IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE SIDE CRIMINAL APPEAL NO.424 OF 1996 The State of Maharashtra (Through Laxmipuri Police Station, Kolhapur)) ….Appellant/Complainant V/s. Shivaji Haribhau Jirase R/o. Laxtirtha Vasahat, Kolhapur))) ….Respondent/Accused ---Ms. Pallavi Dabholkar, APP for State. ---CORAM : K.R.SHRIRAM, J. DATE : 11th NOVEMBER 2019 ORAL JUDGMENT :

1 Accused was charged under Section 392 of the Indian Penal Code on the allegation that at about 8.30 p.m. on 16th October 1992 at Laxtirtha Vasahat, Kolhapur accused committed theft of wrist watch and cash of Rs.25/- from the possession of complainant - Suresh Shivaji Raval by brandishing a knife and threatening to kill him if he did not part with it. According to the prosecution, complainant - Suresh Shivaji Raval was going to visit a friend on his two wheeler and accused waved to him to stop and requested for lift. Complainant gave accused lift but after going some distance, accused asked complainant to stop the two wheeler, brandished a khanjar (a kind of knife), threatened to kill him if he did not hand over his watch and money and snatched the wrist watch of Citizen Quartz make worth about Rs.1500/- and also cash of Rs.25/- from complainant. Accused then told complainant to go away from the spot without even looking back.

Complainant, as he feared for his life, without any protest left the spot, then went home and thereafter went to Laxmipuri Police Station and reported the matter vide Exhibit 15. P.S.I. – Ramakant Keraba Mane (PW-7) reduced the complaint in writing (Exhibit 15) at about 21:30 hours on 16th October 1992, registered the crime and issued the FIR. Time gap between the offence and registering the FIR was only one hour.

2 It is also stated that on 16th October 1992, i.e., the date of offence, Police Head Constable - Shete, Badge No.1813, who was on patrolling duty at Rankala Tower area, alongwith his staff, saw accused asking for lift from persons passing by in their vehicles. Since the said Shete (PW-6) found the actions of accused rather suspicious, he went to enquire with accused what he was doing. Accused, on seeing PW-6, ran away from the spot and PW-6 chased accused and caught him. When physical search of the accused was taken, one dagger was found in possession of accused. PW-6 has also stated that at that stage Police Constable – Sunil Ingavale and Police Constable – Kishor Patil were also with him on patrolling duty. These two police constables have not been examined by the prosecution. Then accused was taken to Laxmipuri Police Station and produced before the P.S.I., i.e., Ramakant Keraba Mane (PW-7).

3 PW-6 in his examination in chief stated that on enquiry they came to know that accused had committed some offences. Thereafter, two panch witnesses, PW-1 – Rajendra Ashok Mudholkar and another, who was

not examined, were called to the police station to record the seizure panchnama for the knife and in their presence personal search of accused was taken. In the panchnama, PW-1 has stated that accused was wearing a pant and shirt and underwear and one knife and cash amount of Rs.265/ only was found in his custody. The knife was in leather cover, which was sharp on both sides and was 9 inches long alongwith handle. The length of

the blade was 5 inches long and it was old one. Police took custody of the knife for investigation. The panchnama is supposed to have been taken at 22.30 hours and completed at 22.40 hours. There is no mention of wrist watch.

4 In cross examination, PW-1 has stated that it was around 6.00 p.m. to 6.30 p.m. when police started preparing the seizure panchnama. I would give a benefit of doubt because the panchnama is dated 16th October 1992, whereas the evidence has been recorded on 4th January1996. At the same time, I have to note that the prosecution has to prove it's case beyond reasonable doubt. This personal search of accused should have been taken when he was chased and caught by PW-6. PW-6 stated that around 10.00 p.m. on 16th October 1992 he had gone to Rankala Tower area where he saw one person was asking for lift from persons passing by in vehicles and he felt it rather suspicious and when he made enquiry, the said person ran away and he chased the person, caught him on the spot and he found a dagger. That is the time, at which, I would have expected a personal search by

panch witnesses to have been produced and not after taking accused to the police station. The time gap between the two, i.e., PW-6 arresting the accused in Rankala Tower area (10 p.m.) and panchnama being drawn in the police station (10.30 p.m. – 10.40 p.m.) is rather close. I would have expected it would have taken 10 to 15 minutes for PW-6 to enquire with accused, chase and catch him and bring him to the police station. Of course

we have to note that there is nothing in evidence to show what was the distance between Rankala Tower area and Laxmipuri police station. The statement of panch witness is recorded between 10.30 p.m. to 10.40 p.m. How did the police make the panch witness to come so quickly and take search? Further, Police Constable - Sunil Ingavale and Police Constable – Kishor Patil, who were with PW-6 when he was patrolling and caught the accused, have not given evidence.

