



Presented on : 17.09.2019
 Registered on : 17.09.2019
 Decided on : 28.07.2020
 Duration : YS MS DS
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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
JAYSINGPUR.

(Presided over by – Akash Baburao Redkar)

REGULAR CRIMINAL CASE NO.101/2019

CNR NO.MHKO070018072019

Exh. No. 25/B

State of Maharashtra)
 Through Officer In charge,) -- **Prosecution.**
 Jaysingpur Police Station,)
 Jaysingpur, Tah.Shirol, Dist.Kolhapur.)

- Versus -

1. Laxman alias Lucky Maruti Naik)
alias Sanadi,)
 Age About 26 years, Occu.- Labour,)
 R/o. Near Vasantrya Sugar Factory,)
 Madhav Nagar, Sangli,)
 Originally from Hosun,)
 Dist. Belgaon, State - Karnataka.)
2. Raghvendra alias Nagraj) -- **Accused.**
Shambhu Shetty)
 Age About 27 years, Occu.-Waiter)
 R/o. Near Vasantrya Sugar Factory,)
 Madhav Nagar, Sangli,)
 Originally from Mel Idgunji,)
 Tah.Honnabar, Dist.Karwar, Belgaon)
 State - Karnataka.)

OFFENCES PUNISHABLE UNDER SECTION 454, 457, 380
READ WITH SECTION 34 OF THE INDIAN PENAL CODE,
1860.

Advocates:-

Shri.R.N.Madake and Shri.Miraje, A.P.P. for the State.
 Shri.M.G.Badadare and Shri.S.S.Kamble, Advocate for the
 accused no.1 and 2.

J U D G M E N T

[Delivered on this 28 th day of July, 2020]

The accused no.1 and 2 are arraigned for offences punishable under Section 454, 457 and 380 read with Section 34 of The Indian Penal Code, 1860.

PROSECUTION'S CASE -

02. Abhijeet Kiran Lohar is resident of Sudarshan Chowk, Shahu Nagar, Tah.Shirol, Dist.Kolhapur (Hereinafter referred as 'the informant.'). He resides in rented premises. In between 11.30 pm. of 11/05/2019 to 06.00 am. of 12/05/2019, the informant went to sleep on terrace of his house. At about 06.00 am., the informant found that the lock of his house was broken. Locker inside the house was broken. Gold, silver ornaments and cash amounting to Rs.44,000/- were stolen. Hence, the informant lodged report with Jaysingpur Police Station. Accordingly, C.R.No. 187/2019 was registered against unknown person.

03. Local Crime Branch, Ichalkaranji got secret information that the accused persons in above mentioned crime number were supposed to gather near Railway Station, Jaysingpur. So, ASI Tipe of Local Crime Branch, Ichalkaranji took help of Jaysingpur Police Station and trapped both accused near Railway Station, Jaysingpur. He arrested both accused and prepared seizure panchnama of *Moped Bike, Manimangalsutra, Chain and Bormal* from possession of the accused. PSI K. B. Didwagh obtained custody of both accused, prepared arrest panchnama in C.R.No.223/2019. Both accused admitted their guilt in police custody. The accused no.2 showed places where they have committed theft. The accused no.1 showed place where they hid stolen articles. Accordingly, PSI

Didwagh prepared discovery panchnama and seized 16 articles from possession of the accused no.1.

04. After receipt of First Information Report, investigation was handed over to Police Naik M.K.Khedkar (PW3). Investigating Officer Police Naik M.K.Khedkar visited spot of offence, prepared spot panchnama. He obtained custody of both accused arrested in C.R.No.223/2019. He obtained custody of stolen property from C.R.No.223/2019. He recorded statement of witnesses. After collection of sufficient evidence, he submitted charge-sheet against both accused.

05. I framed charge for offences punishable under Section 454, 457, 380 read with Section 34 of The Indian Penal Code, 1860 against accused persons vide Exh.05. The contents of the charge were read over and explained to them. Both accused pleaded not guilty and claimed to be tried vide Exh. 06 and 07.

06. Considering the case of prosecution, the points for determination along with findings thereon with the reasons are as under:-

SR. NO.	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the prosecution proved that both accused in furtherance of their common intention, committed offence of house breaking in order to commit theft of informant's gold, silver ornaments and cash?	Yes.
2	Whether the prosecution proved that both accused in furtherance of their common intention, committed offence of house breaking by night into informant's house and committed offence of theft?	Yes.

