
(2015) 02 CAL CK 0027
In the Calcutta High Court
Case No : CRA Nos. 509 and 555 of 2007

Kartick Mondal and Others	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 34, 364A, 419

Citation : (2015) 02 CAL CK 0027

Hon'ble Judges : Ishan Chandra Das, J.; Ashim Kumar Roy, J.

Bench : Division Bench

Advocate : Abhinava Patra, for the Appellant; Manjit Singh, Ld. P.P. and Rituparna Dey, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—In a sessions trial held before the learned Additional Sessions Judge, 4th Court, Nadia, the appellants in C.R.A. No. 509 of 2007, Kartick Mondal and Sufal Mondal, and the appellant in C.R.A. No. 555 of 2007, Khudiram Biswas, were convicted for the offence punishable under section 364A/34 IPC and sentenced to suffer imprisonment for life and to pay fine with default clause.

Apart from above, the appellant in C.R.A. No.555 of 2009, Khudiram Biswas, was also convicted for the offence punishable under section 419 IPC and sentenced to suffer rigorous imprisonment for seven (7) years with fine and default clause.

The said order of conviction and sentence are under challenge in the aforesaid appeals.

2. During trial, the prosecution examined as many as sixteen (16) witnesses and out of them, the key witness was PW/6, Ramjana Halsana, the victim, who was allegedly abducted for ransom.

However, five (5) prosecution witnesses were declared hostile, because they did

not support its case. There were few other important witnesses examined by the prosecution, they were PW/1, Faraj Halsana, the maker of the FIR, PW/3, Naren Mondal, an employee of a telephone booth, and PW/15, Gopal Kishan Sinha, a Judicial Magistrate, held the TI Parade and PW/16, Anirban Roy, another Judicial Magistrate, recorded the statements of PW/6, Ramjana Halsana, PW/12, Raju Biswas and PW/13, Ashok Biswas. The PW/12 and PW/13 were the witnesses of seizure of the motor-cycle belonging to the victim and the victim was riding the said motor-cycle when abducted.

3. It was the case of the prosecution that PW/6, Ramjana Halsana, was a Kabiraj by profession. It is its further case that on January 17, 2006 at around 11.30 a.m., one unknown person came to the PW/6 and disclosed his identity as Nirranjan Modak and requested him to attend a patient at Jayghata-Majdia, who suffered a leg fracture. Since on that day, PW/6 was otherwise busy, he requested the accused Nirranjan Modak to bring the patient to his chamber, but the said witness expressed his inability and then January 19, 2006 was fixed for visiting the patient.

On January 19, 2006, at around 5.30 a.m. PW/6 left his house informing his mother and wife (both not examined) and brother, Faraj Halsana, (PW/1) that he was going to attend a patient at Jayghata-Majdia, who suffered fracture and at that time, he also carried his mobile phone with him.

On his way, he received a phone call from Nirranjan Modak, who informed him that he was standing near a telephone booth and from there he would take him to the house of the patient. After reaching near a telephone booth, Nirranjan Modak was found there and he took his seat behind him in the motor-cycle and moved towards the house of the patient. After proceeding about one and half km, one person was found standing on the road with a gun in his hand, another accompanying him. At that place PW/6 was forced to get down from his motor-cycle by said Nirranjan and two others and was dragged at the gun point inside a banana garden. The said miscreants snatched away his wrist-watch and mobile phone and he was asked to contact his brother and when contacted the miscreants demanded ransom of Rs. 20 lakhs from his brother and threatened that unless their demand is fulfilled, the PW/6 will be killed. Subsequently, on January 21, 2006, the victim was taken to the house of the PW/2, Raju Biswas (hostile) and from there with the help of PW/2, he went to a nearest police camp and informed the entire incident.

4. When this appeal was taken up for hearing initially Mr. Rajarshi Chatterjee, advocate, appeared on behalf of the appellants in C.R.A. No.509 of 2007 and in the midst of his submissions, he retired and was replaced by Mr. Jagannath Ganguly, advocate. However, after a few words Mr. Ganguly sought for an adjournment for a week, on the plea that he was recently engaged, therefore, not prepared. Having regard to the facts, this is an appeal where appellants are in jail, this court was not inclined to grant any adjournment. Both Mr. Rajarshi Chatterjee and Mr. Jagannath Ganguly were found completely unprepared and

were not able to argue on a single question of law. They were found to be totally ignorant even about the facts of the case. Most of their submissions were irrelevant and had no bearings on the merits of the case. Finally, a written note of argument was filed in connection with the said appeal but only on behalf of Kartick Mondal.

5. It appears from the aforesaid written notes of argument that the following points have been raised challenging the legality and validity of the conviction of the appellants in C.R.A. No.509 of 2007.

"(a) The prosecution has failed to prove its case beyond all reasonable doubts.

