

(2018) 05 MP CK 0160

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. No. 268 Of 2009

Baiju Alias Vijay Singh Baghel

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 359, 362, 364, 364(A), 365
Madhya Pradesh Dakaity Avam Vyapaharan Prabhavit Kshetra Ahdiniyam, 1981 —
Section 11, 13
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 134

Citation : (2018) 2 MPWN 89

Hon'ble Judges : SHEEL NAGU, J;VIVEK AGARWAL, J

Bench : Division Bench

Advocate : Aijaj Gauri, Rajesh Pathak

Final Decision : Dismissed

Judgement

Sheel Nagu, J.

1. The present appeal questions the legality, propriety and validity of the judgment of conviction dated 26.12.2007 rendered by Special Judge

MPDVPK Gwalior in S.T. No. 37/2007 convicting the appellant for the offence punishable u/S. 364 A r/w 120 B of IPC for life imprisonment and

fine of Rs. 1000/- with default clause with further conviction and sentence rendered u/S. 365 r/w 120 B of IPC for five years R.I. and fine of Rs.

500/- with default clause. The court below despite finding the appellant guilty of the offence u/S. 11/13 MPDVPK Act did not impose any separate

penalty since life imprisonment was already imposed for offence u/S. 364-A of IPC. All sentences were directed to run concurrently.

2. The facts in nutshell are that the complainant Dashrath PW-1 alongwith his

companions Munna Dhobi, Kalicharan, Hukum Singh and Babulal

Rawat orally informed the police that in the night intervening 26th March, 2004 and 27th March 2004, his brother Lokendra (PW- 8) alongwith Munna

Dhobi (PW-5), Kalicharan (PW-3), Pajan Singh (PW-2) and Vrindavan Baghel (PW-4) had gone to the agricultural field of Kashiram Baghel village

Pabaya for repairing of electric light. While repairing light, they noticed that 5-6 persons armed with firearms were sitting in the house near the

agricultural field. These gun wielding persons namely Dayaram, Rambabu Gadariya, Harsi, Prakash Gadariya, Rajapur, Sobran, Baiju Gadariya

Nandpur Amola and two other persons surrounded the complainant and his companions. The report disclosed that these persons were wielding

firearm and one who had covered his face was wielding Lathi. These miscreants warned that if any one moves, he will be shot. These miscreants

asked the name, address and details of property of the persons surrounded and took them to the Dera where they also abducted Arjun Singh (PW-7)

(brother of complainant) which was followed by abduction of Jasvant Singh (PW-6), Maheep Singh (PW-10), Kallu alias Kalyan Singh (PW-9).

Thereafter in the house of Babulal, these miscreants gave fist and kick blows to the abductees leading to abductees creating ruckus. The miscreants

also thereafter took the abductees at gunpoint to the jungle near Bhoomeshwar Temple. The miscreants were calling each other by names enabling

the abudctees to gain knowledge of the names of miscreants. The miscreants released from their captivity Munna Dhobi, Kalicharan Dhobi and

Virndavan Baghel and asked them to convey message that ransom money should be paid for ensuring release of abductees. The offence accordingly

was registered by the police. Statements of witnesses were recorded. Requisite formalities of investigation were completed. The miscreants Atar

Singh, Babulal, Kalyan and Ramjilal were arrested on 29.03.2004. On 30th April, 2004 abductees Pajan Singh, Lokendra Singh, Jaswant, Arjun, Kallu

alias Kalyan Singh were recovered. On disclosure made by the accused Kashiram, Lal Singh and Maharaj were arrested on 29.03.2004 which was

followed by arrest of Kalyan and Uttam on 04.04.2004. Appellant Baiju alias Vijay who was in custody in connection with some other offence could

not be arrested in the present case. However, against the said arrested co-accused charge-sheet was filed, trial was conducted and judgment was

rendered on 02.01.2006. Thereafter accused was normally arrested since he was already in custody in connection with some other offence and

supplementary charge-sheet was filed against them. Charges u/S. 364 A IPC in the alternative 120 B r/w section 364 A, section 365 in the alternative

section 120 B r/w section 365 r/w section 13 of MPDVPK Act.

2.1 The appellant abjured guilt and sought trial. In his statement u/S. 313 Cr.P.C. appellant alleged false implication but did not produce any defence

witness.

3 After hearing learned counsel for the rival parties, this court is of the considered view that threadbare analysis of all the abductees who turned

hostile except PW-9 Kalayan Singh (one of the abductees who supported the story of prosecution) is not required. Thus this court restricts the judicial

scrutiny to the testimony of PW-9 Kalyan Singh Rawat.

3.1 Kalyan Singh PW-9 whose statement was recorded on 26.11.2009 in his examination-in-chief testifies that six firearm wielding miscreants

abducted him at about 9 PM and the said miscreants belong to Rambabu Gadariya gang. PW-9 testifies that he was confined for two days and two

nights in the forest. There was an encounter between the miscreants and the police which afforded opportunity to allow PW-9 Kalyan Singh to escape

from captivity. PW-9 also stated that six miscreants who has abducted him were not earlier known to him but they were calling each other by names

which included the name of appellant. He further states that due to failure of police to arrest co-accused Uday Singh, other PW has turned hostile.

