

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.57 OF 1997

BHASKAR SURYAKANT DAVE	]	.Appellant
Hindu, Indian Inhabitant,	]	(Ori.Accused
Aged : 49 yrs,	]	No.5)
Residing at Shastri Nagar,	]	
Linking Road Extension,	]	
Santacruz(W),	]	
Mumbai - 400 054.	]	

Vs.

- | | | |
|--|---|--------------|
| 1. THE STATE OF MAHARASHTRA |] | .Respondents |
| (At the instance of |] | |
| Santacruz Police Station) |] | |
| |] | |
| 2. MAHESHKUMAR GOVINDJI TRIVEDI |] | |
| Uttam Villa, St.Mary Road, |] | |
| Block No.1, Ground floor, |] | |
| Vile Parle(W), |] | |
| Mumbai. |] | |

Mr.M.S.Mohite i/b. Mr.C.K.Talekar, Advocate, for
the Appellant

Mr.A.S.Shitole, APP, for the Respondent No.1 -
State

CORAM : REVATI MOHITE DERE, J.

DATE : 21.07.2016

ORAL JUDGMENT

. By this Appeal, the Appellant has
impugned the Judgment and Order dated 28.11.1996

passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.283 of 1992 convicting and sentencing him as under :-

For the offence punishable under Section 387 r/w 34 of the Indian Penal Code to undergo rigorous imprisonment for four years and to pay fine of Rs.10,000/-, in default to suffer rigorous imprisonment for six months;

The Appellant was, however, acquitted from the offences punishable under Sections 364 r/w Section 34 and/or Section 109 of the Indian Penal Code; under Section 365 r/w Section 34 and/or Section 109 of the Indian Penal Code and under Section 323 r/w Section 34 and/or Section 109 of the Indian Penal Code.

2. At the outset, it may be noted, that in all there were 15 Accused, who were charged for various offences. Out of the said 15 accused, as

10 were absconding, the trial proceeded against five Accused i.e. Maganlal Gelabhai Desai (Original Accused No.1); Bechuram Ledharam Yadav (Original Accused No.2); Bhaskar Suryakant Dave i.e. the present Applicant (Original Accused No.5); Shatrudhan Singh Rupalal Singh (Original Accused No.7) and Subhashchandra Nandkishor Shukla (Original Accused No.12). The said five Accused were charged for the offences punishable under Sections 364 r/w Section 34 of the Indian Penal Code; Section 365 r/w Section 34 and/or Section 109 of the Indian Penal Code; Section 387 r/w Section 34 and/or Section 109 of the Indian Penal Code; and under Section 323 r/w Section 34 and/or Section 109 of the Indian Penal Code. Except the Appellant, all the other four co-accused who were tried, were acquitted of all the offences by the learned Sessions Judge, vide the aforesaid Judgment and Order.

3. It is the prosecution case, that the Appellant alongwith the other Accused, in furtherance of their common intention, kidnapped Maheshkumar Govindji Trivedi, from the compound of Uttam Villa, St.Mery Road, Block No.1, Ground floor, Vile Parle(W), Mumbai and confined him on the third floor of Amrit Villa, Kandivali(E), Mumbai from 29.05.1991 till 07.06.1991. Pursuant to the incident of kidnapping, a complaint was lodged by Maheshkumar Trivedi's daughter, Ms Vaishali Trivedi, with the Santacruz Police Station. The said complaint was registered vide C.R.No.397 of 1991 on 29.05.1991. Accordingly, investigation commenced and the Accused came to be arrested on different dates. Maganlal Desai (Original Accused No.1) and Bechuram Yadav (Original Accused No.2), soon after their arrest led the police to the place at Kandivali(E), Mumbai, where Maheshkumar Trivedi was kept in confinement, after being kidnapped. It is alleged by the prosecution, that the present

Appellant alongwith the other Accused was present in the room alongwith Maheshkumar Trivedi, pursuant to which they were arrested. After investigation, charge-sheet was filed and the case was committed to the Court of Sessions, as the alleged offences were sessions triable.

