

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1151 OF 2019

Deelip S/o. Madhukar Puri
Age: 55 years, Occu.: Medical Practitioner,
R/o. Wai-Bazar, Tq. Mahur,
Nanded.

. . . Appellant
(Victim)

Versus

- 1) Manoj @ Mahendra S/o. Vitthalrao Puri
Age: 50 years, Occu.: Agril.,
R/o. Asoli, Tq. Mahur,
District Nanded.
- 2) Dharamsingh S/o Parasram Chavan,
Age: 44 years, Occu.: Agril.,
R/o. As above.
- 3) Vijay S/o. Fulsingh Rathod
Age: 38 years, Occu.: Agril.,
R/o. As above.
- 4) Dinesh S/o. Laxman Giri
Age: 46 years, Occu.: Driver,
R/o. As above.
- 5) Sanya @ Sunil S/o. Ambharsingh Rathod
Age: 38 years, Occu.: Agril.,
R/o. As above.
- 6) Babu S/o. Amarsingh Chavan
Age: 37 years, Occu.: Agril.,
R/o. As above.
- 7) Manish S/o. Santosh Puri
Age: 40 years, Occu.: Business,
R/o. As above.

8) Sanjay S/o. Uttamrao Lokhande
Age: 51 years, Occu.: Private Service,
R/o. Shivaji Wad, Pusad,
Tq. Pusad, District Yeotmal.

9) Ganesh S/o. Dashrath Kamble
Age: 45 years, Occu.: Private Service,
R/o. Shivaji Wad, Pusad,
Tq. Pusad, District Yeotmal.

10) The State of Maharashtra
Through Police Station Officer,
Police Station, Sindkhed,
Tq. Mahur, District Nanded.

. . . Respondents
(Res. Nos.1 to 9 Orig. Accu. :
Res. No.10 – Org. Informant)

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Mr. A. N. Nagargoje, Advocate for Appellant
Mrs. V. S. Choudhari, APP for Respondent No.10 - State
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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATED : 20 FEBRUARY 2023

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

1. Original victim is taking exception to the judgment and order dated 08.08.2019 passed by learned Additional Sessions Judge-2, Nanded in Sessions Case No. 107 of 2010 by which respondent Nos.1 to 9 are acquitted from charges under Sections 143, 147, 365, 395, 397, 452 and 506 r/w 149 the Indian Penal Code (IPC) and Section 135 of the Maharashtra Police Act.

BRIEF FACTS GIVING RISE TO THE SESSIONS CASE

2. One Madhukar Rambhau Puri lodged FIR alleging that his son Dilip, a medical practitioner was running a hospital at Wai. On 23.02.2010 daughter of Chandrashekhar Giri, namely, Jyoti was brought for treatment to the hospital. On 25.02.2010, accused nos. 1, 2, 5 and 7 along with seven to eight persons came to the hospital of Dr. Dilip seeking whereabouts of Jyoti. They assaulted the informant, Dilip, Chandrashekhar and wife of Chandrashekhar, namely, Maltibai. As accused did not find Jyoti, they kidnapped Dr. Dilip in a vehicle bearing registration no. MH-29/1336. Therefore, report was lodged at Sindkhed Police Station on the basis of which crime no. 11/2020 was registered for the above offences.

3. Investigation was carried out by **PW11** API Babarao and case was committed for trial. Learned Sessions Judge-2, Nanded conducted trial and reached to the finding that prosecution has failed to bring home the charges against accused and thereby acquitted them vide judgment and order dated 08.08.2019. Victim Dr. Dilip is now questioning the legality and maintainability of the judgment by filing instant appeal i.e. by invoking the provisions of Section 372 of the Code of Criminal Procedure (Cr.PC.)

SUBMISSIONS ON BEHALF OF APPELLANT

4. Learned Advocate for the appellant would submit that prosecution had made out a full-proof case. Accused persons had entered the hospital of the appellant in search of Jyoti and not finding her, they had beaten and kidnapped the appellant. That, in support of its case, prosecution has examined in all 12 witnesses and therefore, there was sufficient evidence against accused persons. However, learned trial court has failed to appreciate both, oral and documentary evidence. It is next submitted that hypertechnical view has been adopted by learned trial court while appreciating the evidence and reaching to the conclusion. That, appellant victim has also stepped in the witness-box and has narrated the acts of accused with him. However, learned trial court failed to appreciate the same.

