Bombay High Court
The State Of Maharashtra vs Shaikh Jafter Abbas & 5 Ors on 11 May, 2017
Bench: Dr. Shalini Phansalkar-Joshi

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 982 OF 2001

The State of Maharashtra
at the instance of Inspector
R.P.F. Lonavala, Dist.Pune

V/s.

1. Shaikh Jafar Abbas ]
age: 28 years, Occn. Truck Driver ]
r/o Nigdi, Pune -44 ]
]
2. Ganpat Ambalal Mehata ]
age: 41 yrs. Occn. Business ]
r/o Air India Road, Rupi Ram Chawl Colony]
Mumbai 29. ]
]
3. Gopinath Parmeshwar Acharya, ]
age about 38 years ]
Occn. Service. ]
r/o Railway Quarter No.MH/RBIC/8/Bngla ] Respondents.
Lonavala, Dist.Pune ] Original
] Accused
4. Bijendra Kumar Rambaksha Mehata ] Nos
age: about 50 yrs. Occn.Railway Servant ] 1,2,3, 5 and 6
r/o C.T.F.O. Lonavala ]
Dist.Pune ]
]
5. Keval Krushna Sharma ]
age about 44 years, ]
Occn.Service ]
r/o Nigdi, Dist.Pune-44 ]

CRIMINAL APPEAL NO. 131 OF 2002

The State of Maharashtra ]
at the instance of Inspector ]
R.P.F. Lonavala, Dist.Pune ]

V/s.

Avinash Vitthal Dharwadkar, ]
age: 42 years, Occn.Railway contractor ]
r/o Khambewadi, Block No.1, Kopri Road ]
Naupada, Thane. ]

Mr. Amit Palkar, APP for the State in both
the appeals.
Mr. Pravin D. Kadam, for respondent in
Criminal Appeal No.131 of 2002.
None for the Respondents in criminal
Appeal No.982 of 2001.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATED : 9th MAY, 2017.

ORAL JUDGMENT :

1] Both these appeals are preferred by the State against one

and the same judgment and order dated 04.06.2001, passed by the Judicial Magistrate First Class, Railway Court, Pune, in R.C.C. No.70 of 1994. Therefore, they are being decided by this common RJ APEAL 982 OF 2001.odt judgment.

2] By Criminal Appeal No.982 of 2001, State is challenging acquittal of the the respondents for the offence punishable under Section 3(a) of the Railway Property (Unlawfully Possession) Act, 1966(for short called as, "R.P. U.P. Act"); whereas Criminal Appeal No.131 of 2002 is preferred by State seeking enhancement of sentence awarded to accused No.4.

3] Brief facts of the appeals can be stated as follows :-

On 12.2.1994, while P.W.1 R.P.F. Naik- Jamdade was on duty alongwith his colleague P.W.19 Sonawane, and two others, at about 6.55 p.m. at Bit No.5/5, they found 20 to 25 persons loading in

one truck iron articles i.e. OHE Poles called as "structures" belonging to the railway property. On enquiry, these persons failed to give satisfactory explanation. Out of them, respondent No.1 Shaikh Jafar and respondent No.3 Gopinath Acharya, were from the railway staff and on enquiries with them, they informed P.W.1 RPF Naik Jamdade that they were shifting these railway structures from Lonawala Railway Yard to Kurla Railway Yard where railway work RJ APEAL 982 OF 2001.odt was in progress. P.W.1 RPF Nayak - Jamdade, was however, not satisfied with the explanation and therefore, he produced the said truck and respondent No.1 Shaikh Jafar and respondent No.3 Gopinath Acharya before P.W.2 RPF Inspector - Rajkumar Agnihotri. 4] P.W. 2 Agnihotri then made enquiry about ownership of three structures which were loaded in the said truck bearing No.MH- 14/4220. He also found that respondent No.2 Ganpat, who was alongwith other persons loading the truck on the spot, was unable to give satisfactory explanation. On further enquiries with them, he was found that respondent Nos. 4 Bijendra Mehata and 5 Keval Sharma, who were also serving in railway, in collusion with other respondents, were helping Accused No.4, who was subsequently convicted in this case, in carrying out these structures from the spot of Lonawala Railway yard to Kurla where another work was going on and claiming double payment. In the course of investigation, at the instance of accused No.4, some more structures belonging to railway, totally 19 in number came to be seized under panchnama. It was also transpired that the wife of respondent No.2 Ganpat Mehata and wife of respondent No.3 Gopinath Acharya had received RJ APEAL 982 OF 2001.odt cheques of Rs.6,000/- and Rs.15,000/-, respectively, towards the consideration for assisting accused No.4 Avinash Dharwadkar in committing theft of these railway structures. As a outcome of this enquiry, P.W.2 RPF Inspector Agnihotri lodged complaint on behalf of Railway Authorities against respondents and accused No.4, for offence punishable under Section 3(a) of R.P.U.P. Act, on 30.5.1994, in the trial Court.

