



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 916 OF 2022

Prakash S/o. Fulchand Kataria,
Age : 67 years, Occu. Business,
R/o. Vrindavan Colony, Sangamner,
Tq. Sangamner, Dist. Ahmednagar,
Maharashtra.

... Appellant
(Orig. Informant)

Versus

1. Sumit S/o. Sunil Dukre,
Age : 24 years, Occu. : Construction Assit.,
R/o. Near Keshav Market, Gavandi Galli,
Yewla, At Pre. Chatrapati Sambhaji Colony,
Maldad Road, Sangamner, Dist. Ahmednagar.
2. Janardhan S/o. Khandu Bodke,
Age : 19 years, Occu. : Labourer,
R/o. Near Kalaram Mandir, Panchavati,
Dist. Nashik.
3. Sachin S/o. Popat Leve,
Age : 19 years, Occu. : Labourer,
R/o. Someshwar Bardan Fata,
Dist. Nasik.
4. Pankaj @ Mayur S/o. Prakash Udavant,
Age : 21 years, Occu. : Laborer,
R/o. Saishraddha Chawk, Sangamner,
Dist. Ahmednagar.
5. Viresh S/o. Sakharam Giri,
Age : 35 years., Occu. : Service,
R/o. Saishraddha Chawk, Sangamner,
Dist. Ahmednagar.
6. The State of Maharashtra,
Through the Police Inspector,
Investigating Officer,
Sangamner City Police Station,
Tq. Sangamner, Dist. Ahmednagar.

(C.R. No. 528 of 2019 with Sangamner
City Police Station, Sangamner)

... Respondents.

...
Mr. Abhaykumar Dilip Ostwal, Advocate for Appellant.
Mr. A. M. Phule, APP for Respondent – State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 12th OCTOBER, 2023

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

1. Getting dissatisfied by judgment and order of acquittal passed by learned Additional Sessions Judge, Sangamner, Dist. Ahmednagar in Sessions Case No.118 of 2019, thereby acquitting accused respondents from charges under sections 363, 364-A, 342 and 201 read with section 120-B of Indian Penal Code (IPC) and also acquitted accused no.2 Janardan from charge under section 3/25 of Arms Act, original informant is invoking provisions under section 372 of the Code of Criminal Procedure, praying to set aside impugned judgment.

2. Learned counsel for the appellant would submit that, serious offence has been committed. Minor has been kidnapped for ransom after hatching conspiracy i.e. for demand of Rs.10 crores. That, in support of the charges, prosecution had examined in all 18 witnesses, and therefore, there is overwhelming evidence including evidence of very victim child. However, it is his submission that, still, said evidence has been rejected by learned trial Judge without

assigning satisfactory reasons. It is further submitted that, immediately when the child was missing, the information was passed to police. Accused persons had themselves contacted informant and had demanded ransom. Accused were apprehended with arms. The panchanama of the spot where the victim child was detained was drawn. In spite of commission of grave offence, learned trial Judge has acquitted accused, and therefore, prayers are sought to be granted, i.e. setting aside judgment under challenge and convicting the accused for the charges for which they are tried.

3. After hearing the submissions, we have taken stock of the evidence of prosecution in trial court. The status of the witnesses is as under :-

PW1 Prakash is the informant and he examined at Exh.71.

PW2 Mahesh is the son of the informant and father of the victim. His statement is at Exh.73.

PW3 Onkar, who was running a stationary shop at Sangamner. His statement is at Exh.74.

PW4 Sunil is a pancha to spot panchanama from where the accused alleged to have been kidnapped the victim boy.

- PW5** Amit is also pancha to spot panchanama for the spot where the accused detained the victim for some time (Exh.78).
- PW6** Vaibhav is a pancha to seizure of mobile of accused. The said seizure panchanam is at Exh.80.
- PW7** Bhagwan is a pancha to Exh.81 and his statement is at Exh.80.
- PW8** Ritesh is a pancha to memorandum of disclosure at Exh.83.
- PW9** Rakash is the witness who gave the alleged vehicle used by the accused for kidnapping purpose.
- PW10** PW.10 Jayant is the owner of the said bungalow situated at Perucha Bag area where these accused alleged to have been detained the victim.
- PW11** PW11 Rahul examined at Exh.90.
- PW12** Sakib Khan was the witness to whom PW9 Prakash Chate gave the said vehicle for changing its colour. This witness has not supported the prosecution.
- PW13** Yogesh has been examined at Exh.92 and he claims that police had obtained the custody of the victim boy from him.
- PW14** Vasant is a pancha for test identification parade (Exh.95).
- PW15** Santosh is also a pancha to memorandum of disclosure at Exh.97.

