

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1502 OF 2016
IN
CRIMINAL APPEAL NO. 670 OF 2016

1. Mulani Dawood Husain,
2. Sagar Vijay Gavali,
3. Arjun Madhukar Rahane. ... Applicants.
V/s.
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL APPLICATION NO. 55 OF 2017
IN
CRIMINAL APPEAL NO. 295 OF 2017

Sachin Damodhar Kolhe (Patil). ... Applicant.
V/s.
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL APPLICATION NO. 1262 OF 2016
IN
CRIMINAL APPEAL NO. 673 OF 2016

1. Yogesh Daulat Gadakh.
2. Vishwajit @ Sonu Kiran Thete. ... Applicants.
V/s.
The State of Maharashtra. ... Respondent.

WITH
CRIMINAL APPLICATION NO. 1269 OF 2016
IN
CRIMINAL APPEAL NO. 681 OF 2016

Tushar Vikram Bairagi. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

WITH
CRIMINAL APPLICATION NO. 1289 OF 2017
IN
CRIMINAL APPEAL NO. 733 OF 2018

Santosh Manohar Hatangale. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Mr.S.V.Marwadi i/b. Mr.Satyajeet P. Dighe for the applicant in APPA-1269/16.

Mrs.Aisha Mohammed Zubair Ansari with Mrs.Nasreen Ayubi
for the applicant in APPA-1502/16 and APPA-55/17.

Mr.Jayant Bardeskar i/b. Mr.Tanveer Khan for the applicant
in APPA-1262/16.

Mr.Anand Palande i/b. Mr.Pratap B. Kakade for the applicant in APPA-1289/17.

Mr.Ramesh Dube Patil with Ms.Khushbu Marwadi i/b. M/s.Jay & Co.
for the applicant (intervener) in APPA Nos.46/19, 47/19, 48/19, 49/19, 50/19,
51/19, 52/19, 53/19.

Mr.J.P.Yagnik, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 4th February 2019.

P.C. :

By the impugned judgment and order dated 23rd August 2016, the learned Additional Sessions Judge-I, Niphad has convicted accused Nos.1, 2, 3, 4, 5, 6, 9 and 11 for offences punishable under section 364A read with section 120B of the Indian Penal Code (IPC), section 386 read with section 120B, section 395 read with sections 397

and 120B, section 347 read with section 120B as well as section 506(II) read with section 120B of IPC. For the offence punishable under section 364A read with section 120B of IPC, all the applicants have been sentenced to suffer life imprisonment. The applicants in Criminal Application No.1502/2016 are accused Nos.3, 4 and 5. The Applicant in Criminal Application No.1269/2016 is accused No.2. The Applicants in Criminal Application No. 1262 of 2016 are the accused No.6 and 11. The Applicant in Criminal Application No.55/2017 is accused No.1 and applicant in Criminal Application No.1289/2017 is accused No.9. These applications are filed for suspension of sentence and for grant of bail pending the hearing and final disposal of appeals. The other applications are by the complainant for intervention.

2. The allegation of prosecution is of kidnapping of P.W.15- Shankarlal for ransom of Rs.5 crore. P.W.11- Karsandas is the brother of the victim of offence who is the complainant. The case of the prosecution is that on 19th December 2012, Shankarlal who was an onion merchant had gone to market for doing his daily transactions. On that day, around 6.30 p.m., Shankarlal went to old market by motorcycle. He did not return home. As Shankarlal did not return home and he could not be contacted, the complainant- Karsandas in the night of 19th December 2012 and 20th December 2012 tried to call on cell phone of Shankarlal around 1.30 a.m. which was picked up by a stranger who told him in Hindi language that Shankarlal was in their custody. On 20th December 2012, in the morning at about 7am, on his mobile phone, Karsandas received a

