

(2018) 01 MP CK 0099
In the Madhya Pradesh High Court
Case No : 161 of 2003

KAMAL S/O RAMESHCHANDRAJI

APPELLANT

Vs

STATE OF MADHYA PRADESH AND OTHERS

RESPONDENT

Date of Decision : 02-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 374](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 364A](#) -
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Citation : (2018) 01 MP CK 0099

Hon'ble Judges : Sheel Nagu, Ashok Kumar Joshi

Bench : Division Bench

Advocate : D.S. Kushwaha, Prakhar Dhengula

Judgement

1. The present appeal preferred u/S. 374 Cr.P.C. assails the judgment dated 11.02.2003 passed in Special Case No.16/01 whereby the trial

Court has convicted the appellant for the charge u/S. 364-A of IPC read with Section 11/13 of Madhya Pradesh Dacoity Avam Vyapharan

Prabhavit Kshetra Adhiniyam, 1981 (for brevity "MPDVPA Act") and sentenced to suffer life imprisonment with fine of Rs. 10,000/- with default

stipulation.

2. Learned counsel for the rival parties are heard. The record of the trial court is perused.

3. Brief facts giving rise to present case are that on 18.09.2000 when at about 11:45 A.M. abductee Harshit Jain was going from his home to

school Saraswati Shishu Mandir, abductee met a few unknown persons on the way who induced him by advancing a false pretext of taking him for

a roam but instead handed over the abductee to the gang of absconding proclaimed dacoit Rajjan Gurjar. When the abductee did not return home

his family members informed the police who recorded a missing report vide Ex. P-7. When the efforts of the members of the family to search

abductee did not succeed Dinesh Kumar Jain (father of the abductee) lodged FIR bearing crime No. 452/2000 alleging offences punishable u/S.

364-A of abductee having been kidnapped by known persons. Investigation followed. Statement of witnesses namely Sandhya Jain (mother of the

abductee) (PW-1), Anuj Kumar Jain (PW-2), Dinesh Kumar Jain (PW-4) (father of the abductee) and Arvind Kumar Jain (PW-3) were

recorded. Statement of abductee Harshit Jain was also recorded after he was released from captivity after three months. The statement of another

abductee Rajendra Prasad Sharma (PW-12) was also recorded. The appellant was subjected to Test Identification Parade (Ex.P-3) conducted

on 29.06.2001 where Rajendra Prasad Sharma (PW-12) recognized the appellant as one of the person who was seen with the gangsters. After

investigation, charge-sheet was filed on 24.02.2001 against the absconding accused. The appellant was thereafter arrested on 14.03.2001 which

led to filing of supplementary charge-sheet.

4. The case was committed to the Court of Sessions where the appellant adjured guilt and sought trial. No other defence except false implication

was raised by the appellant.

5. Learned counsel for the appellant has taken us through the findings recorded by the trial Court to contend that there is nothing on record to

indicate that the appellant was the one who kidnapped the abductee. It is submitted that factum of kidnapping qua the appellant not having been

proved, the offence u/S. 364-A of IPC cannot be said to be established. It is further submitted that the entire case of prosecution hinges upon the

testimony of the abductee Harshit (PW-7), Test Identification Parade (Ex.P-3) and the testimony of another abductee Rajendra Prasad Sharma

(PW-12). It is further submitted that the Test Identification Parade loses its probative value as the same has been conducted after nearly three

months of arrest of appellant. It is further submitted that the abductee Harshit has not been able to corroborate his diary statement recorded u/S.

161 Cr.P.C. in toto and therefore, his evidence before the court cannot be treated

as reliable enough to sustain conviction against the appellant. It is further submitted that Rajendra Prasad Sharma (PW-12) another abductee cannot be treated to be reliable witness. Lastly it is submitted by learned counsel for the appellant that the abductee has nowhere stated the name of the appellant in his statement recorded u/S. 161 Cr.P.C. but has for the first time identified the appellant in the court. In this background, it is submitted that dock identification is not a reliable piece of evidence unless preceded by Test Identification Parade. Since in the Test Identification Parade, the abductee was not present for recognizing the appellant but it was another abductee Rajendra Prasad Sharma who identified the appellant, the identification so made by the abductee Harshit before the court is ineffective and inconsequential.

6. The arguments of learned counsel for the rival parties are heard and the evidence on record is perused alongwith the findings rendered by the learned trial judge. After having given thoughtful consideration to the material placed before us, we are of the considered view that for the reasons *infra*, the conviction and sentence of the appellant deserved to be upheld.

7. A bare perusal of the testimony of mother and father of the abductee, Smt. Sandhya Jain (PW-1) and Dinesh Kumar Jain (PW-4) establish the prosecution story that abductee Harshit Jain had gone to the school from home but did not return home till evening which led to the family members conducting a search but on being unsuccessful, lodged a missing report to the police. On further search, when abductee was not found, the offence was registered with the police of abductee having been kidnapped by unknown persons.