5. It is further pointed out that at the time of abduction, accused persons had also committed dacoity by forcibly taking away two gold rings, a gold chain and cash of Rs.2,200/- i.e. by making use of deadly weapons. In spite of evidence to that extent, learned trial court has surprisingly disbelieved the prosecution case and acquitted the accused.

6. Inviting our attention to the testimony of **PW2** Madhukar, **PW3** Dr. Dilip and **PW4** Chandrashekhar, it is submitted that all such witnesses were

consistent in their evidence. That, in spite of lengthy cross-examination, their evidence has not been shaken, but still learned trial court failed to appreciate the same and erroneously acquitted the accused. Lastly it is submitted that undue importance has been given by learned trial Judge in holding that evidence of prosecution is full of contradictions and omissions. Thus, learned Advocate submits that such findings reached at by learned trial court, being against law and not being based on sound reasons, the said judgment is liable to be dismissed and the respondent nos.1 to 9 are liable to be dealt according to law.

SUBMISSIONS ON BEHALF OF STATE

7. On behalf of the State, learned APP pointed out that prosecution had cogently established the oral and documentary evidence in the trial court. There was testimony of victim along with other witnesses, who were very much present at the time of incident. Before abduction of the appellant, by using of deadly weapons, ornaments and cash was forcibly taken away. There was use of deadly weapons in violation of the Maharashtra Police Act. That, in spite of availability of cogent and reliable evidence, learned trial court has surprisingly acquitted the accused and therefore, she too prayed that said judgment cannot be allowed to be sustained.

8. We have appreciated the submissions advanced by learned Advocate for the appellant as well learned APP for the State. We have also gone through the evidence adduced before the trial court. We have also carefully gone through the answers given by witnesses on behalf of prosecution apart from scanning the documentary evidence. In short, it seems to be the case of prosecution that a girl by name Jyoti was brought to the appellant, who is a medical practitioner, for treatment purpose. From the submissions advanced before us, it transpires that accused no.1 was interested in Jyoti and he suspected that she was kept with appellant and other relatives deliberately. In above backdrop, it is stated that on 25.02.2010 accused persons entered the hospital of appellant thereby questioning the whereabouts of said Jyoti and not finding her, it is alleged that, while abducting the appellant, he was robbed of ornaments on his person and cash, and hence above crime was registered at Sindkhed Police Station.

9. To establish its case, prosecution seems to have examined in all 12 witnesses, but testimony of only **PW2** Madhukar, **PW3** Dr. Dilip and **PW4** Chandrashekhar seems to be only of importance. Rest of the witnesses seem to be panchas, Investigating Officer, medical expert and police panchas. Therefore, above evidence is required to be visited.

10. **PW2** Madhukar, father of appellant stated that Jyoti is daughter of his nephew PW4 Chandrashekhar. She came for treatment to appellant on 23.02.2010. According to him, on 25.02.2010, 4 to 5 persons along with 8 to 10 persons came to the hospital at 8.30 p.m. He stated that Manoj Giri, Dharma Chavan, Sanaya Rathod, Manish Puri, Vijay Rathod and other 5 to 6 persons were accompanying them. He stated that they had knife with them. They showed it to his son appellant Dilip and asked whereabouts of Jyoti and to hand over her custody to them. According to him, 4 to 5 persons assaulted this witness, his wife and his nephew Chandrashekhar while they were looking for Jyoti. He stated that by showing knife accused abducted his son Dilip in a vehicle bearing registration no. MH-29/1336. Therefore, he approached Sindkhed Police Station and lodged report which he identified at Exhibit 98.

Above witness is cross-examined at length. Initial cross-examination is about his wife, his children. He was asked about adoption of Shankar Giri to Sujan Giri which he admitted. He also admitted name of daughter of Chandrashekhar to be Jyoti. Then in para 5 and 6, there are questions about association of this witness to Co-operative Society, about his wife to be elected as Sarpanch. He was asked about house of Dilip i.e. number of rooms, its location from Bazar and its surroundings. He was asked about brother of Jyoti and whether he knew him and whether Jyoti was taken away on 18.02.2010,

to which he admitted. He was unable to state whether on 20.02.2010 Jyoti was taken to hospital of Dr. Papulwar and whether any complaint was filed by accused no.1 Manoj for wrongful confinement and whether any inquiry was made with Jyoti. He denied that because of political rivalry with Manoj, he has filed false report against him. He was unable to state whether he had given written complaint. In para 11 of his cross-examination, this witness has denied about falsely stating that on 23.02.2010 Chandrashekhar brought Jyoti to appellant and on 25.02.2010, 4 to 5 persons along with 8 to 10 persons visiting the clinic of Dilip seeking whereabouts of Jyoti and on knife point, abducting Dilip in a vehicle.

