

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 296 OF 2017

WITH

INTERIM APPLICATION NO. 5098 OF 2024

Javed Akhtar Basiulla Ansari,
Age 28 years, Occupation : Labour Work,
R/at: Khandupada, Bhiwandi,
District : Thane.

.....Appellant

Vs.

The State of Maharashtra,
At the instance of Bhiwandi
City Police Station, District : Thane,
Vide C.R.No.I-232 of 2013,
Tried in Sessions Case No. 248/2014.

.....Respondent

Mr. B. A. Lawate, for the Appellant.

Mr. Ashish I. Satpute, APP, for Respondent-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

RESERVED ON : 23rd APRIL 2025.

PRONOUNCED ON : 30th APRIL 2025.

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

1. The Appellant assails the Judgment and Order dated 7th February 2017 passed by the Additional Sessions Judge-3, Thane in Sessions Case No.248 of 2014. By the impugned Judgment and Order, the Appellant is convicted for the offence punishable under Sections

364A and 386 of the Indian Penal Code, ('IPC') 1860. For the offence punishable under Section 364A of the IPC, he is sentenced to suffer life imprisonment and pay a fine of Rs.1000/- in default of which suffer rigorous imprisonment ('RI') for two months. For the offence punishable under Section 386 of the IPC, he is sentenced to suffer RI for five years and pay fine of Rs.500/- in default of which to suffer one month of RI. Both the sentences are to run concurrently. He is also held entitled for set off for the period of detention already undergone. The Appellant is acquitted for the offence punishable under Section 25(1)(c)(1-a) of the Arms Act, 1959 and 37(1)135 of the Bombay Police Act, 1951. The said acquittal is on account of absence of the sanction to prosecute him under the Arms Act or any order of the Police Commissioner under the Bombay Police Act being placed on record. There were two other accused in the said offence, one of whom was absconding and the other, a juvenile in conflict with the law and hence, tried separately under the provisions of law, as applicable.

2. The case of the prosecution is as follows:

2.1 The Dangi family comprising of several cousins and uncles

were working in a power loom in Mumbai. Some of them were residing at Narayan Compound, Kanher, Bhiwandi. They used to take their meals in 'Mangal Bhavan' i.e. the house of their aunt.

2.2 On 20th November 2013, the complainant, Uday Baldeo Dangi (PW/1) had been to 'Mangal Bhavan' to have dinner. At that time, Pankajkumar Govind Dangi (PW/3) and Vikaskumar Sitaram Dangi (PW/4) were working in the power loom. After some time, both PW/3 and PW/4 came to 'Mangal Bhavan' to have dinner while the complainant returned to the power loom. Thereafter, the complainant received a phone call from Ramesh Dangi (PW/6), the third victim, informing him that some rogue persons had taken him along with Vikaskumar and Pankajkumar at knife/gunpoint. They rushed to 'Mangal Bhavan' where their aunt informed the complainant that the kidnappers were demanding Rs.15,000/- for the release of the victims. One of the kidnappers directed the complainant to bring the ransom of Rs.15,000/- immediately at the Hotel Sagar Plaza, Nagaon Road, Shantinagar, failing which all the three victims would be killed.

2.3 The complainant (PW/1) went to the Bhiwandi City Police

Station and lodged the complaint. The police registered an FIR vide C.R.No.232 of 2013 for the offences punishable under Sections 364A, 386 of the IPC and under Sections 3 and 25 of the Arms Act and under the provisions of the Bombay Police Act. Thereafter, the police arranged a trap. The complainant brought Rs.4,000/- to be used in the trap. The trap party went near Hotel Sagar Plaza and the complainant received the call of the kidnappers on his mobile phone. When two persons came near the Hotel Sagar Plaza to collect the money, the complainant paid Rs.4,000/- to them and signaled the police. Immediately, the said persons were accosted. They stated their names and one of them was the Appellant. On a personal search, a revolver and a knife were found on their persons. These articles were seized under Panchnama. Statements of witnesses were recorded. So also, the complainant recorded his supplementary statement. On 30th January 2014, the revolver along with four live cartridges were sent to the ballistic expert for analysis. The Appellant did not have a license to possess the revolver. Accordingly, after the investigation, the charge sheet was filed against the Appellant in the Court of Judicial Magistrate First Class, Joint Court, Bhiwandi, which was committed to the Additional Sessions Court, Thane.

2.4 Charges were framed against the Appellant for the offences punishable under Sections 364A, 386 of the IPC and under Section 25(1)(c)(1-a) of the Arms Act and 37(1) 135 of the Bombay Police Act on 26th November 2014. The Appellant entered his plea of not guilty and claimed to be tried.

2.5 In support of their case, the prosecution examined as many as seven witnesses. The defence did not lead any evidence. The statement of the Appellant under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The defence of the Appellant was that of total denial, innocence and false implication. However, the Additional Sessions Judge-3, Thane vide his Judgment and Order dated 7th February 2017, convicted the Appellant and sentenced him as noted in paragraph 1 above.

