



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

993 CRIMINAL APPEAL NO. 844 OF 2024

1. Bandu s/o Haribhau Ghule
Age : 52 years, Occu. Agril.,
R/o Takali, Taluka Kaij,
District Beed.

2. Jalinder Vishwanath Ghule
Age : 45 years, Occu. Agril.,
R/o Vikhe Patil Karkhana,
Taluka Kaij, District Beed.

... Appellants
[Orig. Accused Nos. 1 & 9]

Versus

. The State of Maharashtra
Through Police Station Officer,
Ambajogai Rural,
Taluka Ambajogai, District Beed.

... Respondent

...
Advocate for Appellant : Mr. S. S. Thombre
APP for Respondent/State : Mr. V. M. Jaware
Advocate for Informant & Victim : Ms. Amita Chate (*Through VC*)

CORAM : ARUN R. PEDNEKER, J.

DATE : 09.07.2025

PER COURT:

1. Heard Mr. S. S. Thombre, learned counsel for the appellants,
Mr. V. M. Jaware, learned APP for the respondent / State and Ms. Amita
Chate (*Through VC*) for the informant and victim.

2. The learned counsel for the appellants submits that the trial court has recorded conviction under Section 365 of the Indian Penal Code, 1860, convicting the appellants and has awarded sentence of imprisonment for 5 years. The sentence awarded by the trial court reads as under:

“ **:: O R D E R ::**

(1) Accused Nos. 1 and 9 respectively Bandu Haribhau Ghule and Jalindar Vishvnath Ghule are convicted for the offences punishable under Sections 143, 147, 323, 341, 342, 346, 363 and 365 r/w. 149 of Indian Penal Code, 1860 vide provision of Section 235(2) of Cr.PC.

(2) However, as discussed above, since the offences punishable under sections 341, 342 r/w. 149 are minor as compared to the offence punishable under section 346 r/w. 149 of IPC, the accused are not separately sentenced for the offences punishable under sections 341 and 342 of IPC. Similarly, since the offence punishable under section 363 r/w. 149 is minor as compared to the offence under section 365 r/w. 149 of IPC, the accused are not separately sentenced for the offence punishable under section 363 r/w. 149 of IPC.

(a) The accused Nos.1 and 9 Bandu Haribhau Ghule and Jalindar Vishvnath Ghule are sentenced to suffer imprisonment for a period of six months and fine of Rs.1000/- (Rs. One thousand only), each, in default imprisonment for 15 days for the offence punishable under section 143 of IPC 1860.

(b) They are sentenced to suffer imprisonment for a period of six months and fine of Rs.1000/- (Rs. One thousand only) each in default imprisonment for 15 days for the offence punishable under section 147 of IPC 1860.

(c) They are sentenced to suffer imprisonment for a period of one year and fine of Rs.1000/- (Rs. One thousand only)

each in default imprisonment for 15 days for the offence punishable under section 323 r/w. 149 of IPC 1860.

(d) They are sentenced to suffer imprisonment for a period of three years and fine of Rs.5000/- (Rs. Five thousand only) each in default imprisonment for one month for the offence punishable under section 346 of IPC 1860.

(e) They are sentenced to suffer imprisonment for a period of five years and fine of Rs.5000/- (Rs. Five thousand only) each in default imprisonment for one month for the offence punishable under section 365 of IPC 1860.

(3) The substantive sentences shall run concurrently.”

3. The learned counsel for the appellants submits that there were certain transactions between the parties and he submits that advance was given to the informant's husband and that in terms of the advances paid the informant's husband he was supposed to provide sugarcane labourer to the sugar factory alternatively to return the money. On acceptance of payment labourers were not supplied. The money was also not returned and, thus, there was possibility that the appellants could have initiated legal proceedings against the husband of the informant. As such, to avoid the situation, the case of kidnapping was registered against the appellants. However, the trial court has recorded conviction after considering the evidence.

4. The case against the appellants is that on 18.04.2011, while the informant and her husband were returning towards the village, their motorcycle was intercepted by a Scorpio jeep and unknown persons,

who alighted from the vehicle, initially trapped her husband in a net, beat him and forcibly took him in the vehicle and kidnapped her husband. It is also stated that the victim has also given names of number of persons including the present appellants as the persons who have kidnapped the victim. It is also stated that there were two eye witnesses for the incident.

5. The trial court has appreciated the evidence placed on record and formulated the points and rendered findings thereon as under:

9. Following Points arise for determination of this Court. Court records its findings thereon for reasons to be recorded below.