11. **PW3** Dilip is the victim. He spoke about the incident taking place on 25.02.2010 around 08.30 p.m. According to him, while he was checking patients, **one unknown person** came to his clinic, pushed him towards inner room and took out a knife. At that time, Mahendra Puri, Dharamsingh Chavan along with two to three persons also entered and asked whereabouts of Jyoti. They threatened that they will cut him. After asking whereabouts of Jyoti, he stated that unknown persons took him in his own house and started roaming in the house and destroying the articles. He stated that at that time, his parents came, upon which Mahendra Puri and Dharamsingh Chavan pushed his parents. Thereafter, Chandrashekhar came and Dharamsingh and Mahendra assaulted Chandrashekhar but they did not find Jyoti. He stated

that the persons who were unknown were speaking in Hindi language. Thereafter those persons were taking him out of house and when he resisted, he was hit by Dharamsingh with wooden stump and later on he was assaulted by blows on head resulting into bleeding injuries. Thereafter, he was dragged in white colour jeep. While he resisted being taken, at that time Mahendra inflicted blow of iron rod on his head causing bleeding injury. They lifted him and put him in jeep and took him to Mahur Road. On the way, his two gold ring weighing 4 and 5 grams respectively, and gold chain weighing 10 grams was removed from his person and even cash of Rs.2,200/- was taken away and finally they dropped him at Manora squar, Digras, where he went to Naik Hospital, informing the compounder about the incident, made phone call to his house and called a vehicle and went to police station. Police referred him to Primary Health Center, Sindkhed and after treating him, he was referred to PHC Mahur. However, according to him, in stead of going there, he went to home and thereafter on 27.02.2010 police came and recorded his statement.

In cross-examination he was asked about since when he is practicing, whether he has maintained records of patients and what is the distance between his clinic and market road. He answered that in the statement he has stated about Chandrashekhar being beaten by accused nos. 1 and 2, but he was unable to assign as to why said material was not in his statement. He was again questioned about his father at Aswali for the period from 1967 to 1992,

and who is Jyoti and as to whose daughter she is and when she came to Mahur and whether her marriage has taken place with consent. All the suggestions put to this witness are denied by him. He admitted that he had not told police while recording statement that Waman Petkule came to his hospital on 25.02.2010 at 8.30 p.m.

12. **PW4** Chandrashekhar seems to be cousin of appellant. This witness is father of Jyoti. He stated that on 25.02.2010 while he was in the hospital along with his wife brother, accused nos. 1, 2, 3, 5 and 7 along with others came to the hospital calling Jyoti. He stated that accused no.1 was armed with iron rod and accused no.2 was armed with wooden stump. They took Dilip out of hospital in the vehicle. In the morning Dilip came and told that he was beaten and sustained injuries to his head and even his ring and chain was removed.

This witness is also cross-examined at length on the point of education of his daughter, about his native to be Aswali. He admitted that his daughter was produced before J.M.F.C. on 18.02.2010. He denied that she stated that she wanted to reside with accused no.1. He admitted that he and his brother forcibly took Jyoti to his house. He admitted that on 25.02.2010 he was present in the hospital of Dr. Puri but he is unaware whether his daughter made any complaint against Dr. Puri and others. He admitted that he did not

give complaint regarding incident dated 25.10.2010 personally.

13. **PW5** Dhanlal is the pancha to seizure of clothes of appellant and he identified the panchanama.

14. **PW6** Sayed Irfat is the pancha to seizure of vehicle and **PW7** Narayan is the pancha to seizure of iron rod and they have not supported prosecution.

15. **PW8** Tukaram had acted as pancha to the memorandum at Exhibit 123 and seizure of cash of Rs.1,200/- from Alto car Exhibit 124.

ANALYSIS AND CONCLUSION

16. On carefully going through the prosecution case in the trial Court, it seems that alleged episode has taken place at Wai Bazar in the premises of **PW3** Dr. Dilip. Informant **PW2** Madhukar seems to be his father, whereas **PW4** Chandrashekhhar seems to be nephew of informant. Testimony of above three witnesses is said to be crucial for prosecution.

17. The episode can be split into two occurrences. Firstly, forcibly entering the clinic, assaulting **PW3** Dr. Dilip and thereafter forcibly abducting him in a vehicle and later on forcibly removing his belongings.

