

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.173 OF 2014

The State of Maharashtra] Applicant

Versus

1. Mahesh Madhukar Pogurlekar,]
R/at Sunrise Apartment, 'A' Wing,]
Flat No.301, Off Aarey Road,]
Goregaon (East), Mumbai.]
]
2. Manohar Kishore Patel,]
R/at Shri Datta C.H.S., Bldg. No.3,]
'D' Wing, Room No.303,]
New MHADA Colony,]
Gen. A.K. Vaidya Marg,]
Goregaon (East), Mumbai.]
]
3. Mukesh Gajanan Rikame,]
R/at Shivkrupa Seva Mandal,]
Julie Aunty Compound,]
Santosh Nagar, Shri Krishna Nagar,]
Dindoshi, Goregaon (East), Mumbai.]
]
4. Vikas Shantaram Giddhe @ Vicky,]
R/at Ahmed Chawl, Rajendra Nagar,]
Dattapada Road, Behind Mahakali]
General Stores, Borivali (East),]
Mumbai.]
]
5. Sandip Ramesh More,]
R/at Ahmed Chawl, Room No.198,]
Rajendra Nagar, Near Ektabhoomi]
Road, Dattapada Road, Borivali (East),]
Mumbai.]
]
6. Balchandran Rajan Swami,]
R/at Hussain Compound, Near Sandip]
Medical, Filmcity Road, Santosh Nagar,]
Goregaon (East), Mumbai.]
]
7. Vikas Rajendra Shrivastav,]

R/at Chandresh Terrace, D-104,	]	
Parshwanagar, Old Petrol Pump,	]	 Respondents/
Mira – Bhayander Road,	]	(Org. Accused
Mira Road (East), Dist. Thane	]	Nos.1 to 7)

ALONG WITH
CRIMINAL APPEAL NO.375 OF 2014

Dudhnath Dwarkaprasad Varma,	]	
Age : ... Adult, Occ.: Estate Agent,	]	 Appellant /
Presently residing at Shivam Co-op.	]	(Original
Hsg. Society, Kanyapada, Goregaon	]	Complainant/
(East), Mumbai.	]	Victim)

Versus

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| 1. Mahesh Madhukar Pogurlekar, |] |
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| Flat No.301, Off Aarey Road, |] |
| Goregaon (East), Mumbai. |] |
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| 2. Manohar Kishore Patel, |] |
| R/at Shri Datta C.H.S., Bldg. No.3, |] |
| 'D' Wing, Room No.303, |] |
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| R/at Ahmed Chawl, Rajendra Nagar, |] |
| Dattapada Road, Behind Mahakali |] |
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| 6. Balchandran Rajan Swami, |] | |
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| R/at Chandresh Terrace, D-104, |] | |
| Parshwanagar, Old Petrol Pump, |] | |
| Mira – Bhayander Road, |] | |
| Mira Road (East), Dist. Thane |] | Respondents/ |
| |] | (Org. Accused |
| 8. The State of Maharashtra |] | Nos.1 to 7) |

Mrs. Sangeeta Shinde, A.P.P., for the Applicant in Criminal Application No.173 of 2014 and for Respondent No.8/State in Criminal Appeal No.375 of 2014.

Ms. Madhavi Tavanandi for Respondent Nos.1 to 5 and 7 in Criminal Application No.173 of 2014 and in Criminal Appeal No.375 of 2014.

Mr. J.P. Kharge for the Appellant/Original Complainant/Victim in Criminal Appeal No.375 of 2014.

CORAM : P.V.HARDAS & DR. SHALINI PHANSALKAR-JOSHI, J.J.

RESERVED ON : 24TH MARCH, 2015.

PRONOUNCED ON : 26TH MARCH, 2015.

P.C. [Per Dr. Shalini Phansalkar-Joshi, J.] :

1. Criminal Application No.173 of 2014 is preferred by the State seeking leave to prefer Appeal under Section 378(3) of Cr.P.C. to challenge the Judgment of the Additional Sessions Judge, Greater Bombay in Sessions Case No.195 of 2012 dated 15th February, 2014,

acquitting the Respondents/Accused Nos.1 to 7, for the offences punishable under Sections 120-B, 363, 342, 394, 307, 201 r/w. 120-B of the IPC and Section 324 r/w. 34 and 506 of the IPC. Criminal Appeal No.375 of 2004, preferred by the original Complainant/Victim, is also arising out of the said Judgment and questioning the acquittal of Respondents in the said Sessions Case. Hence, both these proceedings are being decided together by this common order.

2. On the complaint of the Appellant-Dudhnath Dwarkaprasad Varma, C.R. No.158 of 2012 came to be registered at Vanrai Police Station for the various offences punishable under Sections 120-B, 363, 342, 307 r/w. 120-B of the IPC. According to him, the Respondents herein had, on 18th June, 2012 in between 6 pm onwards to 3:30 am, in pursuance of the criminal conspiracy hatched by them, kidnapped him, took him to one unknown place and, by confining him, attempted to commit his murder by assaulting him with cricket stumps and pouring acid in his eyes. They also snatched his gold ring, mobile phone and court documents with intent to cause disappearance of evidence; set fire to those documents and thereby also committed the offence punishable under Sections 394 and 201 r/w. 120-B of the IPC.

3. After carrying out necessary investigation in the said C.R. and arrest of the Respondents, Charge-Sheet came to be filed in the Court.

On case being committed, the charge vide Exhibit-2 was framed against the Respondents. The Respondents pleaded not guilty. The Prosecution, to prove its case, examined in all 24 witnesses and exhibited voluminous documentary evidence. The main reliance of the Prosecution was on the evidence of PW-1 Complainant – Dudhnath. To prove the case of conspiracy, Prosecution relied on the evidence relating to Call Detail Records, whereas, to prove the injuries sustained by the Complainant, Prosecution examined the two Medical Officers. On appreciation of this evidence, the Trial Court found that the Prosecution has failed to prove its case on all the counts and accordingly acquitted the Respondents, of all the charges levelled against them.