Sr.No.	P O I N T S	FINDINGS
1)	Whether prosecution proves that all the accused formed an unlawful assembly and were its member with a view to kidnap the Balasaheb Sidram, wrongfully confine him and to cause decoity and thereby committed an offence punishable under section 143 of the Indian Penal Code, 1860?	Partly Yes to the extent of accused Nos.1 & 9.
2)	Whether prosecution proves that all above accused used force or violence being the member of an unlawful assembly, in prosecution of the common object of said assembly and thereby committed an offence of rioting punishable under section 147 the Indian Penal Code, 1860?	Partly Yes to the extent of accused Nos.1 & 9.
3)	Whether prosecution proves that all above accused, armed with deadly weapons, used force or violence being the member of an unlawful assembly, in prosecution of the common object of said assembly and thereby committed an offence of rioting punishable under section 148 the Indian Penal Code, 1860?	No.
4)	Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, voluntarily caused hurt to the Balasaheb Sidram Rathod and thereby committed an offence punishable under section 323 r/w. 149 the Indian Penal Code, 1860?	Partly Yes to the extent of accused Nos.1 & 9.

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| 5) | Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, wrongfully restrained the Balasaheb Sidram Rathod from proceeding towards his desire direction of Radi tanda and thereby committed an offence punishable under section 341 r/w. 149 the Indian Penal Code, 1860? | Partly Yes to the extent of accused Nos.1 & 9. |
| 6) | Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, wrongfully confined the Balasaheb Sidram Rathod and thereby committed an offence punishable under section 342 r/w. 149 the Indian Penal Code, 1860? | Partly Yes to the extent of accused Nos.1 & 9. |
| 7) | Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, wrongfully confined the Balasaheb Sidram Rathod in such a manner that it may not be known to any person and thereby committed an offence punishable under section 346 r/w. 149 the Indian Penal Code, 1860? | Partly Yes to the extent of accused Nos.1 & 9. |
| 8) | Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, kidnapped the Balasaheb Sidram Rathod and thereby committed an offence punishable under section 363 r/w. 149 the Indian Penal Code, 1860? | Partly Yes to the extent of accused Nos.1 & 9. |
| 9) | Whether prosecution proves that all above accused, being the member of an unlawful assembly, in prosecution of the common object of said assembly, kidnapped the Balasaheb Sidram Rathod with an intention of causing him to be secretly and wrongfully confine him and thereby committed an offence punishable under section 365 r/w. 149 the Indian Penal Code, 1860? | Partly Yes to the extent of accused Nos.1 & 9. |
| 10) | Whether prosecution proves that all above accused, being five or more persons conjointly snatched away the gold ornament, cash and / or mobile phone with sim cards of and from the Balasaheb Rathod and thereby committed an offence of decoity punishable under section 395 the Indian Penal Code, 1860? | In the negative. |
| 11) | What Order? | As per final order. |

It was held that the present appellants had kidnapped the husband of the informant. The learned counsel appearing for the appellants submits that there is no evidence that the victim was kidnapped for the period of 29 days and, although, near about eleven names were taken as the accused who had kidnapped the informant's husband only 2 of them are convicted for the said offence. He submits that there is no evidence to indicate that the informant's husband was kidnapped for 29 days. The informant's husband himself appeared and that he has sustained injuries before 2 to 3 days prior. In any event, the learned counsel submits that the case arises out of civil dispute.

6. The learned counsel for the appellants further submits that the informant, victim and the appellants have settled their dispute and the informant and victim have also filed the affidavits before this court that they have no objection if the dispute is resolved and that the affidavits are filed by the victim and the informant. The same has been verified before the Registrar of this court. The present appellants is in custody for last 9 months, as such, the appellants submits that the conviction be maintained and the sentence be reduced to the sentence undergone.

7. The learned counsel for the appellants also submits that there is no minimum sentence prescribed for the offence. The learned

APP has submitted that once the conviction is maintained the sentence can be imposed at the discretion of the court depending upon the fact situation.

8. In view of the above and considering the submissions, more particularly, that the offence as alleged has arisen out of civil transaction and, also, considering the affidavits filed by the victim and informant, I proceed to pass the following order:

ORDER

- (I) The Criminal Appeal is partly allowed.
- (II) The impugned conviction is maintained and the impugned sentence imposed therein is reduced to undergone. The fine amount already imposed is also made a part of sentence. The bail bonds of the appellants, if any, shall stand cancelled.
- (III) The appellants BANDU HARIBHAU GHULE and JALINDER VISHWANATH GHULE shall be released unless required in any other case.
- (IV) The impugned order dated 04.09.2024, passed by the learned Additional Session Judge, Ambajogai stands modified accordingly to the extent of present appellants.
- (V) The Criminal Appeal stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]