18. After comparing testimonies of PW2 Madhukar, PW3 Dr. Dilip and PW4 Chandrashekhar, it is revealed that they are not consistent. It is surprising that they are related witnesses and are moreover said to be present at the scene of occurrence. However, PW2 Madhukar has stated that initially 4 to 5 persons accompanied by 7 to 8 persons entered in Clinic and then he named only five persons i.e. Dharma Chavan, Manoj Giri, Sanaya Rahod, Manish Puri and Vijay Rathod. He speaks of knife being used but PW3 Dr. Dilip and PW4 Chandrashekhar are silent about possession of knife or its use. Instead PW3 Dr. Dilip and PW4 Chandrashekhar speak about wooden stump and iron rod. From the suggestions to such witness there seems to be initial political rivalry and secondly it is emerging that daughter of PW4 Chandrashekhar, namely, Jyoti had some affair with accused no.1 and when court proceedings were going on, it seems that she was forcibly taken away and brought and kept at Wai and therefore, accused persons came in search of her. PW2 Madhukar has admitted to that extent. In spite of assault and kidnapping, no other independent witness has been examined. Though PW3 Dr. Dilip claims that incident had taken place while he was examining patient by name Wamanrao Petkule, even this independent witness is not examined. Even there is variances in the evidence of above three witnesses as PW2 Madhukar and PW4 Chandrashekhar are found to be raising fingers towards accused nos.1, 2, 3, 5 and 7 and PW3 Dr. Dilip raises finger towards accused nos.1 and 2 along with two to three persons coming to his hospital. In fact, PW3 Dr. Dilip has initially

deposed about arrival of unknown person. Testimony of PW4 Chandrashekhar is silent about accused being armed with knife. Infact, it was expected of PW2 Madhukar, PW3 Dr. Dilip and PW4 Chandrashekhar to be consistent about arrival of accused persons, their names and what they were armed with in view of previous political rivalry and alleged episode of bringing Jyoti out of custody of accused no.1. Surprisingly when PW2 Madhukar had spoken about entry of unknown persons and he had informed to Police about it, identification parade was necessary. However, police machinery has not taken steps in that direction. Even when PW3 Dr. Dilip claims that he was referred by Police to the hospital after alleged episode of abduction, police witnesses are not examined by prosecution. PW3 Dr. Dilip is unable to produce documents or receipts of purchase of ornaments which were allegedly removed from his person. Though PW3 Dr. Dilip stated that before being taken in a vehicle, he was hit and assaulted by wooden stump and iron rod, neither PW2 Madhukar nor PW4 Chandrashekhar speak about it. Even case of prosecution received a setback as PW3 Dr. Dilip, in spite of being a Doctor and in spite of he being referred to visit PHC, he did not go to PHC and did not place any medical papers to show that he being assaulted by wooden stump and iron rod causing him bleeding injuries. Even the spot where PW3 Dr. Dilip was said to be left in unconscious condition, its panchanama has not been drawn by investigating machinery to establish kidnapping.

19. Though prosecution came with a case that there was seizure of iron rod at the instance of accused no.1 and wooden stump at the instance of accused no.2, arrest panchanama Exhibits 136 and 137 show that they were arrested on 26-02-2010 at 10:30 a.m. at Sindkhed, however, seizure of iron rod was shown at the instance of accused no.1 at around 09:30 to 09:50 a.m. on 26-02-2010 i.e. prior to the arrest itself. Whereas accused no.2 is shown to be arrested on 26-02-2010 between 10:00 to 10:20 a.m. and therefore, how could there be seizure prior to their arrest. Therefore, recovery under Section 27 of the Indian Evidence Act from the accused while in custody is patently missing in the so-called disclosure and recovery and therefore, in our opinion, even such evidence cannot be of any avail to the prosecution. Rather, case of prosecution of causing seizure is itself rendered doubtful.

20. Therefore, on taking audit of entire evidence of prosecution, here, though case was based on testimonies of PW2 Madhukar, PW3 Dr. Dilip and PW4 Chandrashekhar, for above reasons, we do not find their testimonies to be consistent and therefore, it fail to inspire our confidence. That apart, there are patent shortfalls and lacunae in the investigation. Therefore, in our opinion, learned trial court has correctly appreciated the evidence and committed no error whatsoever in refusing to accept the case of prosecution and thereby acquitting the accused. With such quality of evidence, only conclusion that can be arrived at is that case has not been proved against

accused beyond reasonable doubt. Therefore, finding no merits, we are of the opinion that appeal deserves to be dismissed and accordingly, we proceed to pass following order :

ORDER

Criminal Appeal No.1151 of 2019 stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

VRE