5] On this complaint, the trial Court recorded evidence of P.W.1 Jamdade and P.W.2 Agnihotri before framing of charge. Through their evidence, various documents were proved and on the basis thereof, after satisfying itself that prima face case, has been made out against respondents and accused No.4, the trial Court framed charge against them vide Exh.294. All the accused, including respondents, pleaded not guilty and claimed trial raising defence of denial and false implication.

6] In support of its case, Railway Authorities examined in all 19 witnesses. Out of them, 7 witnesses, namely, P.W. l6, 7, 8, 15, 19, 20 and 21 were declared hostile and had not supported the RJ APEAL 982 OF 2001.odt prosecution case.

7] On appreciation of evidence of remaining witnesses on record, the trial Court was pleased to hold the guilt of accused No.4 to be proved beyond reasonable doubt and convicted him alone for the offence punishable under Section 3(a) R.P.U.P Act and sentenced him to suffer S.I. for six months and to pay fine of Rs.3,000/- in default to suffer S.I. for one month. As regards remaining accused the trial Court was pleased to hold that the prosecution has not proved their guilt beyond reasonable doubt and hence acquitted them extending such benefit of doubt.

8] This judgment of the trial Court is challenged in this appeal by learned APP by pointing out that there is consistent evidence of P.W.1 RPF Nayak Jamdade, fully supported and corroborated by the evidence of P.W.2 RPF Inspector Agnihotri and P.W.19 Sonawane, which clearly establishes that the

respondents were found loading in the truck the structures belonging to railway. It is submitted by learned APP that the respondents were caught raid handed and prosecution has also established that structures belonged RJ APEAL 982 OF 2001.odt to railway. Some of the structures were also recovered at the instance of original accused No.4 Dharwadkar. No satisfactory explanation is offered by any of the respondents or even by accused No.4 for shifting away or taking away structures from the railway yard to another place. In such situation, according to learned APP, the trial Court has committed an error in extending the benefit of doubt to respondents, stating that no chain of circumstance is established by prosecution against them. According to learned APP, therefore, the impugned judgment and order of the trial Court is required to be quashed and set aside holding that respondents are guilty of the charges framed against them.

9] As regards Appeal No.131 of 2002, it is submitted by learned APP that though the trial Court has convicted accused No.4, for the offence punishable under Section 3(a) of R.P.U.P. Act, the punishment imposed by the trial Court is too meager and inadequate. It is urged that the punishment prescribed for offence punishable under Section 3(a) of R.P.U.P. Act is imprisonment for a term which may extend to five years. It is urged that only in the case of special and adequate reasons to be mentioned in the judgment, RJ APEAL 982 OF 2001.odt such imprisonment can be less than one year. Here in the case, it is urged that trial Court has not assigned any reasons in the judgment for imposing imprisonment of six months, which is less than one year and therefore, according to learned APP, interference is warranted in the impugned judgment of the trial Court on this count also for enhancement of punishment to accused No.4.

