

for life and to pay fine of Rs.10,000/-, i.d. to suffer Simple Imprisonment for two years.

Whereas, on being convicted under Section 394 read with 34 of the IPC, they are sentenced to suffer Rigorous Imprisonment for 10 years with a default sentence. In addition, separate sentences are imposed on being convicted under Section 342, 506 read with 34 of the IPC, all sentences having been directed to run concurrently.

All the accused are acquitted of the offence punishable under Section 328 read with 34 of the IPC.

The present Applicant Siraj Khan was tried as Accused No.3 and he also stand convicted as indicated above and presently is undergoing the sentence of life imprisonment.

2. Being aggrieved by the impugned Judgment, all the convicted accused persons have preferred an Appeal viz. Criminal Appeal No.294/2023, which is admitted on 09/03/2023.

During the pendency of the Appeal, the present Application is taken out by Siraj Khan seeking suspension of the sentence and for his release on bail, by claiming parity with co-accused Mukesh Kamleshkumar Shukla (Accused No.5), who is released on bail by this Court on 16/07/2024.

Parity is also claimed with Accused No.4 Rohit @ Akash Vimal Dubey and Accused No.6 Prakash @ Paru Sukharam Prajapati and Accused No.7 Tejendra @ Tiju Shivprasad Sharma, who are released on bail and their sentence being suspended by distinct orders passed by this Court.

It is urged before us that the role attributed to the present Applicant is similar to that of co-accused and he deserve a similar relief.

3. Heard learned counsel Mr.Balkrishna Joshi for the Applicant, whereas, the Application is contested by Respondent No.2/Union Territory of Dadra and Nagar Haveli, which is represented by the Public Prosecutor Mr.H.S. Venegavkar.

State of Maharashtra is represented by the APP Mr. Y.M. Nakhwa.

The Applicant was tried as Accused No.3 in Sessions Case No.8 of 2017, in the backdrop of the case of the prosecution which was initiated on the complaint filed by PW 9, Pramodkumar Saraf, father of PW 1 Bharat, resident of Vapi. It is the case of the prosecution that Pramodkumar is a Partner in M/s.Baba Baidyanath Spinners Pvt. Ltd., Naroli and his son Bharat was helping him in his business.

As per the prosecution, on 22/01/2017, when Bharat went to his factory driving his Innova car, he was intercepted and kidnapped from the spot, in front of the factory. Pramodkumar received a phone call about the said incident from the Manager of the factory and he was also informed that the kidnappers had taken away Innova car, which was being driven by Bharat. When he reached the spot, he came to know that Bharat was restrained by 3-4 unknown persons on the road and by spraying some substance on his face, he was kidnapped.

PW 9 lodged the report with Silvassa Police Station which resulted in registration of FIR bearing No.11/2017 against unknown persons by invoking Section 365, 341 read with 34 of the IPC.

Maheshkumar, brother of PW 9 received a call for ransom from Mobile No.81415 71185, whereas, the informant also received a phone call from Mobile No.81415 61018 and he was asked to reach Nashik with ransom amount.

4. In the whole episode, on 25/01/2017 the victim Bharat (PW 1) informed his father that he had escaped from the clutches of kidnappers and he was at Bavisafaliya, and as per the information received, he was traced, but since he was under trauma, he was taken to Civil Hospital. It was only on 27/01/2017, he disclosed the entire incident to the police and also lead them to the place where he was confined on being kidnapped.

On the basis of this statement, Sections 394, 364A, 328, 342, 506 read with 34 of the IPC were added.

The accused persons were arrested and on interrogation it was revealed that Accused No.1 had contacted Accused No.4, who hired the other co-accused to commit the offence. The accused persons were subjected to test Identification Parade by the Mamlatdar, Silvassa and the mobile phones and sim cards used in the offence were recovered at the instance of Accused No.1. Similarly the vehicle which was used in the incident was also seized.

The prosecution lead its case before the Trial Judge through the victim himself, who was examined as PW 1, whereas, the eye witness Mahendrasinh Solanki was examined as PW 2. Hiteshbhai Patel to whom information was given by PW 2 was examined as PW 3. Pramodkumar the father of the victim and informant, was examined as PW 9.

The Nodal Officer of Vodafone Idea Company was also examined as witness in addition to the Medical Officer who had examined Bharat. The Scientific Officer Sanjaykumar Prajapati was also examined as PW 15.