(b) PW/1 after receipt of threat calls did not inform police.

(c) The scribe of the FIR was written by PW/7, who was an accused in a rape case.

(d) The PW/1 although knew his brother was a Kabiraj, but he never inquired, as to whether he had any licence or not and no licence was produced in court.

(e) The Police never made any attempt to find out the banana garden.

(f) The evidence of the hostile witnesses were illegally kept out of consideration.

(g) The order of conviction entirely based on surmise and conjecture. Although PW/2 disclosed the real picture, but the prosecution deliberately declared him hostile and the learned Judge committed a grave mistake in not relying on the evidence of that witness.

(h) The prosecution has failed to rely upon its own machinery and declared its own witnesses hostile one after another."

While, Mr. Karim Warsi, advocate at the very outset contended that his client, Khudiram Biswas, is not Niranjana Modak, who allegedly involved in abduction of the victim. He further submitted that, according to PW/1, initially after receipt of a threat call, a missing diary was lodged, but the prosecution has not taken any attempt to exhibit the same. He then pointed out that the witnesses in their evidence made the entire allegation against one Niranjana Modak and not against appellant, Khudiram Biswas, who is altogether a different person. Lastly, he contended that the appellant, Khudiram Biswas was never placed in TI parade for his identification by the PW/3, who was an employee of the telephone booth and the evidence of PW/6 is full of contradiction.

On the other hand, the learned Public Prosecutor submitted that this is a case where an innocent citizen was abducted by this appellants for ransom on the point of gun and his family members were terrorized by phone calls threatening that he will be killed unless ransom money is paid. He further submitted that the appellant, Khudiram Biswas played the most crucial role and by deceitful means abducted him. He further submitted that both the appellants, Kartick Mondal and Sufal Mondal, were identified in the TI Parade by the victim and at the time of TI

Parade, he vividly described about the incident to the Judicial Magistrate, holding TI parade.

He further submitted that the question of placing Khudiram Biswas in TI Parade never arose, because he was absconding and only after submission of the charge sheet he surrendered in court, when the investigation was already over. He then pointed out that the motor-cycle in which the victim came to attend the patient was also recovered from the house of the PW/12 and PW/13, Raju Biswas and Ashok Biswas, and although both of them were declared hostile, but so far as the seizure of the motor-cycle from their house, is concerned, the same has not been disputed.

He lastly contended that since there was no iota of evidence that the appellants and the victim had any previous enmity, there is no question of false implications. He then vehemently urged if it was a case of false implication then at least appellant Khudiram Biswas has been named in the FIR as the real miscreant.

6. Heard the learned advocates appearing on behalf of the parties. Considered their respective submissions. Perused the depositions of the witnesses and other materials on record.

7. Considering the evidence on record, we find that the PW/6, Ramjana Halsana, the victim, is the key witness of the prosecution. Now, on a close scrutiny of evidence of the said witness, with reference to the evidence of the Investigating Officer of the case, PW/14, we find there are plethora of very vital and material omissions. Many important facts, relating to the commission of the crime and deposed by the PW/6 in court, were not stated to the Investigating Officer of the case and are as follows,

"..... An unknown person came to his residence and told him to go to Joyghata-Majdia for attending a fractured patient".

..... "When he was asked by that person that he would have to render medical help to a person, who suffered fracture on his leg and in reply, PW/6 told that unknown person that, he could not attend the patient on that day as his chamber was full of many persons."

..... " He told that person to bring the patient to his chamber at village Khajuri, otherwise he would visit him at his convenience".

..... "A date was fixed for attending that patient at his residence in the village Joyghata-Majdia".

..... "Before his departure on January 19, 2006 for Joyghata-Majdia, he told his mother, wife and brother Faroj Halsana about the treatment of a patient there".

..... "While crossing Krishnanagar city, he received a call in his mobile and after crossing one-and-a-half kms distance from a telephone booth he found

a person standing with a gun".

..... "That the said miscreant told him that Dr. we are searching for you for long time, but could not get and today we have got you".

..... "Five persons surrounded him inside the garden and they told him Doctor we need huge money, when PW/6 asked them to talk to his brother over mobile and to tell him how and where they will take that money".

..... "Then he disclosed to the miscreants the mobile number of his brother - 9434231085".

..... "The accused Niranjan Modak had a talk with his brother in the mobile and told him we have abducted your brother and you have to collect Rs. 20 lakhs and to pay them and if, either police or anybody is informed, then they would receive truncated head of his brother and further told if, he wanted to get his brother back, he is to arrange for the money".

..... "Accused Niranjan Modak switched off the mobile after he finished talk and before that he told the PW/6 that from where they will collect the money would be informed to his brother over phone on the next day".

..... "Five persons took Parota and curry with him inside the banana garden and he was confined at the said banana garden throughout the night".