4. All the accused including the Appellant, who were put up for trial pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case examined five witnesses. PW.1 – Maheshkumar Govindji Trivedi, the person who was kidnapped; PW.2 – Ela Maheshkumar Trivedi – PW.1's wife; PW.3 – Ramakant Chandrakant Gharat – Panch to the recovery of choppers and revolver, as well as a chit at the instance of Accused No.3 on 07.06.1991 and recovery of Rs.6,150/- from the Appellant on 12.06.1991 and some blank stamp papers; PW.4 – Nasir Abdul Afiz Khan, panch to

the recovery of certain documents at the behest of Accused Nos.3 & 4 and PW.5 – PSI, Prakash Mohanrao Wadkar, the investigating officer, who conducted the investigation in the said case and filed the charge-sheet.

6. After considering the evidence on record, the learned Sessions Judge, Mumbai, vide his Judgment and Order dated 28.11.1996, was pleased to acquit four of the five Accused, who were charged for the aforesaid offences, but was pleased to convict the Appellant as stated in para 1 of this Judgment.

7. Learned counsel for the Appellant assailed the Judgment on several counts. He submitted that the prosecution had failed to establish the identity of the Appellant, in the light of the evidence and discrepancies that had come on record. He submitted that even the panch witness i. e. PW.3 – Ramakant Gharat was an

unreliable witness, considering the discrepancies in his evidence. He further urged that although, (PW.3 - Ramakant Gharat) had identified the Appellant as being the person, at whose instance choppers and revolver were recovered, the panchanama is to the contrary i.e. it shows that it was Accused No.3 - Rajkumar Singh at whose instance choppers and revolver were recovered. He further submitted that no Test Identification Parade was held in the said case. According to the learned counsel, the Complainant in the said case had not been examined and that the investigation was riddled with several infirmities, casting a shadow of doubt on the evidence adduced by the prosecution as well as on the prosecution case. He further submitted that the recovery of an alleged suicide note from the Appellant had not been proved by the prosecution, inasmuch as, PW.1 - Maheshkumar Trivedi does not say that the note was recovered from the Appellant's pocket. He

submitted that infact, PW.3 – Ramakant Gharat (Panch) had also not uttered a single word with regard to the suicide note, allegedly recovered from the Appellant's pocket.

8. Learned APP submitted that the evidence on record shows that the Appellant had been identified by both, PW.1 – Maheshkumar Trivedi as well as by PW.5 – Prakash Wadkar. He submits that the Appellant was apprehended on the spot alongwith other Accused, from the place where Maheshkumar Trivedi was rescued. He submits that no interference was warranted in the impugned Judgment and Order.

9. Perused the papers, with the assistance of the learned counsel for the Appellant and the learned APP. As noted earlier, there were 15 Accused in the said case, out of which 10 are stated to be absconding and hence, the trial proceeded against five Accused (including the

Appellant). Out of the said 5 Accused, 4 Accused were acquitted and the Appellant was convicted as aforesaid. It is pertinent to note, that the prosecution has not challenged the acquittal of the other four Accused, who were tried with the Appellant.

10. On a complaint lodged by PW.1 – Maheshkumar Trivedi's daughter, investigation commenced in the said case. PW.5 – PI Prakash Mohanrao Wadkar, who was attached to the Santacruz Police Station, Mumbai at the relevant time, has stated that on 29.05.1991, he was on duty and that PSI Nitin Mohol was the station house duty officer. He has stated that at about 10.15 p.m., they received a wireless message that one person was kidnapped from Vile Parle(W), Mumbai in a White Fiat Car bearing No.MMB-1988. On receiving the said message, an entry was made in the station diary and the police rushed to the spot. The said station