call informing that his brother Shankarlal was in the custody of the person calling him and a ransom of Rs.15 crore was demanded. The person on call threatened that in the event he informs the police, they would kill Shankarlal. P.W.11- Karsandas filed a complaint with the Police between 8.00 to 8.30 am. At 4.30 pm, he again received a call from cell phone of P.W.15- Shankarlal. He told the person making the call that he was willing to pay them a sum of Rs.5 Crores. That was accepted and the call was disconnected. P.W.11- again received calls from the cell phone of P.W.15- and was told to come to Nashik with the amount. After he started towards Nashik in his car along with his driver carrying cash of Rs.5 crores kept in three bags, he kept on receiving calls to come from one place to another. From Sangamner, he was told to proceed to Nagar Road and from Nagar Road to Shiblapur road. He described as to how he met three persons who came by a motor bike. P.W.15 was sitting in Matiz car parked there. One person was carrying pistol. He described as to how he handed over the cash to the said three persons around 9.30 pm and took with him P.W.15 who was injured. He reached home with P.W.15 around midnight. Next day, he reported the episode to the Police.

3. The police started investigation of the crime. The police inquired about the cell phone number from which calls were received by Karsandas and traced the location of the said cell phone. On 20th December 2012, around midnight, the police called two persons to act as Panchas. For conducting a raid, the police decided to use a private vehicle. They proceeded to village Kharshinde in Taluka- Sangamner.

The police party encircled 8 persons and apprehended them. The police found the accused No.1 in custody of one loaded pistol having 5 bullets. He was in possession of currency notes of Rs.1.25 crore of denomination of Rs.500/-. It was kept in a bag. They found cell phone with him. In personal search of accused No.2, it was found that he was having a single bore pistol made in Italy containing eight rounds and one mobile phone. Accused No.3 was found possessing a bag having currency notes of Rs.90 lakh of denomination of Rs.500/-. Accused No.4 was found to be in possession of one pistol with 8 rounds loaded therein. A bag was found near the head of accused No.4 in which currency notes of Rs.2.25 crore of denomination of Rs.500/- and Rs.1,000/- were found. A bag was found near the head of accused No.5 containing cash of Rs.60 lakh of denomination of Rs.500/- whereas various articles were found in custody of other accused. Accused No.8 was found to be in possession of a bag containing 57 rounds/ cartridges. The police also seized a car of Matiz make and two motor-bikes. The seat in the car was having blood stains. On 22nd December 2012, even the other accused being accused Nos.9 to 11 were arrested.

4. P.W.15- Shankarlal deposed as to how he was kidnapped and how he was taken by car by the accused. He described in detail how calls were made to his brother Karsandas. Accused No.1 allowed P.W.15 to speak to his brother Karsandas. When P.W.15 attempted to speak to his brother in Kacchi language, the accused objected and forced P.W.15 to speak in Hindi language. Karsandas (P.W.11) informed P.W.15 that the

accused were demanding a sum of Rs.15 crores. Thereafter, P.W.15 has deposed how the car was stopped and that the accused No.1 asked him to step down from the car. He was unable to walk and with the help of accused he walked up to the car of his brother. His brother brought him back to his house. His brother removed strips on his eyes and mouth. P.W.15 realized after making inquiry with Karsandas that his brother had to pay ransom of Rs.5 crore to the accused. P.W.11 Karsandas also described as to how he received threatening calls and his discussion on phone with the accused and his brother P.W.15. He also described how he collected the amount and how he got release of his brother- Shankarlal.

5. According to the prosecution case, three bags containing cash of Rs.5 crore were seized. By order dated 9th January 2013 passed by the the learned Judicial Magistrate, First Class, the cash amount was ordered to be returned to P.W.11- Karsandas and, accordingly, he received the same.

6. The learned counsel appearing for the applicants invited our attention to the findings recorded by the Sessions Court in paragraphs- 90, 91 and 92 of the impugned judgment. It was submitted that the learned Sessions Judge has himself recorded a finding that there is a serious doubt about seizure of currency notes from the possession of the accused persons while apprehending them. It is pointed out that the Sessions Court has held that a doubt is created about handing over huge amount of Rs.5 crore by the complainant to the accused persons. It was further pointed that when the learned Magistrate passed an order dated 9th January 2013

directing the Investing Officer to hand over cash in the sum of Rs.5 crore, the cash amount was not before the Court. Moreover, the photographs ordered to be taken while returning the cash amount to the complainant are not produced on record. It was also pointed out that the amount was ordered to be returned to the complainant against execution of bond which contained an undertaking to produce the amount before the Court as and when directed by the Court. It was pointed that the complainant never produced the cash before the Court.

