.. 1 .. <u>R.C.C.No. 618/ 2017</u> <u>Judgment contd......</u>

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Presented On: 17.02.2017 Registered On: 17.02.2017 Decided On: 06.04.2017 Duration: 00 Y 01 M 19 Ds

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, NAGPUR. (Presided over by D.P. Ragit)

Reg. Criminal Case No. 618/2017

Exh. No.20

State of Maharashtra, Through the Incharge of Police Station, Police Station- Ambazari, Nagpur. Dist. Nagpur.

-Vs -

Rahul S/o. Chhotu Suryawanshi, Aged 24 Yrs, Occu.- Painting, R/o. Pandhrabodi, behind Police Chowki, Nagpur.

Accused

Prosecution

<u>Charge</u>: <u>Offence punishable under Section 379 of the Indian Penal Code</u>.

Mr. A.P. Singh, Ld. APP for the State. Mr. D.G. Prasasd, Advocate for Accused.

JUDGMENT

(Delivered on this 6th day of April, 2017)

1] Accused stands prosecuted for the offence punishable under Section 379 of the Indian Penal Code.

2] Brief facts of the prosecution case are as under :-

That the informant Ms. Manisha Shyamdeo Murkute is residing at Plot No. F/52, Raghuveer Apartment, Hill Top, Ambazari, Nagpur. Informant had purchased the vehicle Access bearing No. MH-31-ED-2566 from Prakash Jumani, prior to two years back. On 20.8.2016, informant parked the said vehicle Access in Parking place of said Raghuveer Apartment, at about 7.30 p.m. On 21.8.2016, at about 2 p.m., the informant went to the Parking place, where she had parked her vehicle, but she did not find the said vehicle there. The informant took the search of the vehicle, but did not find the same, and she thought that somebody-else has stolen the said vehicle. She went to the P.S. Ambazari, Nagpur, and lodged report vide Exh.7 on 20.8.2016.

- 3] P.S. Ambazari, Nagpur has registered Crime No.206/2016 on 30.8.2016 as per FIR vide Exh.8 against unknown person. Accused was arrested by the Crime Branch, Nagpur City, and he gave a memorandum statement about commission of this Crime, and Crime Branch, Nagpur, has recovered and seized the stolen vehicle i.e. Access bearing No. MH-31-ED-2566 from the accused. Being this Crime was of P.S. Ambazari, the accused was transferred to P.S. Ambazari. N.P.C. Narendra Thakur, B.No. 5438, (Investigating Officer) did the investigation. After the completion of investigation, Investigating Officer has filed Chargesheet for the offence punishable under Section 379 of Indian Penal Code against accused, for his trial before the Court.
- 4] I have framed the Charge at Exh.2 for the offence punishable

under section 379 the Indian Penal Code against accused which was read over and explained to him in his vernacular, to which he pleaded not guilty and claimed to be tried. The defence of the accused is of total denial and of false implication.

5] Following points arose for my determination and I have recorded my findings against each of them for the reasons to be discussed in the subsequent paras as under:-

	POINTS	FINDINGS
1)	Whether the prosecution proves that in between 19.30 hours of dated 20.8.2016 to 14.00 hours of dated 21.8.2016, at Flat No.F/52, Raghuveer Apartment, Nagpur, the accused intending to take dishonestly Suzuki Access vehicle bearing No. MH-31-ED-2566, worth of Rs.25,000/- out of the possession of informant Ms. Manisha Shyamdeo Murkute, without her consent and moved it in order to such taking?	<u>In the Affirmative.</u>
2)	What order ?	<u>As per final order.</u>

REASONS

AS TO POINT NO.1:

To prove the alleged offence, the prosecution has examined in all four witnesses. Against this, the statement of accused under Section 313 of Cr.P.C. is recorded at Exh.17. The defence of accused is of total denial and of false implication. Heard, Ld. A.P.P. Mr. A.P. Singh for the State and Ld. Advocate Mr. D.G. Prasad for accused. Legal Aid Counsel

