

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

CRIMINAL APPEAL NO. 154 OF 1997

1) Indranil @ Mintu @ Nitin Roy

2) Anthony @ Tony William

Rozario – deceased

.... Appellants

v/s.

The State of Maharashtra

.... Respondent

Mr. Tapan Thatte a/w. Mr. Amar Patil & Mr. Shantanu Adkar
for the Appellants.

Mr. P.H. Gaikwad, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th DECEMBER, 2021.

ORAL JUDGMENT :-

. This is an Appeal under section 374 of Cr.P.C. challenging the judgment in Sessions Case No.509/1991 along with Sessions Case No.204/1993, Greater Bombay.

2. By the impugned judgment, the learned Additional Sessions Judge, Greater Bombay has held the Appellants (accused nos.1 & 3 – hereinafter referred to as ‘the accused’) guilty of offences under sections 452 and 387 of IPC and sentenced them to undergo rigorous imprisonment for three years with fine of Rs.500/- in default one month rigorous imprisonment in respect of each of the offences.

3. It is the case of the prosecution that the Appellant along with other co-accused hatched a criminal conspiracy to abduct Laxmichand Roopchand Badlani. In furtherance of the criminal conspiracy, on 10/05/1990, at about 19:00 hours, the accused no.3 Anthony @ Tony, since deceased along with two others went to the office of said Badlani and told him that they have been sent by a builder. They directed him to accompany him to the office of the said builder. It is alleged that Roopa (the deceased accused) put a revolver on his forehead and that the deceased accused no.3 and others forcibly took him to his car bearing No.MFF-7404 which was driven by the accused no.1. The vehicle was taken to different places and during this time, PW1 – complainant was compelled to make phone calls to his partners to arrange for Rs.4,00,000/- which was to be delivered at Gaiety Galaxy Cinema. It is further stated that the accused no.2 alighted from the car and followed it in an auto rickshaw. The police reached at the spot and apprehended the accused no.1. Subsequently, the accused no.3 and others were also arrested. Upon investigation of the crime, charge sheet came to be filed against the accused and other co-accused for offences under sections 120-B, 452, 364, 367, 450, 386, 387 of the Indian Penal Code or in the alternative under sections 452, 364, 367, 450, 386, 387 r/w. Section 34 of the Indian Penal Code.

4. Upon considering the evidence on record, the learned Trial Judge acquitted all the accused of offences under sections 120-B, 450, 364, 367 of IPC. The accused no.1 and the accused no.3 – Tony were held guilty of offences under sections 452 and 387 of IPC and were convicted and sentenced as stated above. The Appellant No.2 – Tony (original accused no.3) expired during the pendency of this Appeal and the Appeal stands abated against the Appellant No.2 (original accused no.3).

5. Heard Mr. Tapan Thatte, learned counsel for the Appellant and Mr. P.H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The evidence of PW1 – Laxmichand Roopchand Badlani (complainant) reveals that on 10/05/1990 at about 07:00 p.m., the deceased accused no.3 entered his office along with two other persons. They threatened him and forcibly took him out of his cabin and compelled him to sit in his Car No.MFF-7404. He has deposed that the accused no.3 had made a phone call to the accused no.1 and directed him to occupy driver's seat. The accused no.1 initially took the car to

Juhu Tara Road and later to Charkope Industrial Area. He has deposed that the accused no.3 and others demanded Rs.10 laksh from him and when he expressed his inability to pay the amount, they scaled down the amount to Rs.4 lakhs. He was forced to make a call to his partner and ask him to arrange an amount of Rs.4 lakhs under the threat of causing his death. He phoned his partner and requested him to arrange the money. PW1 told the accused no.3 that an amount of Rs.2.5 lakhs was arranged and the remaining amount would also be arranged within few minutes. PW1 has stated that the accused no.3 also made several phone calls to his partner and directed him to come with the money at Gaiety Galaxy Cinema at Bandra. He has deposed that the accused no.1 took the vehicle near the Station Road and stopped the vehicle near Gaiety Galaxy Cinema at which time, police in plain clothes came rushing towards the car and apprehended the accused no.1.

7. PW4 - Hansraj is one of the employees of the complainant – Badlani. This witness has deposed that about 10:00 p.m., one person had entered the cabin of Badlani followed by two persons. They sat in the cabin of Badlani for about 08 to 10 minutes and thereafter took Badlani along with them. He has stated that one of the accused

persons had threatened him. He realized that something was wrong. He contacted Mr. Chhugani, the partner of the firm and when he came to the office of the firm, he narrated the incident to Mr. Chhugani. At about 09:00 p.m., Mr. Chhugani received a telephonic call and thereafter told him to wait in the office and that he was going to arrange the money. While he was waiting in the office, he received a phone call from Badlani. The complainant inquired about Chhugani and PW4 told him that he had left the office to arrange the money. At about 10:30 p.m., they again received a telephonic call. Mr. Chhugani, who had returned to the office, informed the caller that an amount of Rs.2.5 lakhs was arranged and that it would take some time to arrange the balance amount. PW4 was given a bag containing the cash of Rs.1 lac and was told to handover the money to a person in dark blue shirt waiting at Gaiety Galaxy Theater. When he reached the Gaiety Galaxy Theater with the money, he saw that the police had arrested two persons. He has stated that one Senior Police officer took the bag from his hand.