8. As regards complicity of the appellant to the crime, the statement of abductee Harshit (PW-7) and the other abductee Rajendra Prasad Sharma (PW-12) who also identified the appellant in the Test Identification Parade conducted on 29.06.2001, is crucial.

9. The abductee Harshit (PW-7) has supported the prosecution story of being induced and taken away by unknown persons while he was going to school. The only contradiction between his statement recorded u/S. 161 Cr.P.C. and the testimony is as regards the time of going to the school at about 9:00 A.M. whereas in the missing report lodged by his father (Ex.P-7), the time of his going to school is shown as 12:00 P.M.. The trial

court has rightly ignored this contradiction by recording a lawful finding that Harshit is a child witness who is merely 8-9 years old, who was in a state of shock which has caused adverse affect to his peace of mind as a result of which slight contradiction in his version of the incident deserves to be ignored. Abductee Harshit (PW-7) has further revealed that the appellant was seen with the gangsters on several occasions who had confined and constrained him. This revelation of abductee having seen the appellant on various occasions with the gangsters has not been challenged by the defence. The factum of abductee not having disclosed the name of the appellant either in his statement recorded u/S. 161 Cr.P.C. or in his testimony is also of no avail to the defence as abductee has clearly revealed that the appellant used to be present with the gangsters and was seen frequently with them during the long three months period of captivity. Though the abductee admits that the gang of unknown persons kidnapped him while he was on his way to school, this fact does not demolish the prosecution story as the abductee in his evidence clearly says that he did not know the name of the appellant but had seen him on various occasions during his three months long captivity with the gangsters. More so, there is no explanation by the defence about the presence of appellant with the members of the Rajjan Gurjar gang, thus there is no occasion for discarding the testimony of the abductee.

10. Other abductee Rajendra Prasad Sharma (PW-12) has clearly stated that abductee Harshit PW-7 was one of the person kidnapped and brought to the captivity of Rajjan dacoit gang. This witness states that when he was released from captivity, he came to know the name of the appellant. Rajendra Prasad Sharma (PW-12) has recognized the appellant in the Test Identification Parade held on 29.06.2001 as the person who was with the members of Rajjan Gurjar gang during his captivity.

11. Objection has been raised by defence as to the probative value of the Test Identification Parade conducted on 29.06.2001 by contending that despite arrest of the appellant as early as on 14.03.2001, the Test Identification Parade was conducted with much delay after three and a half months, which raises the doubt of appellant having been recognized by Rajendra Prasad Sharma (PW-12). Admittedly the Test Identification Parade was conducted with delay of three and a half months which necessarily

raises the inference of possibility of the appellant having been seen by the said PW-12 during this interregnum period of three and a half months thereby rendering the recognition during Test Identification Parade to be unreliable. No doubt the Test Identification Parade cannot therefore be of any avail for the prosecution but testimony of Rajendra Prasad Sharma (PW-12) clearly reveals that he had seen the appellant on several occasions with the members of Rajjan Gurjar gang who were holding the abductee Harshit in captivity. With no explanation of the presence of appellant with the members of Rajjan Gurjar gang, it can safely be inferred that the appellant was a part of the Rajjan Gurjar gang and was instrumental in the kidnapping of abductee Harshit for ransom.

12. The ground raised by learned counsel for the appellant that the appellant was not involved in the act of kidnapping and therefore, cannot be punished for the offence of kidnapping for ransom especially in the absence of any proof of demand or receipt of ransom money, is heard to be rejected.

13. Going through the evidence that has come on record especially the statement of abductee Rajendra Prasad Sharma (PW-12), the Test Identification Parade and the statement of said PW-12, it is proved beyond reasonable doubt that the appellant was a part and parcel of the Rajjan Gurjar gang which had kidnapped the abductee and kept in captivity thereby putting him to fear of death or hurt.

14. Importantly contents of Para 2 of testimony of the abductee (PW-7) reveal about the release of abductee on payment of ransom money of Rs. 3,00,000/- by his father Dinesh Kumar Jain (PW-4).

15. The issue of dock identification raised by the appellant does not appeal to this court. True it is that the abductee Harshit was not called for the Test Identification Parade held on 29.06.2001 for recognition of the appellant but it was another abductee Rajendra Prasad Sharma (PW-12) who identified the appellant in the said Test Identification Parade. In the considered opinion of this court, this by itself can not vitiate the conviction in the presence of other cogent evidence in the shape of testimony of abductee of having seen appellant with the members of the Rajjan Gurjar gang and also the statement of Rajendra Prasad Sharma (PW-12) of having witnessed the appellant frequenting the place where the abductee was kept in

captivity.

16. In view of above, we see no reason to interfere with the well reasoned judgment of the trial court convicting the appellant for the offence

punishable u/S. 364-A of IPC and sentencing him to life imprisonment with the appropriate findings.

17. Consequently, the appeal has no merit and is dismissed by upholding the judgment of conviction and sentence passed by the court below.