The prosecution also relied upon the Spot Panchanama, Seizure Panchanama as well as the Panchanama in respect of voice recording

of Accused No.1. The report of Spectrographic Examination of Accused No.1, alongwith certificate issued under Section 65B of the Indian Evidence Act, 1872 as well as 65B certificates in respect of mobile phones from which the telephone calls were made, also formed part of the documents placed before the learned Judge.

5. On the basis of the evidence that came through 19 witnesses examined by the prosecution, six accused persons were tried, though seven of them were charge-sheeted, but the Appeal abated against one of the accused.

Appreciating the evidence brought on record by the prosecution, the learned Trial Judge held that the prosecution has proved its case beyond reasonable doubt as it was able to establish that all the accused persons in furtherance of their common intention voluntarily caused hurt to PW 1 Bharat while kidnapping and robbing him and they took him in a Chawl at Bavisafaliya, where he was confined for almost three days. It was held that the prosecution has proved that during that period demand of ransom of Rs.2 Crore was made from PW 9 for releasing him and this fact was also made known to the victim Bharat. Because of the threat received, Pramodkumar (PW 9) did not immediately inform the police as he was worried about safety of Bharat he was apprehensive that they may hurt him.

It was also concluded based on the testimony of PW 1 Bharat that he was threatened with dire consequences and, therefore, offence under Section 364A of the IPC was clearly proved by the prosecution. All the accused persons were found guilty for the offence for which they were charged except offence under Section 328 of the IPC, since it was not established that any stupefying or intoxicating substance was sprayed on the victim.

6. On various grounds raised in the Appeal Memo, an Appeal has been preferred by the convicts including the present Applicant, but by the present Application, he seek suspension of the sentence.

It is sought to be urged before us that the only role attributed to the present Applicant is that he had sprayed some liquid on the face of the victim and had informed the victim that they had made phone call to his family members demanding ransom.

It is urged before us that all the accused persons stand acquitted under Section 328 read with 34 of the IPC and this was the only act which was attributed to the Applicant.

It is specifically urged that the prosecution has miserably failed to point out incriminating circumstance against the present Applicant as this was the limited role attributed to him and about informing the victim that some phone call was made, it is not the case of the prosecution that it is the present Applicant who had made the phone calls for ransom.

7. The learned counsel for the Applicant has invited our attention to the discrepancies in the evidence of PW 1 and PW 9 and it is specifically submitted that in the entire statement PW 9 has nowhere stated that there was any threat of life or injury to PW 1 and, therefore, ingredients of Section 364A of the IPC are not made out at all. In any case, it is submitted that it is a matter to be appreciated by this Court when the Appeal is taken up for final hearing.

8. Parity is claimed by the Applicant since the co-accused are already released on bail and our attention is invited to the order passed by us on 16/07/2024, when after narrating the case of the prosecution,

we have recorded that PW 1 has deviated from his statement recorded under Section 164 of the Cr.P.C. and PW 1 was not specifically able to establish the role to the present Applicant. In any case according to him, since this Court has already released Rohit @ Akash Vimal Dubey and Accused No.6 Prakash @ Paru Sukharam Prajapati, so also Accused Tejendra @ Tiju Shivprasad Sharma on bail, by suspending their sentence, in our considered opinion, considering the minuscule role attributed to the present Applicant, he deserve a similar treatment.

For the said reason, the ground of parity is applicable to him and considering that he is incarcerated for more than 7 years and the Appeal is filed in the year 2023, which may take considerable time for its hearing, during the pendency of the Appeal, we deem it appropriate to suspend the sentence imposed upon him and secure his release on bail, in terms of the following order :-

ORDER

- i. Interim Application is allowed.
- ii. The sentence imposed upon the Applicant in Sessions Case No.8/2017 vide the impugned Judgment and order dated 15/11/2022, passed by the Sessions Judge for Union Territory of Dadra and Nagar Haveli at Silvassa, stand suspended during the pendency of the Criminal Appeal No.294/2023.
- iii. The Applicant is directed to be released on bail in Sessions Case No. 8 of 2017 arising out of FIR No.11 of 2017 registered with Silvassa Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

iv. The applicant shall mark attendance to the concerned Police Station once on first Monday of every trimester between 10.00 and 11 a.m.

v. Upon release, the Applicant shall furnish his contact number and permanent residential address to the Investigating Officer/Police Station and shall keep him updated in case of any change.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J)