7. Therefore, the submission of the applicants was that in view of serious doubt about payment of ransom amount by the complainant to the accused, a doubt is created about the veracity of entire prosecution case. It was pointed out that no explanation is offered by the prosecution as to why the Medical Officer examined the victim of the offence at his residence. A contention is raised that there is a delay in holding the test identification parade. It was pointed out that the investigation commenced even before registration of FIR. Several other deficiencies in investigation were pointed out which go to the root of the matter. The learned counsel appearing for the accused No.9 pointed out that neither the complainant nor the victim have identified accused No.9.

8. We have considered the submissions. On the basis of the evidence on record, it is held that three meetings were held by accused No.1 prior to 19th December 2012 for hatching the conspiracy. In the first meeting, P.W.12, the accused No.7 and one Lalit were present. In the second meeting, the accused Nos.1, 2, 4, 7 and P.W.12 were present. In

the third meeting, the accused No.1 along with accused Nos.2 to 5, 9 and 12 were present. The finding is that in the said meetings, the accused No.1 disclosed that they have to kidnap onion merchant P.W.15- Shankarlal from his office for a ransom. Various jobs were assigned to those who were present in the meetings.

9. Testimony of P.W.15- Shankarlal has been believed by the Sessions Court. His testimony reveals that at about 6.30 p.m. on 19th December 2012, the accused Nos.2, 4 and 6 wearing monkey caps and holding pistol entered his office and assaulted him. Thereafter accused Nos.1, 2, 5 and 11 followed them. The eyes of P.W.15- Shankarlal were covered and cap was put on his head. After tying his hands and legs, he was taken in the car. Evidence of P.W.11- Karsandas reveals that at 1.30 a.m. on 20th December 2012, he received a call from cell phone of victim- Shankarlal when a demand of ransom was made by the accused. In the morning at 7.00 a.m., he received a call from another number when again a demand was made by him. Thereafter four to five calls were received by the accused from P.W.11- Karsandas. P.W.11 deposed as to how he visited the spot as per the demand of the accused and handed over cash in three bags and how he obtained release of P.W.11- Shankarlal from the accused. P.W.15- Shankarlal, the victim of offence identified the accused in the Court except accused No.9. His evidence has been believed by the Trial Court. At this stage, we cannot re-appreciate the evidence.

10. As far as accused No.9 is concerned, firstly there is an evidence of participation in a meeting to hatch conspiracy. Moreover,

P.W.4- Kantilal proved memorandum recording that accused No.9 showed the place where he had thrown the cell phone of the victim. The Sessions Court believed the testimony of P.W.4, P.W.18 and P.W.9 which shows that accused No.9 made a phone call from the phone of the victim to the complainant. Accused No.9 was found to be a part of the conspiracy.

11. As regards the recovery of cash amount, it is true that there is some controversy. The three bags in which cash was brought by P.W. 11 and was handed over to the accused were seized from the accused along with the cash. P.W.11 identified the bags in the Court. The Station Diary reveals that cash was brought to the police station and was kept protected. There are entries of the cash in the record of the police station. Moreover, in Criminal Misc. Application No.281/2012, the learned Judicial Magistrate, First Class passed an order dated 9th January 2013 after giving opportunity to the accused to file a reply by which he ordered the Investigating Officer to return the cash to the complainant. Accordingly, the cash was returned to the complainant. Therefore, at this stage, it is not possible to accept the contention of the applicants and hold that actually there was no recovery of cash. The learned APP after examination of record of the case stated that there was never an order passed by the Sessions Court directing the complainant to produce the cash. Same is the contention raised by the advocate for the complainant. Therefore, prima facie, he was under no obligation to produce the cash before the Trial Court.

12. Moreover, the Sessions Court for detailed reasons recorded findings after considering the testimony of the victim of the offence and the complainant as well as witnesses and at this stage, prima facie, we find nothing wrong with the findings. Prima facie, there is sufficient evidence to show the complicity of the applicants. Considering the seriousness of the offence, this is not a case where the applicants can be enlarged on bail. However, hearing of the appeals deserve to be expedited.

13. Hence, the applications are rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)