Mr. R.F. Patle is absent on today, and he was also absent on yesterday. Ld. APP has argued that prosecution has proved the alleged offence of theft of Access vehicle of informant by the accused from the Raghuveer Apartment without her consent and the said vehicle had been seized by the police from the possession of accused, by producing the evidence of Manisha Shyamdeo Murkute (Informant), P.W.No.1 P.W.No.2 Chandrashekhar Ramesh Katre (Panch). P.W.No.3 Narendra Avdheshsingh Thakur (Investigating Officer) and P.W.No.4 Pravin Bhila Patil (Officer of Crime branch who has recovered the stolen vehicle from the accused). Ld. APP has prayed for conviction of the accused for the offence punishable under Section 379 of Indian Penal Code. Ld. Advocate for accused has argued that accused has been falsely implicated by the police in this case and informant does not know who has stolen the vehicle and prosecution has failed to prove the alleged offence of theft of vehicle Access from the possession of informant, by producing sufficient and cogent evidence on record. Lastly, he has prayed for the acquittal of accused from the offence punishable under Section 379 of Indian Penal Code.

Considering the submissions of both the sides, I have gone through the record of the case. The prosecution has come-up with the case that in between 19.30 hours of dated 20.8.2016 to 14.00 hours of dated 21.8.2016 at Flat No.52, Raghuveer Apartment, Nagpur, where the informant Ms. Manisha Shyamdeo Murkute had parked her vehicle i.e. Suzuki Access bearing No. MH-31-ED-2566, and the accused had committed theft of said vehicle which was seized by P.W.No.4 Pravin

Bhila Patil i.e. Police Officer of Crime Branch, Nagpur City, Nagpur, from the accused in pursuance of memorandum statement under Section 27 of Evidence Act. The defence has denied the commission of alleged theft of vehicle by the accused.

8] To prove the alleged offence, the prosecution has examined P.W.No.1 Manisha Shyamdeo Murkute (Informant and owner of the vehicle) at Exh.6. She has deposed that she had parked her Scooter Access bearing No. MH-31-ED-2566 in the Parking place of Raghuveer Apartment, Hill Top, Nagpur, where she is residing, and she did not find her vehicle in the said Parking place on the next day, though she took the search of the same for two days, and she lodged report vide Exh.7 to P.S. Ambazari. P.W.No.1 Manisha has deposed that she has purchased the said vehicle from Prakash Jumani and she got the said vehicle on Supratnama as per the Order of the Court. P.W.No.1 Manisha has deposed in her cross-examination that she can not tell who had stolen the said vehicle and she does not know the accused. Needless to say that alleged incident of theft of vehicle Access was not occurred in the presence of P.W.No.1 Manisha, so the instant case is based upon the circumstantial evidence and not on the direct evidence. The prosecution is under obligation to link-up the chain of circumstances to bring the accused to the home of guilt to show the only possibility that accused person only has committed the theft of said vehicle.

9] On appreciating the evidence of P.W.No.1 Manisha, the

defence has not put any suggestion to her by denying the ownership of informant Manisha over the said vehicle, and theft of the said vehicle from the Raghuveer Apartment where she was residing. Thus, the informant Manisha (P.W.No.1) appears to be the owner of the said vehicle Access bearing No. MH-31-ED-2566 which was found to be stolen from the Raghuveer Apartment where she was residing.

- The prosecution has examined P.W.No.2 Chandrashekhar Ramesh Katre (Panch) at Exh.9. He has deposed that on 11.12.2016, police had called him as a panch in the office of Crime Branch, Nagpur, where the accused gave a memorandum statement vide Exh.10. He has further deposed that accused had produced the said Moped vehicle at Gajanan Nagar, Nagpur, and it was seized by the police as per seizure memo vide Exh.11. Defence has brought in the cross-examination of P.W.No.2 Chandrashekhar that he went to Crime Branch Office, Nagpur, on 11.12.2016 as the Laptop of his friend was being stolen. Thus, the presence of P.W.No.2 Chandrashekhar Katre in the office of Crime Branch, Nagpur, where the memorandum statement vide Exh.10 of accused was recorded by the police, is brought on record by the defence, and same can not be doubted.
- Defence has not brought any evidence on record during the cross-examination of P.W.No.2 Chandrashekhar Katre to say that his evidence is unreliable and can not be considered. It is not the suggestion of the defence to P.W.No.2 Chandrashekhar that he is the habitual panch of the police. It appears from record that P.W.No.2

