

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 569 OF 2014

Meera W/o Kolamdas Sirsat
Age : 28 years, Occu. Household,
R/o - Siddhivinayak Colony, Chanai,
Tq. Ambejogai, Dist. Beed.

...APPELLANT

versus

- 1] The State Of Maharashtra
Through its Secretary
Law and Judiciary Mantralaya Mumbai.
- 2] Swapnil s/o Gautamrao Chaudhari,
Age : 27 years, Occu. Education,
R/o Paithan, Tq. Kej, Dist. Beed.
- 3] Gautam s/o Bhagwanrao Chaudhari,
Age : 50 years, Occu. Agri.,
R/o Paithan, Tq. Kej, Dist. Beed.
- 4] Balasaheb S/o Babruwan Saware
Age : 24 yrs., Occu. Agril. & Service,
R/o Chanai, Tq. Ambejogai, Dist. Beed.

...RESPONDENTS

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Mr. P. M. Gaikwad, Advocate for Appellant
Mr. K.S. Patil, APP for Respondent No. 1
Mr. B.B. Bhise, Advocate for Respondent No. 4
Mr. Abhijit Choudhary h/f Mr. D.J. Chaudhary, Advocate for Respondent No. 2
& 3

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**CORAM : R.M. BORDE AND
K.K. SONAWANE, JJ.**

DATE : 5TH JUNE, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Leave to add prayer clause granted. Amendment be carried out forthwith.

2] The appellant - victim of the crime preferred the present proceeding of appeal under Section 372 of Cr.P.C, inter-alia, seeks leave to present an appeal against the impugned judgment and order of acquittal, passed by the learned Assistant Sessions Judge, Ambejogai, dated 18.12.2013, to redress her grievances. It was the allegations of the prosecution that first informant Meera w/o. Columbus Shirsath, on 03.12.2010, approached to the police of Ambejogai police station and ventilated the grievances that on 01.12.2010, in the morning hours, she was at home with her husband. At about 8.00 a.m. somebody else gave kicks on the door of her house and exhorted to open the door. Accordingly, first informant opened the door and saw that respondents Swapnil Chaudhari, Gautam Chaudhari and one Balasaheb Babruwahan Saware, were standing in front of her house. They made enquiry about her father-in-law Tukaram. The first informant disclosed that her father-in-law Tukaram was residing separately and they have no concern with him. The respondent became furious and they pushed the first informant Meerabai inside the house. The respondent - trio barged in to the house and they caught hold of the husband of first informant. They beaten him up saying that his father Tukaram had taken Rs. 4 Lakhs from them and he should refund the amount. The respondent gave threats of life to the husband of first informant. She made endeavour to persuade the respondent but all her efforts found unavailing.

The respondent/accused dragged her husband - Columbus out of the house and made him to sit in the vehicle jeep. Thereafter, the respondent/accused went away in the vehicle jeep with her husband. It has been alleged that at the time of incident of kidnapping her husband Columbus, the landlord Shri Dhanraj Maind and one Pratik Jogdand were present on the spot. They tried to intervene in the fight, but the respondent pushed them aside and escaped from the spot. According to the first informant, the respondents accused kidnapped her husband with an intention to commit his murder. The first informant moved an application under Section 97 of Cr.P.C. for production of her husband before the court. Eventually, she approached to the Ambejogai police station and filed the impugned FIR for redressal of her grievances.

3] Pursuant to FIR, the concerned PSO, registered the crime No. 181 of 2010 and set the penal law in motion under Section 452, 364, 323, 506 r/w. 34 of IPC. I.O. visited to the spot and drawn the panchanama. He recorded the statements of witnesses acquainted with the facts of the case. I.O. collected the relevant documents. Meanwhile, the accused set free the victim Columbus near the gate of Amba Sugar factory. He returned to home. I.O. recorded his statements. After completion of investigation, I.O. preferred the charge sheet against the respondent/accused for the charges of kidnapping, house trespass, voluntarily causing hurt, criminal intimidation etc. before the learned Magistrate, Ambajogai.

4] After receipt of charge sheet and investigation papers, the learned Magistrate registered the proceeding as RCC No. 195 of 2011 and verified the charges pitted against the respondents/accused. It was found

that the offence levelled against the respondents under section 364 of IPC was triable by the Court of Sessions. The learned Magistrate wisely transmitted the proceeding to the concerned Sessions Court for trial of accused within the ambit of law. Accordingly, learned Sessions Judge framed the charges against the accused/respondents for the offences punishable under Sections 452, 323, 364, 504, 506 r/w. 34 of IPC, the respondents denied the accusations and claimed for trial.