diary entry was produced as Entry No.46 in SDE No.9/91. According to PW.5 – PI Wadkar, they contacted Ms Vaishali (daughter of PW.1 – Maheshkumar Trivedi), who informed them, that her father Maheshkumar Trivedi (PW.1) was kidnapped. Ms Vaishali's statement was recorded, pursuant to which C.R.No.397/91 was registered with the Santacruz Police Station. The said C.R.No.397 of 1991 was registered as against Maganbhai Shah and Bechuram Yadav for the alleged offences punishable under Sections 363, 365, 368 & 114 of the Indian Penal Code. PW.5 has stated that on 30.05.1991 at about 12.30 a.m., Ms Vaishali received a telephone call from a person, who disclosed his name as Salimbhai and informed her that her father was kidnapped by them. As Ms Vaishali (Complainant) was not available and as the learned counsel for the Accused had no objection, the FIR was taken on record. PW.5 Prakash Wadkar produced the proforma of the FIR alongwith the statement of

Ms Vaishali and the same was marked as Exh.31 (colly).

11. On 31.05.1991, PW.5 Prakash Wadkar visited the house of Maganlal Desai (Original Accused No.1) and Bechuram Yadav (Original Accused No.2) and arrested them in the aforesaid C.R.. The owner of the vehicle was contacted and his statement was also recorded. On 05.06.1991, Ms Vaishali (Complainant) produced two Audio Cassettes, pursuant to which her further statement came to be recorded. The said two Audio Cassettes were produced by PW.5 – PI Wadkar and came to be marked as Article 1 (Colly). On 06.06.1991, personal search of co-accused R.K.Singh (absconding) and Mukesh Gupta (absconding) was taken in the presence of panchas. In the personal search of co-accused R.K.Singh, a letter was found, in his shirt pocket. The letter was marked as Article 15 and the Motor Driving License recovered from Mukesh

Gupta was marked as Exh.21. Thereafter, R.K.Singh and Mukesh Gupta came to be arrested. On 07.06.1991, co-accused R.K.Singh made a statement, pursuant to which, he led the police party and panchas to the third floor of Amrit Villa, Kandivali(E), Mumbai, where Maheshkumar Trivedi was confined. PW.5 – PI Wadkar has stated that when they went to the spot, they noticed that there were seven persons present in the room. Accordingly, all the Accused, including the Appellant came to be apprehended. PW.5 – PI Wadkar has stated that in the search, they found a suicide note allegedly written by Maheshkumar Trivedi (PW.1), which was seized. The said suicide note is at Exh.20. According to PW.5 – PI Wadkar, Maheshkumar Trivedi pointed out one pistol, one sword and two choppers which were kept in the sand. All other Articles lying there were also seized. The said Articles were marked as Articles 2 to 7 (Colly). PW.5 – PI Wadkar has stated that apart from the Appellant,

the other persons, who were present in the room were, Bhaskar Suryakant Dave, Ramkumar Shetty, Maharaj Hari Singh, Shatrughan Singh, Sushilkumar Gupta, Sushilkumar Chanderia and Suresh Khare. All the said persons including the Appellant were arrested and the victim – Maheshkumar Trivedi was rescued. PW.5 has stated that co-accused R.K.Singh, thereafter, took them to Ashok Chakravarty road and pointed out one car. On conducting a search of the vehicle, one extra number plate was found in the said car, pursuant to which the car was seized under a panchanama. PW.5 – PI Wadkar has further stated that on the way back, they apprehended co-accused Bhupendra Singh and Subhash Shukla and brought them to the police station. He has further stated that Maheshkumar Trivedi was sent for treatment to the hospital. On 12.06.1991, the Appellant is alleged to have made a statement, pursuant to which panchas were called and his statement was recorded. According to