4. In this Criminal Application and Criminal Appeal, we have heard learned A.P.P. and learned Counsel for the Original Complainant/Victim. With their assistance, we have also perused the evidence of the prosecution witnesses.

5. As per evidence of the Complainant, on account of some property dispute pending between him and Respondent No.1, the Respondent No.1 with the help of Respondent Nos.2 to 7 hatched conspiracy and in pursuance thereof kidnapped him from Goregaon Railway Station, where he was called by Respondent No.1 by making phone calls, when he had come to High Court to attend the proceedings. As per his evidence,

Respondents took him to some place ahead of Dahisar Naka in one car and then after assaulting him with wooden logs and pouring acid in his eyes, he was dropped at Ghodbunder Road near Punjab Dairy at about 3:30 am. However, in his cross-examination, several contradictions, omissions and inconsistencies are brought on record, as a result of which his evidence has lost the credibility. It is admitted by him that there was no transaction between him and accused persons. He has further admitted that on 18th June, 2012, his matter was not on the Board in the High Court. He has further admitted that though there was dispute between his sister-in-law and Developer, he was not a power of attorney holder on behalf of his sister-in-law. Further, he has admitted that the place from where he was kidnapped, i.e. Goregaon Railway Station, is a crowded place. There was heavy traffic on the road. He has not shouted for help when he was forcibly pushed in the car. He has also not shouted for help when the vehicle halted after the bridge, ahead of Dindoshi Police Station or at Dahisar Toll Naka. On the road, he said that, they have passed ten traffic signals, but at no point he shouted for help. Further, he has admitted that even when he was dropped from the car at 3:30 am, he has not shouted for help. In his F.I.R., he has stated that he was kidnapped in Innova Car, whereas, in evidence before the Court, he has stated that he was taken in Swift Car. In F.I.R., he has stated that he was assaulted by wooden logs,

whereas, in evidence before the Court, he has stated that he was assaulted by cricket stumps. As per the F.I.R., his gold ornaments and mobile phone were snatched by the Respondents, whereas, in evidence before the Court he has stated that, except his mobile phone, all other articles were snatched. Further, the gold ring, which is alleged to be recovered at the instance of Respondent No.4-Vikas, is of the different weight and different measurements. Hence, it cannot be said to be the stolen article.

6. Even as regards the medical evidence, it is not consistent with his case. If acid was poured in his eyes, then there should have been some injuries on his face also. However, the medical evidence does not show presence of any such injuries. Moreover, if hydrochloric acid was poured in his eyes, there should have been grievous injuries to his eyes, but no such injuries are proved through the medical evidence. PW-23 Dr. Shirley Fernandes Francis has admitted that it cannot be said that the injuries sustained to his eyes were necessarily caused by acid only. Medical evidence also did not disclose that he has sustained any fracture and hematomas, though, according to him, he was assaulted by seven Accused mercilessly with cricket stumps/wooden logs. Thus, the evidence of the Complainant was found by the Trial Court to be bereft of credence and in our considered opinion rightly so.

7. As regards the charge of conspiracy, the Trial Court found from Call Detail Records produced through the evidence of various Nodal Officers from Mobile Companies that tower locations of the mobile phones of Respondent Nos.2 to 7 did not disclose that during the period from 7 pm onwards till 3:30 am, they were together. Conversely, the Call Detail Records show different locations of their mobile phones. Even the tower location of the mobile phone of Respondent No.1 is shown to be at Goregaon-Andheri from 10:30 pm to 1:35 am and not at the place ahead of Dahisar Naka, where, as per Complainant, he was taken and detained. Therefore, there is no evidence to show that all the Respondents were together during the course of the incident. We find that the Trial Court has considered this aspect properly in paragraph No.155 of its Judgment and in the absence of any evidence, proving prior meeting of minds to prove agreement, held that Prosecution has failed to prove the charge of criminal conspiracy.

8. About identification of the Accused also, the Trial Court noticed number of infirmities and flaws going to the root of the matter in Test Identification Parade of the Accused, as a result of which the Trial Court found that evidence relating to Test Identification Parade does not inspire confidence in the judicial mind. It was held after filing of Charge-Sheet in the Court. Hence, possibility of Accused being seen by witnesses cannot

be ruled out. In paragraph No.163 of its Judgment, the Trial Court noted that though the Complainant was knowing Accused No.5-Sandip More, he has not identified him in Test Identification Parade. He has also not identified Accused No.3-Mukesh Rikame, who was along with him for long time during the travel.

9. In our considered opinion, therefore, the Trial Court has, after correctly appreciating the entire evidence on record, arrived at its conclusion that the Prosecution case, as a whole, lacks the ring of truthfulness, colour of consistency and, therefore, offences against the Accused cannot be said to be proved beyond reasonable doubt.

10. On re-appreciation of the evidence of the prosecution witnesses, we have also arrived at the conclusion that the view taken by the Trial Court is definitely a possible view. It is not pointed out before us how the said view can be called as perverse or otherwise. Hence, according to us, in the absence of anything showing on record that the findings recorded by the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable, no interference is warranted in the impugned Judgment of the Trial Court. The Criminal Application No.173 of 2014 preferred by the State of Maharashtra and Criminal Appeal No.375 of 2014 preferred by the Complainant, therefore, hold no merit.

11. Consequently, Criminal Application No.173 of 2014 filed by the State, seeking leave to prefer the Appeal, and Criminal Appeal No.375 of 2014 preferred by the Complainant stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[P.V.HARDAS, J.]