

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1224 OF 2013

Hemant Shantilal Sangoi]
 Aged 38 years, Occu: Service]
 residing at Room No. 24, Premji Soni Chawl,]
 Carter Road No. 8, Borivali (East), Mumbai]
 and Plot No. 41, Gajanan Niwas, Ashtekar Plot]
 Near Durgamata Mandir, Abhay Nagar, Sangli]..Appellant
 At present in Kolhapur Prison](Org. Accused No.1)
 V/s.

The State of Maharashtra]
 (Inspector of Police, Kasturba Marg, Police]
 Station, Mumbai]..Respondent

 Mr. Narayanganesh M. Nadar i/by Mr. S.V. Marwadi for Appellant.
 Mr. S.R. Agarkar-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 9th April 2019.

ORAL JUDGMENT:

1. Heard the learned counsel and the learned APP.
2. The present appellant herein is convicted by the

Additional Sessions Judge, Greater Mumbai, vide judgment and order dated 26th September 2013 in Sessions case No. 21 of 2012 for the offences punishable under sections 363, 341 and 342 read with 34 of the Indian Penal Code. The appellant is acquitted for the offences punishable under Section 364-A read with 34 of the Indian Penal Code. For the offence punishable under Section 363 of the Indian Penal Code the appellant is sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs. 5000/- (Five Thousand Only), in default to suffer rigorous imprisonment for six months. For the offence punishable under Section 341 and 342 of the Indian Penal Code, the appellant is sentenced to suffer simple imprisonment for one month respectively and no order as to fine.

3. The story as unfolded by the prosecution is that on 10th of July 2011 one Sujjan Pokai Bind (PW-1) had approached the police station and lodged a report that on 9th of July 2011 at about 9.30 a.m. his son Arun has left the house and had not returned back. On 11th July 2011 Sujjan Bind had again approached the police station along with Kuldeep Chaouhan, PW-2 and reported that Arun has been kidnapped by the appellant and that the appellant has demanded ransom of Rs.35,00,000/- through PW-2. On the basis of

the said report, Crime No.149 of 2011 was registered at Kasturba Marg Police Station against the appellant. In the course of investigation the accused was called through PW-2 to Vapi Road alongwith victim Arun, victim was rescued and appellant was arrested. After completion of investigation the charge-sheet was filed against the appellant for the offences punishable under sections 363, 364 (a), 341 and 342 read with 34 of Indian Penal Code. Charge-sheet was filed on 4th October 2011. At the trial, the prosecution has examined as many as 10 witnesses to bring home the guilt of the accused.

4. The case rests upon evidence of PW-1, PW-2, PW-3, PW-8, PW-9 and PW-10.

5. According to PW-1, on 11th July 2011, Kuldeep Chaouhan (PW-2) who was residing in the adjacent Chawl had approached PW-1 and had informed him that he had received phone calls from the appellant and that the appellant had informed him that the son of PW-1 has been kidnapped by him. He is demanding ransom of Rs.35,00,000/-for the safety of Arun. According to him, he, therefore, approached the Police Station and lodged a report which is at 'Exhibit-20'. It is elicited in the cross examination that Kuldeep

Chaouhan has accompanied PW-1 to the Police Station. However, his statement was not recorded by the police in the presence of PW-1. It is pertinent to note that PW-1 and PW-2 were detained in the police station for three days. According to PW-1, the appellant was residing in the same Chawl, however, he has further corrected and stated that the appellant is residing in the neighbouring Chawl. It is also admitted that he had not received any phone calls from any person and nor from Kuldeep Chaouhan. Nobody had demanded ransom from him. According to him he had no knowledge about demand of ransom.

6. In fact, PW-1 has candidly stated that he was working on daily wages as a plumber and prior to 11th July 2011, he had no communication with the appellant in whatever manner. PW-2 has deposed before the Court that infact Arun i.e. victim happens to be his good friend. According to him, on 8th July 2011 he had received telephonic call from the appellant who had invited him to Gajanan Hotel at Borivali. PW-2 had obliged. At that juncture, the appellant had allegedly informed PW-2 that he is in need of money since he is having some disputes regarding his agricultural property. In fact, he had offered, that they should kidnap a kid from Chawl and demand

ransom. On 9th July 2011 also he had received phone call from the present appellant and he had disclosed that the work is done. He had further allegedly disclosed that with the help of Chintu Vyas he had kidnapped one boy. On the same night i.e. on 9th July 2011 at about 10 p.m., accused-appellant had inquired with PW-2 as to whether the police had made inquiries with him about appellant. The same apprehension was demonstrated on 10th July 2011 and at that time the appellant had allegedly told PW-2 to go towards Gujarat side i.e. at Vapi with PW-1 and demand ransom of Rs.35,00,000/-. He had threatened of dire consequences, to the effect that, in the eventuality if the payment is not made, he would eliminate the victim.

7. On 11th July 2011, PW-2 claims that he had gone to the police station after having discussion with accused-appellant and he had disclosed the same to the police. Thereafter, he had called the accused-appellant to Borivali and at that juncture the appellant was arrested by the police.