..... "On the next morning the accused Niranjan Modak had a talk with his brother over mobile and asked him to come to a bamboo clump, which is just after the Majdia rail gate, with the ransom amount of Rs. 20 lakhs, on the next afternoon at about 4 pm".

..... "Thereafter Niranjan Modak told him your brother did not bring the ransom yesterday and today from where they will collect the money will be told and he is to ask his brother over phone about the same."

..... "He then asked Niranjan Modak wherefrom the money will be collected. Then Niranjan replied ask your brother to bring the money near Bhaina railway station and I will collect the same from there.

..... "He was asked by the accused to inform his brother that the person, who would collect the money, will have a red handkerchief and a bag in his hand".

..... "Thereafter he had a talk with his brother Faroj Halsana over mobile and asked him to go to Bhaina railway station with the ransom money and told him there he would find a person with a red handkerchief and a bag in his hand and that person will collect the same".

..... "One tall man took him inside a house and asked a woman sister, would you provide us some place, where we will sit".

..... "Many persons assembled there and one of them asked him

about his place of residence and he replied that he is a resident of village Khajuri."

We further find during cross-examination of the PW/6, the defence challenged the said witness and confronted him that he never told the aforesaid facts to the Investigating Officer of the case when he was examined under section 161 CrPC. In reply, the PW/6 denied the case of the defence, but the Investigating Officer when was confronted with the same he, however, admitted that those facts were not told to him by the PW/6

Undoubtedly, those omissions are very material and vital and goes to the root of the prosecution case and its credibility stands shattered.

Admittedly, the appellant, Khudiram Biswas was not known to the PW/6 Ramjana Halsana. According to the PW/6, when the appellant Khudiram Biswas approached him to visit a patient, who suffered a fracture on his leg, disclosed his identity as Niranjana Mondal. However, after the appellant Khudiram was taken to custody, he was never placed in the T.I. parade for his identification by the PW/6 as the said miscreant and for the first time he was identified in court, on the dock, by the PW/6 during the trial about 9 months after the occurrence. It was the contention of the prosecution, no T.I. parade was held because, Khudiram Biswas was arrested after submission of charge-sheet. We are not satisfied with such explanation, for the simple reason that the law does not prohibit holding of T.I. parade of a suspect, even when such accused is arrested after charge-sheet and filing of supplementary charge-sheet. In a case where an accused is not known to the victim or the witness, T.I. parade assumes much importance and become essential because to re-assure the person brought before the court was the real person involved in the commission of the crime.

We find the defence during the cross-examination of the PW/6 challenged the identification of the Appellant Khudiram Biswas as the accused Niranjana Mondal by him and suggested before identification on dock, the appellant Khudiram was shown to the said witness. We further find, while the appellant Khudiram was examined under section 313 CrPC, he was never questioned as regard to the most alleged incriminating circumstance against him that he was identified during the trial, by the PW/6 as the accused Niranjana Mondal. This vital omission by the Trial Judge, left us with no option but to exclude the factum of identification of the appellant Khudiram, as the accused who induced the PW/6 to go with him on a false pretext to visit a patient who suffered a fracture on his leg.

In this regard reliance may be placed in the case of Rameshwar Singh Vs. State of Jammu and Kashmir, .

The vital and material infirmities in the prosecution case, we find, are summarized below,

"a) The PW/6 Ramjana Halsana the victim on whose evidence the prosecution case rests, in his examination during investigation omitted to mention very

material facts relating to the incident to the Investigating Officer of the case.

b) If the facts stated in court, but not disclosed to the Investigating Officer during investigation, is excluded from consideration, there is no other reliable evidence against the appellants.

c) No call chart was seized by the police to establish that actually there was exchange of calls from the mobile phone belonging to PW/6 and his brother PW/1.

d) No copy of the missing diary, which was claimed to have been lodged after receipt of the threat calls by the PW/1 was exhibited.

e) There was no TI parade of the appellant, Khudiram Biswas.

f) The appellant, Khudiram Biwas, who was never known to him, was identified by the PW/6, the victim for the first time in the dock, but the fact he was identified in the dock by the victim, PW/6 was not put to the appellant during his examination under section 313 CrPC."

It is true both the appellants Kartick Mondal and Sufal Mondal @ Tela were identified in the TI parade as also on the dock by the PW/6, the victim, but while we are not inclined to uphold the order of conviction of the appellant Khudiram Biswas @ Khude for the infirmities as aforesaid, for the same reasons, in our opinion it would not at all be proper to sustain the conviction of the other two appellants, i.e., Kartick Mondal and Sufal Mondal.

In the result, the appeal succeeds and order of conviction and sentence stands set aside.

The appellants, who are now in correctional home, shall at once be released, if not they are under detention in connection with any other case.

Office is directed to send down the Lower Case Records.

Ishan Chandra Das, J.

I agree.