8. PW6 – Shantaram Parab was a Wireless Operator in DCP Zone – VII. He has deposed that on 10/05/1990, at about 11:30 p.m., DCP Jadhav directed him to be ready for naka-bandi. He was

instructed to come in plain clothes. DCP Jadhav also directed him to confirm whether the partner of Supreme Associates was abducted. He went to the office of the Supreme Associates and confirmed that Mr. Badlani was abducted and that he was taken from his office in his green colour Maruti Car. He has also deposed that as per the instructions of DCP Jadhav, he waited at the office of the complainant Badlani. He learnt that one person in dark blue shirt would be coming to the Gaiety Galaxy Theatre to collect the ransom. He passed on the information to DCP Jadhav.

9. Under the instructions of DCP Jadhav, he proceeded to Gaiety Galaxy Theater at Bandra. The police staff followed them. The driver parked the vehicle between Road No.30 & Road No.38 as directed by DCP Jadhav. Inspector – Deshmukh proceeded to the main gate of Gaiety Galaxy Theater. One green colour Maruti Car having registration No.MFF-7404 came from behind. The said car was followed by two auto rickshaws. DCP Jadhav waited near the compound of Gaiety Galaxy Theater and instructed them to check the said vehicle. He has stated that one person with a revolver in his hand alighted from the rickshaw. DCP Jadhav caught the said person who was holding a revolver in his hand whereas PI – Deshmukh caught the accused no.1,

the driver of the Maruti Car. Accused no.1 disclosed his name as Indranil. He has further told that Mr. Badlani was also in the said car. Some of the accused persons involved in the incident ran away from the spot and were later arrested.

10. PW2 – Jayendra was a Sub-Inspector of Police, Crime Branch, CID, Unit – VII, Bandra office. He has deposed that on 10/05/1990, the Deputy Commissioner of Police, Zone-VII, Mr. B.D. Jadhav informed them that one person by name – Badlani was abducted. He has stated that under the guidance of DCP, a team was formed to nab the accused persons. He has deposed that they proceeded near Gaiety Galaxy Cinema at S.V. Road Junction. At about 00:30 hours, they saw one green colour Maruti Car having registration no.MFF-7404. The said car was being followed by two auto rickshaws. He has deposed that they were aware that the accused had taken Badlani by his own car and that they were given the number of such car. They intercepted the vehicle and caught the accused no.1 who was at the driver's seat. They also arrested the accused no.3 and took his personal search. He was found in possession of revolver. A person wearing dark blue shirt who had alighted from the rickshaw, ran away from the spot. He was later caught and brought to the police station and subsequently, placed

under arrest.

11. PW7 – Purushottam Naik was also a member of a trap party. This witness has also deposed that as per the directions of DCP Jadhav, they waited in a lane near Gaiety Galaxy Theater. They saw one green colour Maruti Car followed by two rickshaws. DCP Jadhav intercepted the said car and apprehended the accused no.1 who was the driving the said car. The other accused who had alighted from the rickshaw was also caught by the police personnel.

12. The evidence of PW1 as well as PW4 clearly indicates that the accused no.3 (deceased) and two others had entered cabin of PW1 and had abducted him for ransom. Abductors had told one of the partners to deliver money to a person in blue colour shirt near Gaiety Galaxy Theater. Under the instructions of the said partner, PW4 had proceeded to Gaiety Galaxy Theater with the money. It is in the evidence that DCP Jadhav had received anonymous call stating that Badlani was abducted. The authenticity of the said information was confirmed by PW6. He was informed that the partner of Badlani would be going to Gaiety Galaxy Theater with money.

13. The evidence of DCP Jadhav and the other police personnel who

were the members of the raiding party clearly reveals that the accused no.1 was driving the car of the complainant, in which the complainant was abducted. Under the circumstances, the learned Judge was justified in holding that the accused was involved in commission of the said crime. There are no justifiable reasons to interfere with the conviction. As regards the quantum of sentence, it is stated that the accused was in custody for 10 months and 18 days. The Appeal which is of the year 1997 relates to the crime registered in the year 1990. It is stated that the accused no.1 does not have any criminal record.

14. Considering the above facts and circumstances, in my considered view, the ends of justice will be met, if the sentence is reduced to the period already undergone. Hence, the Appeal is partly allowed. While maintaining the conviction, the substantive sentence awarded by the Additional Sessions Judge, Greater Bombay in Sessions Case No.509/1991 along with Sessions Case No.204/1993, is reduced to the period already undergone. Bail bonds stand discharged. The accused shall furnish bail bonds before the Trial Court under section 437(A) of Cr.PC. within two months. The Appeal stands disposed of in above terms.

**PREETI
H JAYANI**

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(SMT. ANUJA PRABHUDESSAI, J.)