond accused Munna Qureshi got melted gold and silver articles and sold it to one Lata Laxmi Jeweller, Vishal Babar, and thereafter said person Prakash Paul shown the shops of jeweler at Nashik and thereby police seized 14 gold nuggets and 14 silver nuggets by preparing memorandum panchanama Exh-28 and discovery panchanama Exh-29 and 30. It is seen that prosecution has examined the panch Namdeo Kunjir (PW-2) in whose presence said silver and golden articles were seized. Said panch Namdeo Kunjir PW-2 deposed as per the prosecution story. However, during cross examination he has

clearly admitted on 2.5.2008 Anti Decoity Squad called him in Pune Office and obtained his signature on already prepared panchanama. Further he has failed to state what was seized from each accused. Moreover it is seen that said Prakash Paul is not the accused in the present case. The testimony of other witnesses is also silent about aforesaid panchanamas of Prakash Paul. Even on perusal of memorandum panchanama Exh-28, 30 and Exh-29 it is seen that said panchanama bears details of seized property. However, the testimony of panch Namdeo Kunjir (PW-2) is silent about the detail particulars of said panchanamas. Even his testimony is silent about the presence of another panch at that time, the prosecution has failed to examined other panch, so also the prosecution has not examined police officer Crime Branch, Pune City, Camp Nashik who prepared said panchanamas. Moreover the witness has not stated what was the exact memorandum statement was given by accused in his presence. No where his testimony shows that they followed the accused as per his say and thereafter accused shown them different spot and thereby the seized property was discovered on the basis of information received from the accused. Moreover the persons on

the basis of whose information stolen property was seized was not the arraigned as an accused in the present case. His testimony reveals about the seizure panchanama of the property seized from accused Salim Qureshi, however, he has not stated the details of the property which was seized under panchanama Exh-27. Even his testimony nowhere reveals as to how present accused Janardhan Pradhan and Mohammad Kafil are connected with alleged recovery. The prosecution has examined another panch witness Atmaram Sonawane (PW-4). As per prosecution abscond accused Munna Qureshi gave memorandum statement in presence of this panch and voluntarily shown the spot where he alongwith accused Mohammad Kafil and Janardhan Pradhan committed theft and thereby he had shown the spot i.e. house of complainant Ketan Shah, Preet Apartment, Wakdewadi. However, this witness has not supported the prosecution and denied the preparation of panchanama in his presence. The prosecution has not examined another panch in whose presence memorandum statement of accused Salim Qureshi was recorded on 4.5.2008. Moreover prosecution has failed to prove that present accused Janardhan Pradhan and Mohammad Kafil are connected with present

offence. Even the testimony of informant Ketan Shah also nowhere reveals such discovery and memorandum statement and arrival of police at his house. It has come on record in the deposition of informant Ketan Shah (PW-1) so also in the evidence of other witnesses that nothing has been seized from present accused Janardhan Pradhan and Mohammad Kafil. The prosecution has failed to brought on record any circumstantial or direct evidence against present accused Janardhan Pradhan and Kafil showing their nexus with alleged theft. Even, it is not established that they were present with accused Munna Qureshi when he was arrested. More over there is no evidence to show that accused Janardhan Pradhan and Mohammad Kafil committed lurking house trespass by entering into the house of informant by breaking lock of his dwelling house and committed theft. Under such circumstances the accused cannot be held responsible for alleged offence, hence I answer point no.1 to 3 in the negative.

14] As to point no.4 -

The accused no.1 Munna @ Salim Qureshi is abscond since long, therefore, case will have to be kept pending against him and till then the seized property silver and gold nuggets will

have to be preserved. Hence, I pass the following order.

ORDER

- 1] Accused no.2) Janardhan Govind Pradhan and accused no. 3] Mohammad Kafil Mohammad Sohel Khan, are acquitted of the offence punishable Under Sec.457,380 r/w 34 of IPC vide Sec. 248(1) of The Code of Criminal Procedure.
- 2] Accused 2) Janardhan Govind Pradhan and accused no. 3] Mohammad Kafil Mohammad Sohel Khan are in jail and they be released forthwith if not required in other crime. Accordingly letter be issued to jail authority.
- 3] Case is kept pending to the extent of abscond accused no.1 Munna @ Salim @ Hamidali Hussain Qureshi @ Khan and hence seized property silver and gold nuggets be kept preserve till conclusion of trial.

Pune

Date -20.4.2011

(Mrs. Renuka M.Satav)

Jt. JMFC, Khadki, Pune

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Judgment are same word for the word as per original Judgment.

Name of Steno :- A.D.Gilbale, Steno L.G.

Court Name :- Renuka M. Satav

Date

Jt. Judicial Magistrate F.C., Khadki Pune
:- 25.5.2011