PW.5 – PI Wadkar, the Appellant led them to the third floor of Amrit Villa, Kandivali(E), Mumbai and removed some documents, blank stamp papers and cash of Rs.6,150/-, which were kept under the bricks. The said panchanama is at Exh.28-A and the Articles are marked as Article Nos.10, 11 & 12. On 13.06.1991, co-accused Vishal Tripathi and Vishnu Sonavane came to be arrested. On 21.06.1991, the Special Executive Magistrate – Abdul Rauf conducted a Test Identification Parade of co-accused Ramkumar Shetty and Bhupendra Singh (Co-accused, who are now absconding). After investigation, charge-sheet was filed against all the Accused in the Court of the learned Metropolitan Magistrate, 21st Court, Bandra, Mumbai. As ten of the co-accused were absconding, the case was separated and the trial proceeded as against the Appellant and four other co-accused.

12. Maheshkumar Trivedi, the person who was kidnapped was examined by the prosecution as PW.1. He has deposed in his evidence the dispute with respect to the trust property, of which he was trustee/promotor. He has stated that it was his duty to collect the rent, transfer the premises of the trust property etc. He has further stated that Maganlal Desai (Original Accused No.1) was a tenant of the premises of Trivedi Niwas, New Nagardas Road, Andheri(E), Mumbai. He has stated that in January, 1991, Maganlal Desai (Original Accused No.1) took forcible possession of three blocks of the said Trivedi Niwas. He has further stated that as the said property was within the jurisdiction of the Santacruz Police Station, a complaint was lodged against Maganlal Desai, for taking forcible possession of the premises.

13. PW.1 – Maheshkumar Trivedi has further stated that on 29.05.1991 at about 10.15 p.m.,

when he came out of the house, with his daughter Vaishali, to go to the next building of Trivedi Niwas to keep his car, a white coloured vehicle came there. He has further stated that two to three persons stepped out of the car, pushed his daughter aside and pulled him in the car and made him sit on the front seat of the car. He has stated that he was thereafter taken to Vile Parle(E), Mumbai and was left in a room on the ground floor. He has identified the Appellant and co-accused Subhashchandra Shukla and one Shetty as the persons who were there in the car. According to PW.1, he was kept in the said room for the whole night and that on 30.05.1991, during the day he was taken to Kandivali in a taxi. He has stated that they left the said taxi at Kandivali and hired another taxi and after moving around for some time, he was taken back to Kandivali and thereafter was taken to the third floor of Amrit Villa. He has further stated that the said building was under

construction and hence, there were no windows and doors. He has stated that one fat person asked him, whether he knew that his name was R.K.Singh. According to PW.1, the said person told him that he would eliminate him. The said person i.e. R.K.Singh is alleged to have asked him (PW.1) his position in Trivedi Niwas and is also alleged to have asked him to issue an NOC for the three blocks, which he refused to do. PW.1 - Maheshkumar Trivedi has further stated that the said persons i. e. Shetty, the Appellant and Bhupendra started assaulting him and that the Appellant and R.K.Singh demanded a sum of Rs.10,00,000/- from him. He has stated that he agreed to pay the said amount as he was frightened. According to PW.1, after sometime, two to four persons came there and told him that they would not leave him, unless he paid a sum of Rs.10,00,000/- to them. He has stated that R.K.Singh asked him to call his residence, pursuant to which he was taken to a neighbouring

building, from where he made a phone call to his residence. He has stated that he told his daughter - Vaishali that the Accused were demanding Rs.3,00,000/- from him. He has stated that thereafter, R.K.Singh took the receiver from him and told his daughter to pay a sum of Rs.3,00,000/-, failing which they would eliminate him. According to PW.1, he was brought back to Amrit Villa and was told by the Appellant and R.K.Singh that unless the said amount was paid, he would not be released. He has further stated that thereafter, R.K.Singh left the said place and instructed the others to keep a watch on him; that the said persons provided him with meals and on the next day, again asked him to call his daughter; that he again called his daughter and asked her to arrange the said sum of Rs.3,00,000/-; that the Appellant threatened him; and that after sometime, R.K.Singh returned and asked the Appellant to take a suicide note from him, in

