

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

CRIMINAL APPEAL NO. 872 OF 1998

1. Shankar Sadashiv Pednekar (Abated)]
2. Raichand Bachubhai Nandu (Abated)]
3. Mahesh Jayantilal Solanki] ...Appellants

Versus

The State of Maharashtra]Respondents

.....
Mr. Pranav Badhekar i/b Mr. Prashant Pawar a/w. Mr. Ryan
Shrivastava and Mr. Niranjana D. Pachupate for Appellant No. 3.
Mr. Arfan Sait, APP for the Respondent-State.

.....
**CORAM : PRASANNA B. VARALE AND
N. R. BORKAR, JJ.**

DATE : 04 AUGUST, 2021

JUDGMENT

. This appeal takes an exception to the judgment and order dated 17th November, 1998, passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No. 543 of 1995 along with Sessions Case No. 1264 of 1995.

2. The appellant Nos.1 and 2 who were original accused Nos.1 and 2 respectively before the trial Court died during the pendency of the present appeal.

3. By the impugned judgment and order, the Appellant No.3, who was accused No.3 before the trial Court, has been convicted for the

offences punishable under Section 364-A read with 34 of Indian Penal Code and sentenced to suffer RI for life.

4. It is the case of the prosecution that the dilapidated Chawls namely Dwarkadas Jivraj Chawl and Jariwala Chawl were demolished by the Maharashtra Housing and Area Development Authority (MHADA) in the year 1990 and a building by name Shiv Smruti was to be constructed on that site. P.W.1 Shivram Surve was elected as Secretary of the Shiv Smruti Co-operative Housing Society, which was formed by the residents of the said chawls.

5. According to the prosecution that Accused No. 2, who had two rooms in the old building was opposed to the demolition and reconstruction through MHADA, as he himself wanted to carry out the reconstruction. It is alleged that after the building was reconstructed, one room and two shops were allotted to Accused No. 2, but the same was opposed by P.W. 1 and P.W. 2 Anil Kadam as they were trying to get the room allotted to one Smt. Jayshree Patil. On that count there was dispute between them.

6. It is alleged that on 25th August, 1993, Accused No. 1 visited the house of P.W. 2 and threatened him for the allotment of the room to Smt. Jayshree Patil. On 27th August, 1993, Accused No. 1 along with others again threatened P.W. 2. It is alleged that on 28th August, 1993, P.W. 2 and P.W.1 decided to lodge a complaint in relation to the

alleged aforesaid threats with Nagpada Police Station. It is alleged that while they were going to Nagpada Police Station, Accused Nos. 1 to 3 surrounded them and at that time, Accused No. 1 was armed with stick and Accused No. 5 Toraskar was armed with a revolver. According to the prosecution, the accused forcibly took P.W. 1 and P.W. 2 to Saibaba Temple, near B.I.T. Chawl, Building No.14, Bombay. The accused then started demanding possession of some shops to them. P.W. 1 and P.W. 2 told them that shops had already been allotted to other tenants, upon which according to the prosecution the accused demanded amount of Rs. 5 Lakhs from them. The accused then assaulted P.W. 1 and P.W. 2 with the wooden stick and fist and kick blows, as a result of which, they suffered bleeding injuries. The gold chain, which was on the person of P.W.2 was snatched. It is alleged that P.W. 1 and P.W. 2 raised cries which attracted the attention of P.W. 3 Police Inspector Samsheer Pathan along with P.W. 7 Police Constable Balaji, who were patrolling in that area. According to the prosecution, P.W. 3 and P.W.7 apprehended the accused Nos. 1 and 2 at the place of incident itself, however, other accused managed to escape. P.W. 1 and P.W. 2 were taken to the J. J. Hospital. The complaint was lodged by P.W.2 Anil Kadam. On the basis, the said complaint, crime vide Crime No. 543 of 1993 for offences punishable under Sections 365, 395, 327, 387 read with 34 of Indian Penal Code and Section 3 read with 25 of Arms Act, was registered. On completion of the investigation, the charge-sheet was

filed against the accused for the aforesaid offences. The accused were charged and tried for the aforesaid offences. The trial Court convicted the accused Nos.1 to 3 for the offences punishable under Section 364- A read with 34 of Indian Penal Code.