Chandrashekhar was a chance panch witness in the office of Crime Branch, Nagpur, as he had been to the said office alongwith his friend, in respect of theft of Laptop of his friend. Thus, the evidence of P.W.No.2 Chandrashekhar appears to be reliable, trustworthy and same can be considered, so far as the memorandum statement under Section 27 of Evidence Act of accused and seizure of stolen vehicle as per seizure panchnama in pursuance of memorandum statement of accused.

P.W.No.2 Chandrashekhar has proved the memorandum 121 statement dated 11.12.2016 of the accused vide Exh.10 and the seizure of the Access vehicle at Gajanan Nagar at the instance of accused as per seizure panchnama vide Exh.11, which appear to be the xerox copies. It has come in the evidence of P.W.No.4 Pravin Bhila Patil (who has recorded the memorandum statement of accused and recovered and seized the said vehicle Access from the possession of accused) that original memorandum statement of accused and seizure memo are filed in Crime No.2937/2016 of P.S. M.I.D.C., so it's xerox copies are produced in this Crime. As the original memorandum statement of accused and seizure panchnama are filed in Crime No.2937/2016 of P.S. M.I.D.C., and its xerox copies produced in this Crime are duly proved by P.W.No.2 Chandrashekhar and P.W.No.4 Pravin Bhila Patil. Thus, the xerox copies of memorandum statement of accused vide Exh.10 and seizure memo vide Exh.11 of said vehicle, can not be doubted on that basis.

- 13] On appreciating the evidence of P.W.No.4 Pravin Bhila Patil who has deposed at Exh.15, it appears that on 11.12.2016 he was attached to the Crime Branch, Nagpur City, Nagpur, as API and the accused was in his custody in Crime No.2937/2016 of P.S. MIDC, and accused had confessed 11 Crimes and shown readiness to produce the stolen articles. P.W.No.4 Pravin Bhila Patil has deposed that accused gave a memorandum statement vide Exh.10 in respect of stealing of the Access vehicle from the jurisdiction of P.S.Ambazari and keeping of said vehicle at Gajanan Nagar, MIDC, Nagpur, and also shown readiness to produce the said vehicle, and accordingly, they went to Gajanan Nagar, and accused produced the said Suzuki Access vehicle bearing No. MH-31-ED-2566 and it was seized by him as per seizure panchnama vide Exh.11, in presence of panchas. P.W.No.4 Pravin Bhila Patil has denied the suggestions of defence put-up during his cross-examination. The defence has failed to elicit any circumstances during the cross-examination of P.W.No.4 Pravin Bhila Patil to show that his evidence in respect of memorandum statement vide Exh.10 of accused and seizure panchnama vide Exh.11 of the vehicle Suzuki Access, is not believable. Thus, it appears that the evidence of P.W.No.4 Pravin Bhila Patil is trustworthy and it needs to be considered.
- Prosecution has examined P.W.No.3 Narendra Avdheshsingh Thakur (Investigating Officer) who was attached to P.S. Ambazari as Naik Police Constable on 21.12.2016. P.W.No.3 Narendra Thakur has deposed at Exh.12 that he did the investigation in this Crime, sought the Production Warrant of accused, arrested the accused as per arrest

memo vide Exh.13, recorded the statements of witnesses and filed the Chargesheet against the accused. The defence has put the suggestions to P.W.No.3 Narendra Thakur during his cross-examination which are denied by him. Defence has failed to elicit any circumstances during his cross-examination to disbelieve his testimony.