3. Mr. B.A. Lawate, learned counsel represented the Appellant and Mr. Aashish Satpute, learned APP represented the State.

4. The case of the prosecution is based on direct evidence i.e three eye witnesses, who are the victims of the offence themselves. According to the prosecution, the three victims namely, Pankajkumar

(PW/3), Ramesh (PW/6) and Vikaskumar (PW/4) were abducted and their relatives including the complainant (PW/1) received threatening calls. The Appellant called the complainant (PW/1) from the mobile of the victim (PW/6) and demanded a ransom of Rs.15,000/- to be paid to them at a designated place i.e. at the Hotel Sagar Plaza. The complainant was threatened with death of the victims on failure to deliver the ransom amount. Thereafter, the police laid a trap. Rs.4,000/- was brought by the complainant in denominations of Rs.500/- notes, numbers of which were noted by the police. The said amount was carried by the complainant to the Hotel Sagar Plaza, as an exchange for the victims. The Appellant and his accomplices who came to collect the money were accosted by the police on a signal given by the complainant. Rs.4,000/- which was handed over to the Appellant was recovered and found to be the same notes, numbers of which were recorded by the police. The victims themselves have deposed before the Court narrating their ordeal and have identified the Appellant. Hence, according to the prosecution, the substantive evidence led by the prosecution witnesses clearly establishes the commission of the offences for which the Appellant is convicted beyond reasonable doubt.

5. Mr. Lawate outlined the defence. He says that firstly, there is no clarity as to the mode of transport which was used by the abductors to abduct the victims. Mr. Lawate pointed out that while PW/3 stated that they were abducted in an auto, PW/6 said that they were abducted in a tempo. According to Mr. Lawate, this is a major contradiction in the story of the two victims themselves. He also argues that the statement of rickshaw/tempo driver was not recorded and neither is there any substantive evidence in respect of the same. Secondly, he says that the mobile phone of Ramesh Dangi (PW/6), one of the victims was used to call the complainant to demand ransom. This mobile phone was not recovered by the police. Thirdly, Mr. Lawate argues that the Spot Panchnama of seizing the amount of ransom paid of Rs.4,000/- was prepared in police station. He thus, contends that the prosecution has not proved the case against the Appellant beyond reasonable doubt and hence, urges the Court to allow the Appeal and set aside the conviction.

6. Per contra, Mr. Satpute, learned APP has taken us through the testimony of all the seven witnesses. He submits that the victims, themselves, have narrated their ordeal by giving their testimonies in

the Court; the currency notes which were exchanged at Hotel Sagar Plaza when compared with the numbers on the currency notes jotted down by the police at the police station are the same. The Appellant and his accomplice were apprehended at the spot by the police in the act of exchange of money. According to him, all these acts are proved by cogent and reliable evidence. Hence, the case against the Appellant is water tight and proved beyond reasonable doubt. He prays that the Appeal should be dismissed.

7. The law is settled in cases where the injured witness himself testifies. The Supreme Court, in its decision in the case of *Neeraj Sharma v. State of Chhatisgarh*¹ has dealt with the importance of the deposition of an injured witness. It is held that unless there are compelling circumstances, or evidence placed by the defence to doubt the testimony of the victims of the crime, this evidence has to be accepted as extremely valuable evidence in a criminal trial. The importance of such injured witness cannot be overstated. The Apex Court has referred to the case of *Balu Sudam Khalde v. State of Maharashtra*², where the Supreme Court summed up the principles to be kept in mind while appreciating the evidence of an injured eye

1 [2024] 1 S.C.R. 40

2 2023 SCC OnLine SC 355

witness, which read as under:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally

creep due to loss of memory with passage of time should be discarded.”

8. Further having regard to the legal position pertaining to the scope and purport of Section 364A of the IPC, a case that requires notice is a Three Judge Bench Judgment of the Apex Court in ***Vikram Singh v. Union of India***³. In this case, the Apex Court elaborately considered the scope and purport of Section 364A of the IPC including its historical background. After noticing earlier cases, the Apex Court laid down that Section 364A of the IPC has three distinct components. In paragraph 25, the following was laid down with regard to distinct components of Section 364A: (SCC pp 522-23)

“25.....Section 364-A IPC has three distinct components viz. (i) The person concerned kidnaps or abducts or keeps the victims in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forebear from doing something or to pay ransom.”