his handwriting, pursuant to which he wrote a suicide note dated 28.05.1991. PW.1 has identified the suicide note written by him. The said note is marked as Exh.20. According to PW.1 – Maheshkumar Trivedi, he was again taken to make a call to his daughter, on 01.06.1991. He has stated that he asked his daughter to arrange the money, as early as possible and asked his daughter not to report the matter to the police station, on the instructions of the Appellant and R.K.Singh. He has stated that on 2nd and 3rd June, nothing happened and that on 4th June, he was again made to call his residence. He has stated that the said call was received by his brother-in-law and that he told him “that R.K.Singh was a good man and was not assaulting him” and asked him to arrange for the money. He has further stated that R.K.Singh took the phone receiver from him and told his brother-in-law that, he (PW.1 – Maheshkumar Trivedi) had misappropriated the funds of Trivedi Niwas; and

that Rs.10,00,000/- were required for repairs. R.K.Singh is also stated to have told his brother-in-law to send Vaishali to the Bandra Court with Rs.3,00,000/-. According to PW.1 – Maheshkumar Trivedi, in the evening, when the persons went to pick up the said amount, they realized that there were police moving around, in plain clothes and hence they did not meet Vaishali and came back. He has stated that none of the Accused harassed him, thereafter.

14. PW.1 – Maheshkumar Trivedi has further stated that on 07.06.1991 the police came on the third floor of Amrit Villa and rescued him. He has stated that as Accused No.1 – Maganlal Desai, Accused No.2 – Bechuram Yadav and Accused No.12 – Subhashchandra Shukla could not succeed in getting the three blocks in Trivedi Niwas, they got him kidnapped and demanded a ransom for his release.

15. PW.1 was cross-examined at length. He was cross-examined with regard to the dispute between the tenants association and the trust, with which the Appellant was admittedly not concerned. Certain material omissions were brought on record in the evidence of the said witness, more particularly, the omission that "since the said Maganlal Desai (Original Accused No.1), Bechuram Yadav (Original Accused No.2) and Subhashchandra Shukla (Original Accused No.12) could not succeed in getting the said blocks, they got me kidnapped for ransom". PW.1 had stated that at the relevant time, he was 62 years of age and was using Spectacles; and has admitted that without Specs, he could not see. He has admitted that in the scuffle that had taken place on 29.05.1991, his specs had fallen. PW.1 has also admitted that he learnt of the names of Shetty, Mukesh and Bhupendra from the police, only when his statement was recorded. He has admitted that he had disclosed to the police

that Shetty, Mukesh and Bhupendra had threatened him while taking him to Kandivali; and that Accused No.6 – Ramkumar Shetty, Accused No.11 – Bhupendra Amriksingh & Accused No.13 – Maharaj Singh had kidnapped him.(Appellant's name has not been mentioned here). He has stated that he had given all the said four names to the police. He has further stated in his cross, that after his statement was recorded, he was called for Test Identification Parade and that he had learnt all the names of the Accused from the police. He has admitted that he was not assaulted with a knife. He has stated that in his cross-examination, that on the first day, he was assaulted by the Appellant, R.K.Singh, Shetty, Bhupendra & Mukesh. He has denied the suggestion that he has wrongly identified the Accused Nos.2, 5 & 12. He has admitted that he was not examined by any Doctor for the assault, however, has denied the suggestion that he was not assaulted by the Accused.

16. The prosecution has examined PW.1's wife – Ela Trivedi, as PW.2. Her evidence is not of much assistance, either to the prosecution or to the defence, considering the discrepancies, that have crept in her evidence.