3 Does the prosecution prove that both accused in furtherance of their common intention committed theft in informant's dwelling house ? Yes.

4 What order? The accused no.1 and 2 are convicted.

07. **Prosecution witnesses -**

<u>P.W.</u>	<u>Name of Witness</u>	<u>Exhibit</u>	<u>Relevance</u>
<u>No.</u>			
1	Abhijeet Kiran Lohar	9	Informant
2	Vishal Bhagwan Kamble	12	Panch witness
3	Mahadev Krishna Khedkar	17	Investigation Officer
4	Kiran Brahmadev Didwagh	22	Prepared Discovery and seizure panchnama and seized stolen articles in C.R.No.223/2019

08. **Documentary Evidence -**

- i. First Information Report (Exh.10)
- ii. Discovery panchnama of stolen articles as per information supplied by the accused no.1 (Exh.13).
- iii. Memorandum panchnama of the accused no.2 regarding places of offence. (Exh.14)
- iv. Discovery panchnama as to places of offence as per information supplied by the accused no.2(Exh.15).
- v. Spot Panchnama (Exh. 18).
- vi. Receipt about seized muddemal (Exh.19)
- vii. Memorandum panchnama of accused no.1(Exh. 23).

Defence of Both Accused -

09. Both accused did not lead evidence. Statement of accused persons under Section 313 of The Code of Criminal Procedure, 1973 is recorded below Exh.24 and 25. During cross-examination, both accused submitted that seized gold

ornaments belongs to them. Police prepared new gold ornaments by melting their gold and falsely implicate them. Hence, they claim acquittal.

10. Heard both sides.

REASONS

POINTS NO.1 to 3 :-

11. The informant deposed in consonance with prosecution's case. He deposed about house breaking and theft of gold, silver ornaments and cash amounting to Rs.44,000/- from his locker. The offence committed between 11.30 pm. of 11/05/2019 to 6.00 am. of 12/05/2019 i.e. during night time. He lodged report on the same date at about 02.20 pm. The cross-examination is in the form of denial. The informant lodged report against unknown person. The informant identified seized articles in police station. The informant claimed and received those articles from the Court.

12. Learned advocate for accused persons pointed out that the informant did not produce documentary evidence showing his ownership over gold ornaments. Both accused did not claim those gold ornaments during trial. Hence, the submission of learned advocate for both accused that the informant is not owner of stolen articles has no bearing.

13. The informant lodged prompt report (Exh.10) against unknown person. Hence, doubt as to truthfulness about report (Exh.10) does not arise. The informant's evidence found free of error and trustworthy. He proved commission of offence of house breaking by night and theft of gold, silver ornaments and cash in his house.

14. PSI Didwagh (PW4) obtained custody of both accused in C.R.No.223/2019. On 14/07/2019, he arrested accused under arrest panchnama. On 15/07/2019, the accused no.2 voluntarily gave confessional statement about commission of offence at different places in Jaysingpur city. He recorded statement of the accused no.2 regarding commission of offence. The accused no.2 showed different houses in Jaysingpur city namely, house at Beghar Vasahat, Udgaon, house near Jain Mandir, Udgaon, house near Sudarshan Chowk, in front of Dada Kachare Housing Society, Jaysingpur, House at Dipnagar, Jaysingpur, House at 5th lane, Laxmi Park, Jaysingpur, House at lane no.18, Laxmi Park, Jaysingpur. Accordingly, he prepared memorandum and discovery panchnama vide Exh.14 and 15. On same date, the accused no.1 gave confessional statement regarding disclosure of stolen articles. He prepared memorandum panchnama vide Exh.13. The accused no.1 led police staff and panch witnesses to a house in Chawl no.18 in the premises of Vasantdada Sakhar Karkhana, Madhavnagar. The accused no.1 took out hidden key near said house and opened lock. The accused no.1 took out stolen articles from cupboard. Accordingly, 16 articles were seized under discovery panchnama vide Exh.23 from possession of the accused no.1. The cross-examination is in the form of denial. Nothing revealed during cross-examination to doubt credibility of said witness.