PW16 Daksh is a victim boy, examined at Exh.99.

PW17 P.I. Nitin Patil and **PW18** Abhay Parmar are police officials and the Investigating Officers.

4. Undisputedly, FIR at the instance of PW1 Prakash is against unknown persons. Informant deposed about receiving phone call from unknown mobile. It is not in dispute that, fortunately the child PW16 Daksh has returned back in the custody of his parents. Evidence of this child witness is crucial. On going through his testimony, it is revealed that, he left house to go to school at 7:30 a.m. on 09.08.2019. According to him, while he was proceeding to the bus as usual, he saw a person keeping watch on him, approaching him, catching hold of him, pressing his head inside red jacket worn by that person and forcing him in the Indica car. The child states that, another man was driving, whereas, third person was sitting on the back seat. Said third person applied bandage with medicine and thereafter pressed on his mouth and he fell unconscious. After some distance, i.e. after traveling for 20-25 minutes, there was jungle area where there was a bungalow. He was brought inside the house, made to sit on a chair, his hands and legs were tied, he was blindfolded and sticky tape was fixed to his mouth. He narrated about the conversation between those persons. Then he stated that, he was given Vadapav. After some

conversation amongst them, he claims that he heard them saying that, one of them has been caught by police, and thereafter, they untied his hands and legs and then taken out of the house and further taken on a two wheeler upto some distance and dropped. Those persons gave him Rs. 50 for rickshaw fare and returned his belongings. He met one passerby and he used his phone, but could not connect his father's mobile. That man called police, who came and took him to police station, where he narrated the entire incident and his statement being recorded, both in police station as well as in court.

5. It seems that there is no direct eye witness, and therefore, case is based on circumstantial evidence. Evidence of PW3 Onkar, PW9 Prakash, PW12 Sakib Khan and PW10 Jayant seem to have been relied by prosecution.

6. On going through the evidence on record, it is noticed that, very crucial evidence, like mobile used in the crime has not been laid hands by the prosecution. Panchanama of that spot from where the child was picked up is not drawn. Even the person who allegedly met the child first and called police has not been examined by the prosecution. Admittedly, before being blindfolded, the child must have got occasion to see the kidnapper. Who amongst the five accused played what role has not been given in

detail by the child. In fact, child in cross has admitted that, his grandparents and parents have tutored him before giving statement to police as well as in court.

7. Defence accused has placed on record documents regarding some partnership deeds between accused Viresh and father of victim. Child while participating in T.I. parade seems to be accompanied with father and grandfather. Investigating machinery seems to have failed to gather CDR. No school record is gathered to show that child could not attend school that day. Though there is recovery of weapons upon arrest of accused, child has not stated or uttered anything about any of the accused armed with weapons, like knife and pistol.

8. On going through the evidence of prosecution witnesses, more particularly, PW1 Prakash, PW2 Mahesh, PW16 Daksh and Investigating Officer, there are material contradictions and omissions. The most crucial aspect is that, even before arrest of accused, police machinery were aware of the names. How it is learnt is the mystery. Custody of accused is said to be taken by LCB. From the documents placed on record by defence, it is apparent that, there is civil dispute between informant and accused.

9. There is charge of section 120-B of IPC, but no supporting evidence as to where the conspiracy was hatched. Where they met and how they planned is not getting clear. In fact

there is no evidence as regards to conspiracy is concerned.

10. Therefore, here, very aspect of kidnapping is not cogently proved. There is no evidence with regard to section 364-A of IPC. Similarly, there is no evidence regarding commission of offence under section 342 of IPC. Unless essential ingredients are brought on record, charges cannot be said to be brought home. Here, except evidence of Investigating Officer, which is not convincing, there is nothing to connect the accused. As stated above, entire case of prosecution hinges on testimony of PW16 Daksh-victim, but when the child admits about being tutored by his parents and grandparents, story of prosecution comes under shadow of doubt. That apart, there are serious lapses during investigation. None of the circumstances are cogently and firmly proved and therefore learned trial Judge has committed no error whatsoever in refusing the case of prosecution as proved. Consequently, finding no merit in the appeal, we proceed to pass following order :-

ORDER

The criminal appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)