5] In order to bring home guilt of the accused, prosecution examined in all 9 witnesses. The learned Sessions Judge, recorded statements of the accused/respondent under Section 313 of Cr.P.C. After appreciation of oral and circumstantial evidence adduced on record, the learned Sessions Judge arrived at the conclusion that the prosecution miserably failed to prove the charges against the respondent/accused beyond all reasonable doubt. Therefore, the learned Sessions Judge, exonerated the accused from the charges pitted against them and passed the impugned judgment and order of acquittal, which is the subject matter of the present proceeding.

6] Learned counsel for the victim Meerabai vehemently submitted that the impugned judgment and order of the learned trial court is improper, illegal and not within the purview of law. The learned Sessions Judge, did not appreciate the oral as well as circumstantial evidence on record in its proper perspective. The entire findings of the learned trial court are based on surmises and conjectures. According to learned counsel, the evidence of

PW-1 Meerabai, PW-4 Pratik and her husband PW-6 Columbus was sufficient to draw adverse inference against the respondents/accused. The prosecution has proved the circumstances that the respondent/accused kidnapped the husband of first informant, with an intention to commit his murder. The respondent also committed house trespass and assaulted the husband of the first informant with criminal intimidation. The evidence of first informant was duly corroborated by version of PW-4 Pratik Jogdand. Injury certificate produced by PW-9 Dr. Raut also fortify the allegation of assault on husband of first informant by respondent/accused. According to learned counsel for victim - Meerabai, the learned trial court committed serious error while appreciating the evidence of the prosecution witnesses. The findings of the learned trial court are unreasonable and perverse. There are every chances of conviction of the respondents/accused in this case. The evidence of the prosecution witnesses are cogent, believable and inspire confidence. If the leave is not granted it will cause serious prejudice to the appellant. Learned counsel for applicant/appellant prayed for grant of leave to file appeal against acquittal of respondents/accused.

7] In refutal, learned counsels for respondents, fervidly contended that the evidence adduced on record on behalf of prosecution was cryptic and slender in nature. PW-1 Meera and her husband PW-6 Columbus as well as PW-4 Pratim Jogdand, all were interested and partisan witnesses. There is no corroboration to the evidence of these interested witnesses. PW-3 Dhanraj Maid, who was the alleged eye-witness of the incident and landlord of the first informant, turned hostile and did not support the prosecution

case. Rest of the witnesses are panch and police witnesses. Therefore, the inference drawn by the learned trial court appears, just, proper and reasonable. The injury certificate produced on record has no nexus or proximity with the alleged incident. The learned counsel for the respective respondents, prayed not to nod in favour of appellant/applicant and reject the prayer seeking leave to present an appeal against the judgment and order of acquittal of the accused/respondents in this case.

8] We have carefully examined the oral and circumstantial evidence adduced on record on behalf of prosecution. We have also verified the findings expressed by the learned trial court for conclusion of acquittal of the accused in this crime. We do not come across with any perversity or unreasonableness in the impugned findings of the learned trial court. The learned trial court has appreciated the attending circumstances on record in its proper perspective and did not commit any error or imperfection while arriving at conclusion to absolve the respondent/accused in this case. It is a settled rule of law that the findings of acquittal expressed by the learned trial court can be reversed only if there are substantial and compelling reasons, otherwise, no interference in the findings is warranted.

9] In this case, the primary charge against the respondent/accused is in regard to offence under Section 364 of IPC and in order to prove the charge of kidnapping, as envisaged under Section 364 of IPC, it was imperative for the prosecution to establish the circumstances that the respondents/accused kidnapped the victim Columbus with an intention to commit his murder or he may be disposed of as to be put in danger of being

murdered.

10] The entire edifice of the prosecution rests on the evidence of PW-1 Meerabai, PW-4 Pratik Jogdand and PW-6 victim Columbus. It is to be noted that PW-4 Pratik Jogdand is the relative of first informant Meera and hence, an interested witness. It reflects from his cross examination that the PW-6 Columbus is his maternal uncle. PW-3 landlord Shri Dhanraj Maind made volte-face and did not support the prosecution for the charges pitted against the respondents/accused. There is no independent corroboration to the version of the interested and partisan witnesses as referred supra, examined by the prosecution. The evidence of PW-1 Meera and PW-6 Columbus appears slender in nature to prove the mens-rea of the accused/respondents for kidnapping PW-6 Columbus. In contrast, it has been brought on record that there was an agreement executed in between the respondent/accused Gautam Chaudhari and Tukaram Shirsath, father of PW-6 Columbus, to supply the labourers for cutting the sugarcane crops. It has been alleged that in lieu of agreement, Tukaram, the father of PW-6 Columbus received Rs. 4 Lakhs from the respondent/accused Gautak Chaudhari. Moreover, in cross-examination, PW-6 Columbus conceded that he himself and his father indulged in profession of a Labour Contractor. In these peculiar circumstances, it would unsafe to fasten the guilt on the respondents/accused bare on the basis of version of interested witnesses PW-1 Meerabai, PW-4 Pratik and PW-6 Columbus, in absence of any independent corroboration.