7. We have heard learned Counsel for Appellant No. 3 / Accused No. 3 and the learned APP for the Respondent-State.

8. According to P.W. 1 Shivram Surve on 28th August 1993 at about 10 a.m. he visited the house of P.W. 2 Anil Kadam. P.W. 2 informed him that Accused Nos. 1 and 2 along with some others had come to his house on 27th August, 1993 and threatened to kill him, if their demand in relation to allotment of shop is not met. According to P.W.1, thus they decided to lodge the complaint and they came near the gate of the Society, at that time accused Nos. 1 and 2 along with other five to six persons surrounded them. The accused forcibly took them to B.I.T Chawl, near Saibab temple and made them to sit there. Accused No. 5 pointed the revolver at him. He further stated that accused assaulted them by sticks. They were asking to give them a shop or Rs. 5 or 6 lakhs. He has further stated that someone out of them snatched gold chain of P. W. 2. He further stated that they were there for about two and half hours and were being assaulted intermittently. They were shouting for help. On hearing their shouts, some police personnel on patrolling duty came there at the place of incident and on seeing the police, the accused started running away

from the place of incident. He has stated that the police after chase could apprehend accused Nos. 1 and 2.

9. In the cross-examination P.W. 1 has admitted that on both the sides of the Keshavrao Kadam Marg, vegetable vendors stalls are there. He has further admitted that while passing from their building to Saibaba Temple on the right side there is Chowky of Nagpada Police Station at a walking distance of two minutes. He admitted that in B.I.T. Chawl No. 14, people are residing on the ground floor as well.

10. According to P.W. 2 Anil Kadam, on 25th August, 1993 at about 8.30 p.m. Accused No. 1 came to his house and told him to transfer the room in his name, which was allotted to one Smt. Jayshree Patil. Accused No. 1 threatened to kill him, if his demand is not met. He further stated that on 27th August, 1993, Accused No.1 again came to his house and asked him to come with him to Building No. 14 B.I.T. Chawl. As he refused to accompany him, Accused No. 1 left his house and again came back to his house after half an hour along with other four unknown persons. Accused No. 1 told him that there are four rooms in his name and he should give him the shop allotted to Smt. Jayshtree Patil. The accused again threatened to kill him, if his demand is not met. According to P.W. 2, he informed about the threats to P.W. 1, who at the relevant time was the Secretary of the Society. P.W. 2 further stated that then they decided to lodge the complaint.

According to P.W. 2 on 28.8.1993, at about 10 a.m., P.W. 1 came to his house for going to the Police Station to lodge the complaint. When they came out of his house, accused Nos. 1 and 2 along with four more persons surrounded them. According to him, Accused No. 1 was armed with stick and Accused No. 5 was armed with revolver. The accused No.5 threatened them with revolver and forcibly took them behind Building No. 14, B.I.T Chawl, near Saibaba Temple. According to P.W.2, the accused threatened and assaulted them. At about 01:00 p.m., a Police Officer and a Constable, who were on patrolling duty, came there on hearing their shouts. On Seeing the police, accused ran away from the place of the incident. The Police chased them and apprehended accused Nos.1 and 2. The police took them to the hospital for treatment. After treatment, they came back to the Police Station and then they lodged the report in relation to the incident.

11. Neither P.W.1 nor P.W.2 has attributed any specific role to the accused No.3 in the alleged incident. Admittedly, Accused No. 3 was not known either to P.W. 1 or P.W. 2. It appears that accused No.3 was arrested on 26th November, 1993 that too on the basis of alleged disclosure of his name by Accused No. 5. The Test Identification Parade ("TI Parade" for short) was thereafter conducted on 1st December, 1993 i.e., after three months of alleged incident. In the said TI parade, P.W.1 and P.W.2 could not identify similarly circumstanced accused No.4. Thus, it would not be safe to rely upon the evidence of P.W.1 and P.W.2 to connect the accused No.3 with alleged crime.

12. Considering the overall facts and circumstances, the trial Court was not justified in convicting the Appellant No.3 / Accused No. 3 for the offences punishable under Sections 364 – A with the aid of Section 34 of the Indian Penal Code. In the result, the following order is passed:

ORDER

- i) Criminal appeal is allowed.
- ii) The conviction of Appellant No. 3- Mahesh Jayantilal Solanki vide common Judgment and order dated 17th November, 1998 passed by the learned Additional Session Judge, Greater Bombay in Sessions Case Nos. 543 of 1995 and 1264 of 1995 for the offence punishable under Section 364 -A read with Section 34 of the IPC is quashed and set aside.
- iii) Appellant No. 3 is acquitted of the offence punishable under Section 364-A read with Section 34 of the IPC.
- iv) The fine, if paid by Appellant No. 3, be refunded to him.
- v) His bail bond stands cancelled.
- vi) Criminal Appeal stands disposed of accordingly.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)