17. PW.3 is Ramakant Gharat, panch to the disclosure statement made by co-accused R.K.Singh, voluntaring to show the place, where PW.1 – Maheshkumar Trivedi was confined. PW.3 is also a panch to the discovery panchanama of 2 choppers and 1 revolver, at the instance of the Appellant. According to the said witness, the Appellant produced two choppers and one revolver from the room where PW.1 was confined on 07.06.1991. The said witness was unable to identify PW.1, who was confined in the said room. The said witness has, however, identified the Appellant.

18. In the cross-examination, PW.3 – Ramakant Gharat has admitted that the said choppers and revolver hidden under the sand, were shown by PW.1 – Maheshkumar Trivedi. He has further stated that the Appellant led the panchas to the third floor of the building and from the loft of the kitchen, some papers and cash of Rs.6,150/- was recovered. He has stated that the said papers and cash was recovered from the bricks. The stamp papers which were recovered were blank stamp papers.

19. PW.4 Nasir Khan was examined as panch to show recovery of certain documents at the instance of Accused Nos.3 & 4 and hence, it is not necessary to consider the evidence of the said witness.

20. Perused the evidence. It appears from the evidence on record, that the dispute essentially was between PW.1 – Maheshkumar

Trivedi and other co-accused and not the Appellant. Admittedly, out of the 15 accused, who were charge-sheeted, 10 are absconding and hence the trial proceeded against 5 Accused, including the Appellant. Out of the 5 Accused, four Accused have been acquitted by the Sessions Court and only the Appellant was convicted. The question that arises for consideration, is whether the prosecution has been able to establish beyond reasonable doubt, that the Appellant was present at the spot at the relevant time. Admittedly, the Appellant has not been named in the FIR. Although, according to PW.1, Test Identification Parade was held, no document was placed on record by the prosecution. The Appellant has been identified for the first time in Court by PW.1 – Maheshkumar Trivedi. The evidence of recovery of choppers and revolver at the instance of the Appellant is doubtful, considering the material that has come on record. It appears from the

material on record, that when PW.1 – Maheshkumar Trivedi was rescued by the police, it was PW.1, who pointed out the two choppers and revolver that were kept under the sand and hence, recovery of the very weapons, at the instance of the Appellant, thereafter becomes doubtful. The cross-examination of PW.1 – Maheshkumar Trivedi also shows that he has disclosed the names of Accused Nos.6, 11 and 13, as being the persons, who kidnapped him. The Appellant has been identified by PW.1 – Maheshkumar Trivedi for the first time in Court, as being the person, who had kidnapped him alongwith other co-accused. According to PW.1, the Appellant and other co-accused had assaulted him, however, neither PW.1 was not sent for medical examination nor any medical report was produced by the prosecution, to show that PW.1 had sustained any injuries. The suicide note allegedly recovered from the Appellant is also doubtful, considering the discrepancies in the evidence. As far as

recovery of money i. e. Rs.6,000/odd, at the instance of the Appellant is concerned, the said recovery cannot be said to be incriminating, as nothing was admittedly paid to the Accused, pursuant to the demand. There is absolutely no motive that has come on record, qua the Appellant. Merely because the Appellant has been identified in Court and that too after five years and six months, cannot be said to be incriminating, more particularly, considering the material that has come on record. There is also a discrepancy in the Panchanama (Exh.28) with regard to the names of the persons, who led the police to the place, where certain Articles were recovered. In the panchanama, it is specifically stated that it was R.K.Singh, who led the police party and panchas to the spot; whereas, it is sought to be argued that infact, it was the Appellant, at whose instance the articles were recovered. The said submission is contrary to the record i.e. the Panchanama.

Considering the aforesaid, it is evident that the prosecution has failed to prove its case, against the Appellant beyond reasonable doubt and therefore, the Appellant is entitled to be given the benefit of doubt.

21. Accordingly, the Appeal is allowed and the impugned Judgment and Order is quashed & set aside. The Appellant is acquitted of all the offences for which he is convicted. His bail bonds stand cancelled.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)