Moreover, PW-2, who is the complainant, has not described the weapon as done by PW-1. Therefore, there is no evidence on the kind of weapon used for the offence. The knife allegedly found on accused by PW-1 and PW-6 was in a leather cover, was 9 inches long and the blade was 5 inches long. PW-2 does not say that when he stopped his two wheeler, the accused pulled out a knife from a cover and then brandished it.

5 Thereafter, on 17th October 1992, Investigating Officer alongwith PW-3 went to the spot where the alleged offence was supposed to have been committed. PW-3 has been declared hostile by the prosecution.

The evidence or statement does not show what was the distance between the spot at which the alleged robbery took place and Rankala Tower area because the robbery is alleged to have take place at 8.30 p.m. and accused is alleged to have been found and moving in suspicious circumstances at 10.00 p.m. It was a duty of the prosecution to have proved all of this.

6 Then comes evidence of PW-4, who is supposed to have been a

witness to the statement of accused recorded on 17th October 1992, when the accused is supposed to have confessed that he had committed robbery and that the Citizen Quartz wrist watch was kept in his house. PW-4 was also declared hostile by the prosecution. In the examination in chief, PW-4 has stated that no such confessional statement was recorded in the police station in his presence or after preparing memorandum panchnama, he had gone at any other place for seizure of articles. In his cross examination, PW 4 has stated that it is not true that in his presence or in the presence of the other panch witness, who also was not examined, accused made any confessional statement and accordingly, memorandum panchnama, Exhibit 19, was prepared. He of course states that he, the other panch witness, police and accused had gone to the house of accused and accused produced one wrist watch of citizen make from the trunk which was kept by accused in his cupboard in his house and the wrist watch was seized. The trunk has not been produced but what is alleged is accused is supposed to have confessed that the wrist watch was kept in his residence in the presence of Gauri Gaekwad

panch witness but the panch witness himself denies that any such confession was made. This is also a grey area which goes against the prosecution. In the cross examination of PW-4, PW-4 has stated that he simply signed Exhibit 19 and 20 at the instance of police. PW-4 has also stated that on 17th October 1992 he did not even go to the house of accused. So therefore, two contradictory statements have been made by PW-4, which have not

been clarified by the prosecution in re-examination. PW-4 further stated that even the other witness signed Exhibit 19 and 20 in the police station. Exhibit 20 is the panchnama, which is supposed to have been prepared when the panch witnesses went to the house of accused where accused removed the watch from a trunk and gave it to the police. But this witness – PW-4 - panch witness states that the panchnama was prepared in the police station. This is yet another grey area for the prosecution.

7 It is settled law that a person will be presumed innocent unless proven guilty beyond reasonable doubt. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Doubts would be called reasonable if they are free from a zest for abstract speculation, or free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague

apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt but a fair doubt based upon reason and common sense (State

o f M . P. V / s . D h a r k o l e 1).

8 I am unable to gather myself to conclude that the prosecution has proved the fact that accused robbed original complainant – PW-2, or

accused was found with the offending dagger or wrist watch was found in the house of accused. Though the Trial Court has not in detail dealt with these points but has come to its conclusion on various other factors, I will not find any fault with the Trial Court's order of acquittal. When the evidence adduced did not conclusively lead to the guilt of the accused and only pointed needle of suspicion towards the accused and nothing more, he cannot be committed because suspicion is no substitute for proof in criminal trial.

\ 9 The Apex Court in Chandrappa & Ors. V/s. State of Karnataka 2 in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge; (1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate

1. AIR 2005 SC 44 2. (2007) 4 SCC 415

Court on the evidence before it may reach its own conclusion, both on questions of fact and of law; (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion. (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his

acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

10 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

11 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with

the judgment of the Trial Court.

12 Appeal dismissed.

(K.R. SHRIRAM, J.)