PW-9 categorically stated that the appellant who is present in the court is one of the persons who are in the gang of dacoit who abducted him and the

appellant wielded Mark-3 firearm. He further elaborated by testifying that his abduction was done by two miscreants Prakash and Sobran but when

he was taken to the gang of miscreants, appellant Baiju was also there armed with Mark-3 firearm alongwith five other miscreants. He further

disclosed that accused Prakash demanded payment of Rs. 1 Lakh as ransom money for ensuring release or else dead body of the abductees shall be

sent to their respective homes. This witness admits his signature on the Baramdgi Panchanama (Ex.P-2). In the cross-examination PW-9 admits that

he is illiterate. He states that the date of incident was informed to him by the police personnel who had come to release him from captivity. He shows

ignorance as regards the person who had informed the police about the incident. PW-9 was also questioned on the inconsistency in his

statement that initially he had disclosed that 5-6 miscreants had come to abduct him but later he revealed that only two miscreants had abducted him

while he remained at the time when he was taken to the place of hiding. PW-9 has lastly denied the suggestion that no abduction took place and

no ransom money was demanded. He also denied the suggestion that he is speaking lies due to past animosity against the appellant.

4. It is trite law that the conviction can be sustained based on testimony of single PW provided the same inspires confidence. The testimony of PW-9

as disclosed above is trustworthy and sufficient to bring home the charges alleged against the appellant. Merely due to minor omission, contradiction

and embellishment, the entire testimony of PW-9 can not be thrown overboard. In regard to the probative value of testimony of single PW to sustain

conviction this court is supported in its view by judgment of Apex Court in the case of Vadivelu Thevar Vs. The State of Madras reported in AIR

1957 SC 614, Para 11 of which is reproduced below:-

11. The Indian Legislature has not insisted

on laying down any such exceptions to the general rule recognized in S. 134 quoted above. The section enshrines the well recognized maxim that

Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be

hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one

witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence.

If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime,

would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of

each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by

the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused

person may be proved by the testimony of a single witness, the innocence of an

accused person may be established on the testimony of a single

witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our

opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary

for proving or disproving a fact.....â??

The aforesaid judicial view continues to hold the field vide Prithipal Singh and others Vs. State of Punjab and Another (2012) 1 SCC 10, para 49 of

this judgment is reproduced below:-

â??49. This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly

reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence

Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is

material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is

cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity,

multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction.

Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. (See: Vadivelu

Thevar v. The State of Madras, AIR 1957 SC 614; Sunil Kumar v. State Govt. of NCT of Delhi, (2003) 11 SCC 367; Namdeo v. State of

Maharashtra, (2007) 14 SCC 150; and Bipin Kumar Mondal v. State of West Bengal, AIR 2010 SC 3638).â??

5. When overall probative value of the testimony of PW-9 is scrutinized, it becomes clear that PW-9 has supported his earlier statement Ex. D-1 that

his abduction took place on the day of incident and he was taken to the gang of dacoits who kept him in captivity under fear of death and after nearly

2-3 days to be released only when the dacoits were confronted by the police personnel in an encounter. The testimony of PW-9 may not be of an

extremely sterling quality but considering the fact that PW-9 was illiterate, he has supported the story of prosecution of being abducted by putting him

to the fear of death/injury if the ransom money as demanded was not paid. There may be minor omission, contradiction or embellishment in the

testimony of PW-9 but that by itself does not demolish the entire testimony especially in the face of the clear disclosure that being the abductee PW-9

under reasonable apprehension that death would be caused if ransom money as demanded is not paid, the basic ingredients necessary for constituting

and proving an offence punishable u/S. 364 A and 365 IPC are made out.

6. An argument was raised by learned counsel for the appellant that in the absence of payment of ransom money, an offence u/S. 364-A IPC is not

made out, is considered to be rejected at the very outset. The offence u/S. 364 - A IPC is made out even on a mere demand of ransom provided the

same is made after putting the kidnapped/abducted person under reasonable apprehension that death or hurt would be caused if the ransom money is

not paid. The demand of ransom money is established in the present case as reflected from the testimony of PW-9 and the fact of PW-9 having been

kept in captivity for 2-3 days under a consistent threat to his life, if ransom money is not paid, clearly establishes offence punishable u/S. 364-A to be

made out. This view of this court is supported by the decision of Apex Court in the case of Malleshi Vs. State of Karnataka reported in (2004) 8 SCC

95, relevant extract of which is reproduced below for ready reference and convenience :-

â??7. Section 364 A deals with 'Kidnapping for ransom etc.' This Section reads as follows:

364-A. Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or

hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to

such person in order to compel the Government or (any foreign State or international inter-governmental organization or any other person) to do or

abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

8. The Section refers to both ""Kidnapping"" and ""Abduction"" Section 359 defines Kidnapping. As per the said provision there are two types of

kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship.

9. Abduction is defined in Section 362. The provision envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place. The case at hand falls in the second category.

10. To "Induce" means "to lead into". Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is a matter of intention and even if promise held out by the accused was fulfilled by him, the question is: whether he was acting in a bonafide manner?

11. The offence of abduction is a continuing offence. This Section was amended in 1992 by Act XLII of 1993 with effect from 22.5.1993 and it was subsequently amended in 1995 by Act XXIV of 1995 with effect from 26.5.1995. The Section provides punishment for kidnapping, abduction or detaining for ransom.

12. To attract the provisions of Section 364 A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in Netra Pal Vs. State (NCT of Delhi) (2001 CrL. L.J. 1669) to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.

13. To pay a ransom as per Black's Law Dictionary means "to pay price or demand for ransom". The word "demand" means "to claim as one's due; to require"; "to ask relief"; "to summon"; "to call in Court"; "An imperative request preferred by one person to another requiring the latter to do or

yield something or to abstain from some act;" An asking with authority, claiming." The definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made.â??

7. It is thus held that the conviction under the relevant section i.e. 364, 364-A and 365 of IPC is based on cogent and reliable evidence.

8. Accordingly, this court declines interference and dismisses the present criminal appeal by upholding the judgment of conviction and sentence rendered by learned trial judge.