15. Vishal (PW2) deposed about memorandum and discovery panchnama of the accused no.1 and 2. He corroborated testimony of PSI Didwagh (PW4). During cross-examination, he admitted that he did not recollect four boundaries of said house mentioned in panchnama vide Exh.15. He further admitted that police seized gold and silver

ornaments from said house and they returned to police station. He did not recollect number of said house. Police obtained his signature on panchnama at police station. Learned advocate for both accused pointed out that discovery panchnama prepared at police station, hence, cannot be relied upon. However, PSI Didwagh (PW4) denied that the discovery panchnama (Exh.23) prepared at police station. Precious gold and silver articles were seized from the possession of the accused no.1. Discovery of gold, silver ornaments is supported the version of PSI Didwagh (PW4) and Vishal (PW2). Hence, the minor omission in the testimony of panch Vishal (PW2) regarding memorandum statement of the accused no.1 does not vitiate prosecution's case.

16. Investigating Officer Police Naik M.K.Khedkar (PW3) deposed about preparation of spot panchnama, obtaining custody of both accused and gold ornaments from C.R.No.223/2019. During cross-examination, he denied that police seized accused's gold ornaments and prepared new ornaments as per description of stolen properties. He denied that police snatched gold ornaments from accused's sister and mother. Both accused neither depose nor produce any document to prove their defence. Hence, the defence seems to be afterthought. The role of Investing Officer Khedkar is very limited. The testimony of Investigating Officer Khedkar (PW3) is consistent and reliable.

17. Learned advocate for both accused relied on **MD.Faizan Ahmad @ Kalu Vs. The State of Bihar Cri.M.A.No.11 of 2013**, and **C.M.Girish Babu Vs. CBI, Cochin, High Court of Kerala Criminal Appeal No.377 of 2009** Hon'ble Supreme Court observed that "the Hon'ble High

Court was carried away by the heinous nature of the crime and in that it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a criminal Court allows its mind to be swayed by the gravity of offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing a great violence to the basic tenets of criminal jurisprudence.” The prosecution proved the case on the basis of credible evidence against the accused beyond all reasonable doubt. Hence, cited case law is not applicable to this case.

18. Learned advocate for both accused relied on **Banarsi Dass Vs. State of Haryana Criminal Appeal No.630 of 2003**, the Hon’ble Supreme Court observed that “in the light of statement of two hostile witnesses the demand and acceptance of illegal gratification cannot be said to have been proved by prosecution. Hence acquitted the accused.” facts are distinguished. Hence, not applicable.

19. Learned advocate for both accused submitted that evidence regarding discovery of stolen articles has to be discarded as to the confession statement of the accused no.1 and discovery panchnama had not been proved by panch witnesses. Section 27 of The Indian Evidence Act, 1872 does not lay down a rule that a confession statement has to be recorded only in presence of witnesses. Learned APP for the State relied on **Satyaprakash @ Suresh s/o. Shankar Dahiwale Vs. State of Maharashtra 2007 ALL MR (Cri.)2451** and **Appaso Shankar Aadsule Vs. State of Maharashtra 2015 ALL MR (Cri.) 1488**, the Hon’ble Bombay High Court held that “no bias is attributed to the investigating officer. Hence, there can be no hesitation in

accepting evidence of the investigating officer regarding discovery of weapon used in commission of offence.” In present case, evidence of investigating officer is consistent, credible and can be relied upon. Hence, said case law is applicable to this case. In present case, evidence of investigating officer is not bias, credible, consistent and can be relied upon. The investigation is not perfunctory. Hence, cited case law is applicable to this case.

20. Testimony of prosecution’s witnesses are consistent and corroborative. In the instant matter, all witnesses deposed their role in a piecemeal at an independent incident which need to be linked together. Every witness undoubtedly speaking truth regarding independent aspect of the case.

21. At the time of discovery, the police discharges the dual role of investigating officer and witness to the discovery of facts. As already discussed, no ill-intention or ulterior motive is conspicuous or inferred from record about false implication of accused persons by the Investigating Officer. Discarding the evidence of Investigating Officer only on the criteria of being police officer shows lack of prudence when there is no sufficient reason on record regarding his ill-intention. PSI Didwagh (PW4) prepared memorandum and disclosure panchnamas (Exh.13 to 15 and 23) as per information supplied by both accused. The accused no.2 showed places where they have committed offence of house breaking, theft and robbery. Further, stolen articles were discovered in consequences of information received from the accused no.1. Both accused persons were having exclusive knowledge about places of house breaking and stolen articles. The evidence of both Investigating Officer and panch witness are sufficient to hold

that both accused are involved in offence of house breaking and theft. Further, places of house breaking and stolen article were discovered in pursuant to the statement of both accused is proved.