8. PW-2 has admitted in the cross examination that he had no friendly relations with the accused-appellant nor he had any opportunity to talk to him on telephone prior to 9th July 2011. He has also admitted that he had not disclosed about the conversation

between the appellant and himself to anybody. He has also admitted that he had not disclosed to anybody regarding the calls which he received on 9th July 2011. It is categorically admitted that accused has not disclosed the name of Arun as victim, whom he had kidnapped. He had learnt about the same. It is further admitted that on 10th July 2011 he had neither gone to the house of the complainant nor has lodged complaint at the police station. There are inherent omissions and contradictions in the evidence of PW-2. It is further elicited in the cross examination that he had stayed in the police station for three days. They were not allowed by the police to go home but the police had not meted out any atrocities on him.

9. At this juncture, it would be relevant to consider the First Information Report more particularly in column no.3b of the First Information Report, which clearly indicates that there is over writing on the date on which the information is received at the police station, 10th July 2011 has been made to read as 11th July 2011. PW-8 is the person who had reduced the report in writing, has also admitted that there is interpolation. He has not assigned any plausible explanation for the same. It is also admitted by PW-9 that no arrest Panchnama has been drawn on 11th July 2011.

10. PW-8 has stated that since there was correction of the date he had put his initials on the said correction. However, no such initials was found in the report under section 154 of the Criminal Procedure Code.

11. The relevant witness in the present case would be PW-3 the victim Arun himself. According to him, on the date of incident, he was studying in 8th Standard. He was a bright student. He had deposed before the Court that on 8th July 2011, the appellant met him about 10.00 a.m. near S.T. Depot at Sukur wadi and had promised to give him a cricket kit including bat and stumps. He asked him to sit in the bus, he offered cold drink and after consuming the said drink he had felt drowsy. He had then alighted from the bus at Satara. Thereafter, they had boarded another bus to Sangli. They had reached the house of the appellant at night time. His wife had opened the room and the accused and victim spent the night in the said room. On the next day in the morning he was offered milk by the wife of the appellant. He had again felt drowsy and then he had seen that the wife of the appellant had tied his hands and legs and that the appellant had put cotton ball in the mouth of PW-3. He was allegedly assaulted by the appellant. On the

next day also he was offered milk and, thereafter, his mouth was gagged. Soon the police had arrived in Civil dress, the victim was rescued and taken to the hospital at Sangli. Police had inquired with him and he had narrated the incident as had occurred. He has identified rope with which he was tied. It is also admitted in the cross examination that neither Hemant nor any other person had promised to give him cricket kit. He has also admitted that he was not familiar with the accused Hemant. He could not state before the Court the place where he was detained for four days. Surprisingly, PW-3 had not attempted to contact his parents or anybody else although he had realised that he had been kidnapped.

12. PW-8 happens to be the scribe of the First Information Report. His evidence is on the limited point that is to establish that he is the scribe of the First Information Report. The prosecution has failed to establish as to who had approached the police station and first in point of time i.e. whether it was PW-1 or PW-2. There also appears to be interpolation in the date of the First Information Report. PW-2 claims that he was the first person to reach the police station and thereafter, he had informed PW-1 about the same. The evidence of PW-3 victim assumes importance. It is also admitted by

PW-3 that accused were residing in the Chawl. It is specifically elicited in the cross examination that the accused or any other person had not promised to give cricket kit to the victim. That he had not accompanied the appellant or any other person to purchase cricket kit. It is also admitted that the victim had gone to the friends house and stayed there from 11.00 a.m. to 12.00 p.m. That the accused-appellant had not met him before he had been to his friend's house. It is in these circumstances, it cannot be said that the appellant had lured the victim-PW-3 and had taken him to Sangli.

13. Upon perusal of the evidence adduced by the prosecution it *prima facie* appears that the victim-PW-3 had accompanied the appellant voluntarily. His well being was taken care of by the wife of the present appellant. There is no material on record to even remotely indicate that the appellant had demanded any ransom from PW-1 directly or indirectly. There is no reason why the appellant should have demanded ransom through PW-2. Although he was resident of the same Chawl. Moreover, the status of PW-1 would not have permitted the appellant to demand a ransom of Rs. 35,00,000/-. Since the father of the victim was working on daily wages and same was known to the accused-appellant. The evidence of PW-3 does not

inspire confidence in the cross examination. He has stated that he could not tell in which bus he had travelled and where he had stayed in Satara or Sangli. He could not depose before the court about the identity of persons residing in the said house. He had reiterated that he did not know whether the place was Satara or Sangli or any other place. He has also admitted in the cross examination that it is not correct to say that the accused no.2 assaulted him and tied his hands and leg by putting cotton ball in his mouth. There was no reason for accused to put cotton ball. There was no attempt on the part of PW-3 to contact his parents or PW-2. He has candidly denied that he was rescued by police by untying his legs and was taken to the hospital. There are inherent omissions especially to the extent as to whether he was administered any spurious substance.

14. In view of above discussions, it can be safely held that the prosecution has failed to prove the guilt of the accused/appellant beyond reasonable doubt. Hence, the appeal deserves to be allowed.

Order

- i) Appeal is allowed and disposed of.
- ii) The conviction of the appellant for the offences punishable under sections 363, 341 and 342 read with

34 of the Indian Penal Code passed by the Additional Sessions Judge, Greater Mumbai vide judgment and order dated 26th September 2013 in Sessions case No. 21 of 2012 is hereby quashed and set aside and acquitted of all charges.

iii) He be released forthwith, if not required in any other offences.

iv) Fine amount if paid, be refunded to the accused-appellant as per rule.

(SMT. SADHANA S. JADHAV, J)