9. In the case in hand, the complainant (PW/1) has narrated

³ (2015) 9 SCC 502

that he received a phone call from the victim Ramesh Dangi (PW/6). He also received a call from his aunt informing him that the Appellant has demanded 15,000/- for the release of the victims failing which, they would be killed. He has narrated regarding the trap that was arranged by the police with panchas in tow. The complainant himself along with the police and panchas went in a private vehicle near the Hotel Sagar Plaza. This witness specifically deposed that he received a phone call from the Appellant and he informed him that he was on the way and was bringing the amount demanded by the Appellant. He signaled the police when he saw the Appellant with Ramesh Dangi (PW/6). The Appellant had a knife and the police apprehended him when the amount was exchanged in the presence of this witness. The Appellant disclosed the identity of the other accused and also took the police to the place where they were waiting. One of the accused had a revolver and tried to run away but the police caught him. Two knives, revolver and four live cartridges along with Rs.4,000/- which was given by this witness were seized and a Panchnama was drawn up. This witness clearly identified the Appellant in Court and also stated that the Panchnama was prepared in his presence. In his cross-examination, nothing material is elicited. Although he could not

remember the registration number of the private vehicle by which he traveled to the designated place, the same is not of any material consequence. There is nothing to doubt the statement of this witness.

10. Mr. Anil Kesarwani (PW/2) is the panch witness to the trap arranged by the police. He identified the Appellant and deposed as to the entire sequence of events that transpired from the time they started from the police station till the accused persons including the Appellant were apprehended. Mr. Lawate tried to raise some doubts regarding the recording of the Panchnama as this witness stated in his cross-examination that the Panchnama at Exhibit 13 was written in the police station. We have gone through the said Panchnama. It is in respect of the trap set up by the police and related to the amount seized. The Panchnama records the numbers of currency notes of Rs.500/- denomination, that were recorded by the police earlier. The comparison of the numbers on the notes was done in the police station and hence, in this context the panchnama was recorded in the police station. Nothing of consequence turns on this. The testimony of this witness inspires confidence and there is nothing more in the cross-examination to doubt his statement.

11. PW/3, PW/4 and PW/6 are the victims of abduction. Their individual testimony supports the testimony given by each other. Their stories match and there is no material deviation in their narrations. All of them deposed that one of the accused made them accompany him at the point of knife and demanded an amount of Rs.20,000/-. The accused including the Appellant, threatened to kill them if the amount is not paid. A call was made to the complainant from the mobile phone of Ramesh Dangi. Ramesh deposed that he was compelled to call and tell the complainant to bring Rs.15,000/- as ransom to a designated place near Hotel Sagar Plaza. The complainant came with the amount. Thereafter, the police trapped the accused while taking the money. That this accused was the Appellant. All the witnesses/victims identified the Appellant and the knife in Court.

12. Ramesh Dangi (PW/6), one of the three victims has supported the story of PW/3 and PW/4, the other victims. There are some variations but they are so minor and of no substantial consequence. Nothing material or contradictory has emerged from the cross-examination. There is no reason to doubt the statements of the victims, who have deposed in the Court.

13. PW/7 is the Investigating Officer. He deposed as to the recording of Panchnama in the presence of panchas. He also deposed as to the seizure of the revolver and four live cartridges from the Appellant and having sent the same for analysis to the Ballistic Expert. He also deposed regarding the number on the currency notes recorded in the police station. However, he also stated that there was no order of the Commissioner of Police as required under the Bombay Police Act.

14. The FSL report is at Exhibit 31. The result of analysis clearly indicates that the countrymade handgun seized was in working condition and was used for firing before its receipt in the laboratory. This clearly shows that the threat to the life of the victims was real and the threat could have been easily carried out by the Appellant and the other accused.

15. The aforesaid discussion reveals that in the present case, evidence placed by the prosecution to establish a case under Section 364A of the IPC is in the form of a phone call to the complainant threatening to kill the victims of abduction in the event the amount of ransom as demanded, was not paid. Thus, the demand of ransom is

clearly established. The knife and the gun recovered also indicate that the threat to the life of the victims was very real. The statements of all the three victims support each other and the final clinching piece of evidence is the recovery of the money exchanged. Thus, the three distinct components specified by the Apex Court in *Vikram Singh (Supra)* are satisfied. An offence under Section 364A of the IPC is clearly made out. Furthermore, keeping in view the six broad principles laid down by the Apex Court in *Balu Khalde (Supra)*, we find the testimony of the victims of the crime to be compelling and inspires confidence. We have no hesitation in holding that the act of abduction for ransom is complete and has been committed by the Appellant and his accomplices.

16. In view of the aforesaid, we are of the view that the Judgment and the Order impugned herein is well reasoned and is a sound legal decision. The evidence on record, when assessed in its entirety, establishes the guilt of the Appellant beyond all reasonable doubt. The observations of the Trial Court are compelling and do not warrant any interference. The prosecution has established its case beyond all reasonable doubt based on legal, cogent and admissible

evidence. The Appeal, thus fails, and is accordingly, dismissed. The conviction and the sentence of the Appellant stands confirmed.

17. In view of the dismissal of the Appeal, the Interim Application No. 5098 of 2024 does not survive and is also disposed off.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

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