22. Section 27 of The Indian Evidence Act, 1872 is an exception to the rule mentioned in Section 25 of the said Act. In the relevant section, discovery of fact which was in exclusive knowledge of both accused shall be proved. In the instant matter, it is proved through the testimony of PSI Didwagh (PW4) and panch witness Vishal (PW2). Both accused have given confession regarding commission of crime of house breaking and theft. In consequence of such confessional statement, the accused no.2 took police officer to various spot of incidents, where both accused committed offence of house breaking and theft. The accused no.1 handed over stolen articles from his house at Chawl No.18, in the premises of Vasantdada Sakhar Karkhana, Madhavnagar. Said information about places of offence and stolen property was in exclusive knowledge of both accused. Said articles were identified by the informant. Both accused did not claim those articles.

23. As discussed in previous point regarding confession and discovery of fact, the link between commission of crime and that of both accused is well established through discovery of fact under Section 27 of The Indian Evidence Act, 1872. As far as concerned with the phraseology 'soon after the theft', it shall be considered regarding facts and circumstances of the case. Soon after the incident does not show the immediate effect. Both accused were caught on suspicion and further investigation followed. They made disclosure to the police and accordingly, on the same day stolen properties were seized.

Therefore, the chain is well established. The time required to get accused persons was reasonable and come within ambit of soon after the incident.

24. In police custody, both accused made disclosure which was substantiated through the discovery of fact. The chain of circumstance is well established. The stolen articles seized from the house of the accused no.1. Therefore, in the light of above facts and circumstances, the presumption under Section 114 illustration (a) is necessary to draw. Both accused have to give account for possession of such articles. When they were put the question in their statement under Section 313 of The Code of Criminal Procedure, 1973 they could not give any account or explanation to that effect. The onus shifted on both accused. The presumption remained unrebutted. Therefore, it is found that both accused were either thieves or received the stolen articles. Both accused had not taken plea of receiving such articles from another person. The link between the crime and both accused is hereby established by the evidence brought on record by the prosecution. Therefore, it is presumed and found that both accused were the person, who had stolen the gold, silver articles and cash amounting to Rs.44,000/- from the dwelling house of the informant. It is therefore, held that accused are thieves.

25. It is proved beyond all reasonable doubt that the accused no. 1 and 2 committed house breaking by night and theft at different places in Jaysingpur City by sharing mens rea, in furtherance of their common intention. The prosecution successfully proved that both accused committed lurking house trespass, house breaking by night and theft. Therefore, the prosecution proved ingredients of Section 454, 457, 380

read with Section 34 of The Indian Penal Code, 1860. Hence, answered points no.1 to 3 in the affirmative.

POINT NO.4

(What Order)

26. The prosecution successfully proved that both accused in furtherance of their common intention committed house breaking and theft of stolen articles beyond all reasonable doubt. Both accused are held guilty for offences punishable under Section 454, 457 and 380 read with Section 34 of The Indian Penal Code, 1860. Maximum punishment prescribed for the offence of theft is imprisonment of either description for a term which may extend to 7 years or with fine or with both.

ON THE POINT OF SENTENCE -

27. The accused no.1 and 2 submitted that they are only earning member of their family. Police falsely implicated them. There is no one in the family to look after their family members. They prayed leniency in awarding sentence.

28. On the contrary, the prosecution had submitted that previous conviction is proved against both accused, therefore, they are liable to be punished. Both accused are convicted in Regular Criminal Case No.87/2019, 100/2019, 117/2019 by this Court.

29. The act of accused persons needs to be condemned. Accused persons indulge in the crime of house breaking by night and theft in locked houses. Due to such crime, general public are more expose to the fear of losing their valuables in locked houses. Such kind of act are proving to be menaced to

the society at large. The act of accused persons indicates their approach to get easy money without work. Accused persons are admittedly of young age. Their behaviour and conduct towards targeting innocent persons create terror in their mind. Accused persons have committed the crime after pre-planing and proper execution. The act is more psychological than material. Such kind of offences need to be treated with iron hand as to deter such accused to commit such kind of offences in future. The deterrent theory of punishment is found to be relevant as per facts and circumstances of the case. If accused persons are left scot free or shown leniency towards them then wrong message will disseminate in the society and the trust over the justice by the public at large will be lost. Punishment in the instant crime will fulfill dual purpose in the society. Firstly, accused persons and prospective accused, who shall attempt such kind of offences shall be deterred. Secondly, the trust of public at large will remain on administration of justice and justice delivery system.