10] At the outset, it has to be stated that the law relating to the jurisdiction of the Appellate Court while dealing with the appeal against acquittal is fairly well settled and crystalized in the plethora of the judgments of the Apex Court, one of such judgment being in case of Tota Singh -vs- State of Punjab, A.I.R. 1987 SC 1083. In this case, the Apex Court was pleased to observe as under :-

> "The jurisdiction of the appellate Court, in dealing with the appeal against the order of acquittal is circumscribed by the limitation that no interference is made with the order of acquittal unless the approach taken by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any Court RJ APEAL 982 OF 2001.odt acting reasonably and judiciously and is therefore liable to characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

11] In another decision with C. Antony -vs- K.G. Raghavan Nair A.I.R. 2003 SC 182, the Apex Court was further pleased to observe, "Though the appellate Court has power to review the evidence upon which the order of acquittal is passed still while exercising such an appellate power in a case of acquittal, the appellate Court is under an obligation to first come to a conclusion that the conclusions arrived at by the trial Court for good reasons are either unreasonable or contrary to the

material on record. In the absence of any such finding, the High Court could not take a contra view merely because another view was possible on the material on record".

RJ APEAL 982 OF 2001.odt 12] In the light of this settled legal position, if this Court appreciates the evidence on record, it cannot be said that the view taken by the trial Court is manifestly illegal or perverse so as to warrant interference therein. It may be true that the evidence on record goes to prove that respondents were found loading the railway structures in the truck, as deposed by P.W.1 Jamdade and P.W.19 Sonawane and at the relevant time, they were also unable to give satisfactory explanation except for the fact that accused No.4 Dharwadkar, has directed them to take these structures from Lonawala yard to Railway Yard at Kurla. However, the impugned judgment of trial Court reveals that Railway had placed order to supply these various structures at three places namely Kurla, Lonawala and Kalyan. The documentary evidence is also brought on record to that effect. As per prosecution case, accused No.4 had derived pecuniary advantage by supplying the same structures at these three different places and thereby obtained double payment. However, so far as the present respondents are concerned, it appears that they have acted under belief that these structures were genuinely to be transported from Lonavala Yard to Kurla Yard. There is nothing on record to show that they were aware about the accused RJ APEAL 982 OF 2001.odt No.4 gaining pecuniary advantage by showing the supply of the same structure at two different places.

13] In paragraph No.49 of the impugned judgment, the trial Court has also considered the evidence relating to the alleged cheques issued in the name of Bina Acharya -wife of respondent No.3 Gopinath Acharya; and in the name of wife respondent No.4 Mehta, and it was found by the trial Court that the prosecution has not brought sufficient material on record to show that said cheques were issued by accused No.4 in consideration of the alleged act of taking away property belonging to Railways. On scrutinizing the evidence of all the witnesses, the trial Court has found that the prosecution has failed to establish necessary link connecting to the respondents for the alleged offence or to the penal act of accused No.4 and hence the benefit of doubt was extended to respondents and rightly held guilty accused No.4.

14] In my considered opinion, therefore, such conclusions as arrived at by the trial Court are based on the appreciation of evidence on record. Hence, as the view taken by the trial Court RJ APEAL 982 OF 2001.odt cannot be characterized as perverse or manifestly illegal, no interference is warranted in the said view.

15] As regards Appeal No.131 of 2002, which is preferred for enhancement of sentence imposed on accused No.4, it is true that section 3(a) of the R.P.U.P. Act prescribes imprisonment for a term which may extend to five years or with fine or with both and only for the special and adequate reasons to be mentioned in the judgment, such imprisonment can be less than one year. In this case admittedly the trial Court has not assigned any reasons for imposing punishment of six months which is less than one year. However, taking into consideration the time of 23 years lapsed between the date of incident i.e. 12.2.1994 till decision of this appeal, and the fact that the record does not show any appeal preferred by the accused No.4, against his conviction, at this stage, it would not be proper to enhance the said punishment, especially having regard to the peculiar facts of the case where accused No.4 has raised specific defence. Hence I do not find any reason, at this stage, to

interfere in the said judgment on this score also, so as to enhance the punishment imposed on accused No.4.

RJ APEAL 982 OF 2001.odt 16] As a result, both the appeals fail and hence liable be dismissed. Hence following order.

Order Both these appeals are dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]