11] The conduct and demeanour of PW-6 Columbus since the incident until he was set free by the respondent/accused on the road in front of Amba Sugar factory, seems to be suspicious and doubtful. According to prosecution, he was kidnapped on 1.12.2010 from his house. He was forcibly made to sit in vehicle Jeep by the accused and for about 4 days, they continuously travelled in said jeep. He was also beaten up by the respondents in the jeep during transit and eventually, on 4.12.2010, respondents/accused left him near the gate of Amba Sugar factory and went away. He returned to home and narrated the incident to his wife. We are at our wit's end that when the PW-6 Columbus travelled continuously in the vehicle jeep accompanied with respondents/accused, he did not offer any resistance, nor he made any attempt to disassociate himself from the clutches of the accused. He did not raise shouts nor he made any attempt to invite attention of the by-passers for help. There was no any demur on his part. It cannot be taken that PW-6 Columbus was so innocent as to be carried away by the antics of the respondents/accused. Moreover, when there was no recovery of amount paid in advance to Tukaram, how and for what reasons, the respondent/accused set free the victim Columbus near the gate of Amba sugar factory. These circumstances remained unanswered and created doubt about the credibility of evidence of prosecution witnesses.

12] Learned trial court has appreciated each and every circumstance in proper manner. It has also been observed that PW-1 Meerabai had no acquaintance with the respondents/accused nor she was

aware about their names and residence prior to the incident. Moreover, there was no occasion for her to know the credentials of the respondents/accused. In such circumstances, it is strange to appreciate that on what basis she figured the respondents/accused in the alleged FIR dated 31.2.2010, by mentioning their names in detail. PW-6 Columbus - husband of Meerabai also stated before the trial court that he was not familiar with the accused prior to incident. There are circumstances sufficient to cause dent in the prosecution case.

13] The learned trial court also correctly appreciated the circumstances of lodging the FIR after delay of 3 days. According to prosecution, there was an attempt to get the search warrant under Section 97 of Cr.P.C. from the concerned court and ,therefore, delay was caused to file the FIR. We are of the opinion that when there was an offence of kidnapping of PW-6 Columbus committed in presence of PW-1 Meerabai, for what reason she made an attempt to get the search warrant under Section 97 of Cr.P.C. instead of lodging the FIR directly to the police against the respondents/accused. These circumstances also created doubt about the version of first informant Meerabai.

14] The overall assessment of the evidence of prosecution witnesses reflects that there is no cogent and believable evidence available on record for ultimate chances of conviction in this case. The evidence of witnesses of the prosecution i.e. PW-1 Meerabai, PW-4 Pratik and PW-6

Columbus do not inspire confidence and not free from blemish. The conduct and demeanour of PW-6 Columbus during the 3 days while he was travelling in vehicle jeep accompanied with the accused/respondents smacks something fishy. There are clouds of doubt in the prosecution case. The findings of the learned trial court, appear just, proper and reasonable. The credibility of the prosecution witnesses in this case is doubtful and suspicious. There are no substantial and compelling reasons to cause interference in the conclusion of acquittal drawn by the trial court. In view of presumption of innocence in favour of the accused, we find that the impugned findings of the learned trial court sustainable and not perverse. The findings are required to be made confirm and absolute. In such circumstances, there is no propriety to grant leave to the victim Meerabai to present an appeal against judgment and order of acquittal passed by the learned trial court. Obviously, it would be a futile effort and would not sub-serve any purpose. The ultimate chances of conviction in this case appear bleak. Therefore, the prayer for grant of leave to present an appeal against the judgment and order of acquittal passed by learned trial court deserves to be rejected. Accordingly, the leave to file appeal is hereby refused and consequently, the criminal appeal stands disposed of. R. & P. be sent back to the concerned trial court for further process.

[K.K.SONAWANE]
JUDGE

[R.M. BORDE]
JUDGE

grt/-