30. Both accused shall not be awarded with the benefit of Probation of Offenders Act, as it is against the public at large. The purpose of such act is to give helping hand to such accused persons who had committed offence under the pressure of circumstances or in a haste without thinking over the repercussion of the same. In the instant matter, accused persons had thoughtfully and after preparation committed such kind of crime. Taking into consideration the age, social, economic background of accused persons and impact on the society, the rigorous imprisonment is found suitable and justified to combat with such kind of menace. Accused persons are habitual offender. Therefore, they need to be dealt with strict hands. Considering all circumstances, consecutive

sentence is found to be appropriate.

31. The crime is of the year 2019. The matter lasted for about Ten months. During this period, the expenses incurred on trial including expenses and remuneration to police machinery, salaries and remuneration to Court staff, electricity charges, stationary charges, cost of prosecution etc. These expenses needs to be calculated as it is outcome of the act of accused persons. At the same time, the mental agony of the victim informant shall also be taken into consideration. In the light of all facts and circumstances, age of accused persons, their social, political, financial status, the fine amount of Rs.25,000/- (Rupees Twenty-Five Thousand only) each will justify the purpose of incurring expenses on prosecution. Out of fine amount, Rs.30,000/- (Rupees Thirty Thousand only) be given to the informant for the mental agony suffered by him and remaining amount of Rs.20,000/- (Rupees Twenty Thousand only) be credited to the government. In view of the above discussion, following order is passed:-

ORDER

1. The accused no.1 **Laxman alias Lucky Maruti Naik alias Sanadi**, R/o. Near Vasant Rao Sugar Factory, Madhav Nagar, Sangli, Originally from Hosun, Dist. Belgaon, State - Karnataka and accused no.2. **Raghvendra alias Nagraj Shambhu Shetty** R/o. Near Vasant Rao Sugar Factory, Madhav Nagar, Sangli, Originally from Mel Idgunji, Tah. Honnavar, Dist. Karwar, Belgaon State - Karnataka are convicted of offences punishable under Section 454, 457 and 380 read with Section 34 of The Indian Penal Code, 1860 vide Section 248(2) of The Code of Criminal Procedure, 1973.
2. The accused no.1 and 2 shall suffer rigorous imprisonment for the period of **2 (Two) years** for the offence punishable under Section 454 read with Section 34 of The Indian Penal Code, 1860.

3. The accused no.1 and 2 shall suffer rigorous imprisonment for the period of **2 (Two) years** for the offence punishable under Section 457 read with Section 34 of The Indian Penal Code, 1860.
4. The accused no.1 and 2 shall suffer rigorous imprisonment for the period of **2 (Two) years** for the offence punishable under Section 380 read with Section 34 of The Indian Penal Code, 1860 and shall pay fine of **Rs.25,000/- (Rupees Twenty-Five Thousand only) each**, in default of payment of fine, the accused no.1 and 2 shall suffer rigorous imprisonment for 4 (Four) months. **Out of fine amount, Rs. 30,000/- (Rupees Thirty Thousand only) be given to the informant Abhijeet Kiran Lohar, R/o.Sudarshan Chowk, Shahu Nagar, Tah.Shirol, Dist.Kolhapur** under Section 357 (1)(b) of The Code of Criminal Procedure, 1973 and **remaining amount of Rs.20,000/- (Rupees Twenty Thousand only) be credited to the government** under Section 357(1)(a) of The Code of Criminal Procedure, 1973.
5. The accused No.1 and 2 are in jail since 29.07.2019. They are entitled for set off under Section 428 of The Code of Criminal Procedure, 1973 for the period they have undergone.
6. Seized properties i.e. *Gold Tops, Gold Chain, Silver Anklet and Silver Lamp* are already returned to the informant in Criminal Miscellaneous Application No.198/2019. Said interim order is confirmed.
7. The sentences shall run consecutively.
8. The bail bonds of accused persons stand cancelled.
9. The copy of judgment be given to both accused free of costs forthwith.
[*Judgment dictated and pronounced in open Court.*]

[**Akash B. Redkar**]

Date – 28.07.2020.

Judicial Magistrate First Class,
Jaysingpur.