

(1982) 02 BOM CK 0055

**Bombay High Court****Case No:** Criminal Revision Application No. 449 of 1981

Maruti Bhanudas Kamble

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision:** Feb. 17, 1982**Acts Referred:**

- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 380, 411, 414

**Citation:** (1982) 1 BomCR 764**Hon'ble Judges:** M.L. Pendse, J**Bench:** Single Bench**Advocate:** B.P. Apte, for the Appellant; M.D. Gangakhedkar, for the Respondent

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**Judgement**

M.L. Pendse, J.

The accused was charged for an offence punishable u/s 380 of the Indian Penal Code before the Judicial Magistrate, First Class, Court No. 1, Pune, and the prosecution claimed that a theft took place between November 21, 1974 and September 7, 1979 at the house of Maniklal Baldota (P.W. 1) of two wrist watches and some gold and silver ornaments. Maniklal is residing at House No. 388, Raviwar Peth, Pune and is running a gold-smith's shop. The complainant Maniklal claims that in December 1974 he had kept a watch in his cupboard along with certain gold bangles and when he opened the cupboard in December 1977, he found that the two items were missing. The accused was arrested on October 1, 1978 in respect of commission of some other offence and it is the prosecution case that thereafter the watch was recovered from Suresh (P.W. 6) and bangles from Dattatraya (P.W. 4). A complaint was lodged by Maniklal on October 3, 1978 and thereafter the accused was charge-sheeted.

2. The prosecution in support of its case examined Maniklal (P.W. 2), Suresh (P.W. 6) and Dattatraya (P.W. 4). Suresh claims that he had purchased the wrist watch from

Tarabai (P.W. 3) and Tarabai stated that she had sold the wrist watch sometime in the year 1976-77 at the instance of the accused. The bangles were sold by Shejval to Dattatraya and it is claimed that sale was also at the instance of the accused in the year 1975. The accused denied the commission of the offence and claimed that he was falsely involved. The trial Magistrate came to the conclusion that the prosecution has failed to establish the charge u/s 380 of the Indian Penal Code, but convicted the accused u/s 414 of the Indian Penal Code holding that the evidence of Tarabai and Shejval that the watch and the bangles were sold at the instance of the accused was acceptable. The trial Magistrate released the accused on his entering a bond of Rs. 1000/-.

3. The accused carried an appeal before the Sessions Court, Pune and the learned Additional Sessions Judge by his judgment dated June 25, 1981 altered the conviction to one u/s 411 of the Indian Penal Code while retaining the order of release of the accused on probation of good conduct. The Additional Sessions Judge, came to the conclusion that there was no evidence that the accused either sold or associated in sale of the stolen property and, therefore, the conviction u/s 414 was not maintainable. The Sessions Judge, thereafter observed that there was an unimpeachable evidence to show positively that the accused was found in recent possession of the stolen property knowing it to be stolen and, therefore, the conviction could be properly recorded u/s 411 of this Indian Penal Code.

4. Shri Apte, the learned Counsel appearing in support of the petition submitted and in my judgment very rightly that the entire approach of the Additional Sessions Judge is erroneous and the conviction u/s 411 of the Indian Penal Code could not be maintained. The observations of the Additional Sessions Judge that the accused was found in recent possesses of the stolen property is wholly inaccurate. In the first instance, it is difficult to appreciate how the testimony of Maniklal that he noticed the theft of the property only in December 1977 when he opened the cupboard could be believed. It is difficult to accept that a person of Maniklal's stature would not bother to open the cupboard to find his wrist watch and gold bangles for over three years. The prosecution could not establish the time when the theft took place and merely claimed that the theft must have been committed sometime between December 1974 to December 1977. This evidence, in my judgment, is extremely weak. In addition to this, the absolute reliance on the testimony of Tarabai by the two courts below is not very correct but is even assuming that the word of Tarabai is to be accepted that the accused advised her to sell the wrist watch and the bangles, the statement of Tarabai that it was sold sometime in the year 1975 and 76 clearly indicates that the accused could not have said to be in recent possession of the stolen property. Before an inference could be drawn against the accused in accordance with the provisions of section 114 of the Indian Evidence Act, it must be established that the theft took place on a certain date and within a very short duration thereafter the accused was found in possession of the stolen property. In the present case, the prosecution has failed to establish the time when the theft was

committed and the time when the accused was in possession of the stolen property. The mere statement of Tarabai that she sold the property at the instance of the accused is not sufficient to warrant a conclusion that the accused was found in possession of the stolen property after a short duration from the date of commission of the theft. In my judgment, the order of conviction recorded by the lower Appellate Court is not correct and deserves to be set aside.

5. Accordingly, the petition succeeds and the rule is made absolute and the order of conviction recorded by the Additional Sessions Judge, Pune by his judgment dated June 25, 1981 is set aside and the accused is acquitted and discharged. The bond executed by the accused stands cancelled.