

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1097 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

**RIYAZ RAMZAN MULLA @ SULKUDE @)
RIYAZ YAKUB PAKALE)...RESPONDENT**

Mr.Deepak Thakre, APP for the Appellant – State.

None for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 26th JUNE 2015.

ORAL JUDGMENT :

1 The respondent was prosecuted on the allegation of having committed offences punishable under Sections 363, 384, 386 and 506 of the Indian Penal Code (IPC). The Judicial Magistrate First Class, Kurundwad, after holding a trial, found him guilty and passed an order of acquittal. The State of Maharashtra is aggrieved by the said order of acquittal, and has,

therefore, after obtaining leave of this court, filed the present appeal challenging the said order of acquittal.

2 None remained present for the respondent, when the appeal came up for final hearing. Under the circumstances, the appeal is being decided after examining the record of the case and after hearing the APP.

3 For the sake of convenience and clarity, the respondent shall hereinafter be referred to as 'the accused'.

4 The prosecution case, as put forth before the trial court, was that, the accused was giving karate training to some children including one Abhijit Shintre and one Sachin Kumbhar. That, on 11th January 1999, the accused threatened Abhijit Shintre by showing a knife to him and forced him to deliver an amount of Rs.8500/- to the accused. That, on the same day, the accused kidnapped Sachin Kumbhar from lawful guardianship. It appears that Chandrakant Shintre – father of Abhijit Shintre – had kept an

amount of Rs.8500/- in the cupboard in his house. When he found the said amount missing, he asked Abhijit Shintre about it. Abhijit then told his father that the amount had been given by him to the accused as the accused had threatened him under the point of knife.

5 So far as the kidnapping is concerned, the knowledge regarding that is said to have been derived by Chandrakant Shintre from Abhijit Shintre. On the report lodged by Chandrakant Shintre, a crime came to be registered. The accused came to be apprehended and after completion of investigation, he was charge-sheeted and prosecuted.

6 The prosecution examined ten witnesses, including Abhijit Shintre and Sachin Kumbhar, during the trial. which prosecution, as aforesaid, resulted in his acquittal.

6 I have carefully gone through the impugned judgment. I have also gone through the evidence on record.

7 The learned Magistrate has not believed the story of the accused having threatened Abhijit Shintre and of having extorted an amount of Rs.8500/- from him. In the course of investigation, no knife was recovered from or at the instance of the accused. The Magistrate also observed that cash of Rs.8500/- was said to have been recovered from the accused in the course of investigation, but that, there was a discrepancy about the denomination of the currency notes, that were allegedly given to the accused by Abhijit Shintre.

8 So far as the charge of kidnapping Sachin Kumbhar is concerned, it was revealed during the trial that Sachin Kumbhar was not found even after the apprehension of the accused. Sachin Kumbhar returned to his house about 2½ years. The evidence revealed that he had visited different places during this period and even taken an employment. From the evidence adduced before him, the learned Magistrate came to the conclusion that Sachin Kumbhar had voluntarily left his parents' house, and that, there was nothing to indicate that he had been kidnapped by the accused.

9 The Magistrate has rightly not believed the case of the prosecution which in itself was suspicious. One cannot ignore the fact that the allegation came to be leveled against the accused only after the father of Abhijit Shintre discovered that the amount kept in the house was missing. It was only the word of Abhijit Shintre, who had, admittedly, removed it from his father's house, that he had given it to the accused.

10 The appreciation of evidence, as done by the Magistrate, and the conclusion arrived at by him, is proper and legal. There is no substance in the appeal.

11 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)