Considering the totality of the evidence of P.W.No.1 Manisha 15] Murkute (Informant), P.W.No.2 Chandrashekhar Katre (Panch of memorandum statement of accused and seizure panchnama of stolen vehicle Suzuki Access), P.W.No.3 Narendra Thakur (Investigating Officer) and P.W.No.4 Pravin Bhila Patil (Police Officer of Crime Branch, Nagpur City, Nagpur) in respect of memorandum statement of the accused vide Exh.10 and seizure of stolen article i.e. Suzuki Access as per the seizure panchnama vide Exh.11 in pursuance of the memorandum statement vide Exh.10 of the accused, it appear that the prosecution has linked up the chain of circumstances to show that only accused has committed the theft of vehicle Suzuki Access bearing No. MH-31-ED-2566 from the Parking place of Raghuveer Apartment, where the informant Ms. Manisha Murkute was residing, and said vehicle was recovered from the accused. The prosecution has proved the alleged offence of theft of vehicle Suzuki Access of the informant by producing sufficient and cogent evidence on record beyond the shadow of reasonable doubt against the accused. I hold the accused guilty for the offence punishable under Section 379 of Indian Penal Code. In view of above discussion, I answer point No.1 in the Affirmative.

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I stop here for a while to hear the accused on the point of sentence.

Date: 06.04.2017

(D.P.Ragit) Chief Judicial Magistrate, Nagpur

Heard, the accused and Ld. Advocate Mr. D.G. Prasad for the accused, on the point of sentence. Accused and his advocate Mr. Prasad have submitted that accused is under detention for about 3½ months, so set-off of the said period be given to the accused while convicting the accused for the alleged offence. He has further submitted that the accused is the earning member of the family and he is residing with his grandmother and his parents are dead. He has further submitted that he has a younger sister and prayed for taking leniency against him.

Heard, Ld. APP Mr. Singh for the State on the point of sentence. He has submitted that accused is a habitual offender and some Crimes of P.S. MIDC and other Police Stations are pending against him. He has further submitted that if the accused is convicted by imposing the sentence which is undergone by him, then the accused will commit the offence of theft again. He has prayed for the severe punishment against accused as per the provisions of law.

19] The prosecution has contended that many cases of P.S. MIDC

and other Police Stations are pending against accused. However, prosecution has not produced the extract of the Criminal cases which are filed against accused and pending before the concerned Courts. The prosecution has not produced any extract on record to show that accused has been convicted in such theft case earlier. The accused is of aged 24 years old. Looking to the nature of the offence and contents of memorandum statement of accused showing involvement in other theft Crimes, I do not want to extend the benefit of provisions of Probation of Offenders Act to the accused. Looking to the proved nature of the offence and facts and circumstances of the case, the accused is required to be adequately punished. Following sentence would meet the ends of justice. Hence, I proceed to pass the following order.

ORDER

Accused Rahul S/o. Chhotu Suryawanshi, R/o. Pandhrabodi, Nagpur, is hereby convicted under Section 248(2) of Code of Criminal Procedure 1973, for the offence punishable under Section 379 of Indian Penal Code and he is sentenced to suffer Rigorous Imprisonment for Six months and to pay a fine of Rs. 500/- (Rs. Five Hundred only) in-default to suffer further Rigorous Imprisonment for One month.

Accused is shown to be arrested on 22.12.2016 and produced before the Court on 23.12.2016, and he was in Police Custody and thereafter in Magisterial Custody. He is

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under detention till the date i.e. for 3½ months. The Set-

off under Section 428 of Cr.P.C. of the said undergone

detention period be given to the accused, against the

sentence of imprisonment imposed on him.

3] Seized property i.e. the Suzuki Access vehicle bearing No.

MH-31-ED-2566 is already given on Supratnama to the

informant Ku. Manisha Shyamdeo Murkute, R/o. Hill Top,

Ambazari, Nagpur, so the informant is permitted to retain

the said vehicle and the Supratnama Bond of the said

vehicle stands cancelled, after the appeal period is over.

4] Copy of Judgment be given to the accused at free of Costs.

Nagpur:

Dated: 06.04.2017.

(D.P. Ragit)

Chief Judicial Magistrate,

Nagpur.

Certificate

I affirm that the contents of this PDF Judgment are same word to word, as per original Judgment.

Name of Stenographer :- Ku. G.A. Joshi.