
(2018) 03 JH CK 0083

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No.778 of 2003

KHALIL MIAN, S/O SUKAR MIAN AND ORS

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 364, 365
Code of Criminal Procedure, 1973 — Section 164

Citation : (2018) 03 JH CK 0083

Hon'ble Judges : B.B.MANGALMURTI, J

Bench : Single Bench

Advocate : Ramawatar Sharma, Kavita Sharma, Satish Kumar Keshri

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 12th June, 2003 passed by Additional District & Sessions

Judge, Fast Track Court III, Giridih in Sessions Trial No.310 of 1988 convicting both the appellants Khalil Mian and Imam Mian @ Pano Ansari under

Section 364 of the Indian Penal Code whereas accused Yusuf Mian and Chhoto Mian were not found guilty under Section 364 of the Indian Penal

Code and they were acquitted. The convicts-appellants were sentenced five years rigorous imprisonment under Section 364 of the Indian Penal Code

with fine of Rs.2000/- which will be allowed to be given to the victim girl Gulzar Khatoon as compensation and in default further rigorous

imprisonment for one year.Â Â

2. The prosecution story, in short, is that on 27.08.1987 Md.Anwar Ahmad gave his fardbeyan to Nimiaghat Police Station that on 26.08.1987 co-

villager Md. Ismail Mian informed him that accused Khalil Mian, Yusuf Mian,

Imam Ansari @ Pano and Chhoto Mian instigated accused Rozan Mian

and Chhotan Mian to kidnap Gulzar Khatoon because she was going to Gomoh to inform her father. The accused persons caught hold of her while the

victim girl reached at Kodadih Tand at about 10 Oâ?? clock. The informant came to know about the incident while he was at his Gomoh railway

quarter. He claimed that due to enmity of land dispute between accused Yusuf Mian and informant, they might have kidnapped his sister Gulzar

Khatoon aged about 13 years in order to commit her murder.Â

3. Thereafter, Nimiaghat P.S. Case No.62 of 1987 under Section 364 of the Indian Penal Code being G.R. Case No.1203 of 1987 was registered.

During investigation, statement of the victim girl Gulzar Khatoon was also recorded under Section 164 of the Code of Criminal Procedure. After

investigation, charge-sheet was submitted by the Police and after commitment of the case and after framing of the charge trial against the accused

persons started. During course of trial, altogether four prosecution witnesses were examined but from the defence side, no oral evidence was

examined but they have brought on record certified copies of the judgments which have been marked as Ext. A, B & C to prove previous enmity

between the parties.Â

4. P.W.1 Jamaluddin Ahmad is father of the victim girl. He narrated about the prosecution story that accused Khalil Mian, Chhoto Mian, Imam Ansari

alias Pannu Mian, Yusuf Ansari, Chhotan Mian and Rozan Mian have kidnapped his daughter Gulzar Khatoon. He further deposed that at the time of

occurrence he was working as Railway Driver at Gomoh Railway Station. He got knowledge of the incident from co-villager Ismail Mian on

26.08.1987. After receiving such information, he along with his son Anwar Ahmad, Manir Ahmad, Sikandar Ahmad came to his village Ramnagar and

searched his daughter but could not find her. Then his son Anwar Ahmad gave this information to the Police Station on 27.08.1987. He further

deposed that on 14.10.1987, Chowkidar Nandlal Mahto informed him at his Gomoh railway quarter about the recovery of the girl near the quarter of

Khalil Mian as well as near Sarubera hotel. On 17.10.1987, Nimiaghat Police handed over the victim girl to him. The girl thereafter disclosed that

Khalil and Imam Ansari alias Pannu Mian had forcibly taken her on a motorcycle from Kodadih Tand. He claimed to recognize all the accused

persons who were absent on that day. Lastly, he stated that he had retired from service on 19.07.1992. During cross-examination, he admitted that he

is not an eye witness and had not seen the occurrence but he has stated only what he heard about the incident. The girl was not recovered before him.

During cross-examination, he replied that he had never stated before the Police that the girl has stated that Khalil and Imam had taken her forcibly on

motorcycle. He admitted that before this incident there was previous enmity between his family and the family of accused persons due to land. He

denied the suggestion that he has falsely implicated the accused persons in this case.

5. P.W.2 Salma Khatoon is sister of victim girl aged about 15 years and student of class VII. She stated that occurrence is of around 7 am in the

morning of 26.08.1987 and at that time she was in her house. Her grand-mother instructed her elder sister Gulzar Khatoon to see that who are cutting

the ridge of the field. Then her sister went there but did not returned. When she returned after about 50 days then she disclosed that Khalil Mian and

Panu Mian had taken her on a motorcycle. She also stated that she was kept in different places which she could not know. She also informed that

they left her near the road where there was a shop then a Chowkidar accompanied her to Police Station where she was produced before the court

and then she returned to home. She recognized Khalil Mian and Panu Mian as her co-villagers. During cross-examination, she stated that she is 1½ -

2 years younger to Gulzar Khatoon. Gulzar Khatoon not studied in any school as she has studied in the residence itself. She further stated that her

statement was recorded by the Police on 26.08.1987 at around 4 pm in the evening where she has stated that on the instruction of her grand-mother

her sister Gulzar Khatoon had gone to see the ridge of field. In Paragraph 9, she stated that on that day no person of his village has said to her or to

her grand-mother that they have seen Khalil Mian and Panu Mian taking Gulzar Khatoon on motorcycle. She denied the suggestion about the previous

enmity between both the families. She also denied the suggestion that she is deposing false on the dictation of his father.Â

6. P.W.3 Anwar Ahmad who is also a railway employee and informant in this case who deposed that her sister Gulzar Khatoon while she was coming

from residence at Ramnagar to Gomoh to inform about the conduct of accused persons namely Khalil, Yusuf, Imam alias Pano, Chhoto, Rozan and

Chhotan asÂ they cut the ridge of the field and while she was on her way and reached Kodadih Tand then Khalil, Yusuf, Imam alias Pano, Chhoto,

Chhotan, Rozan all kidnapped Gulzar. This incident was narrated by Ismail to his father and his father stated about the incident to him in the quarter.

When the kidnapping was made, the age of her sister was 13 years. He further stated on 17.10.1987, the Police have handed over her sister at Gomoh

railway quarter after she was recovered by the Nimiaghat Police Station. He recognized his signature on the fardbeyan which was marked as Ext.1.

He recognized accused Khalil and Yusuf and claimed to identify the other accused persons. During cross-examination, he admitted that he is a

Matriculate and he is deposing on hearsay. He further stated that where the girl was recovered, he had not gone to that place. He could not say the

distance between Fusru and Sadhubera. He admitted that due to land some cases were pending between his family and family of accused persons but

there was no case of any assault. He admitted that he is facing a criminal case in the court. He denied the suggestion that he had committed dacoity

so the villagers have broken his house. He also denied the suggestion that in order to take revenge, they have themselves concealed the girl and lodged

a false case implicating the accused persons. He also stated that the girl who was kidnapped is alive and after marriage she is living in her Sasural. He

denied the suggestion that he is deposing false.Â

7. P.W.4 Gulzar Khatoon is victim of this case. She narrated the story that while she was at her residence in her village Ramnagar at around 10-11

am, her grand-mother asked her to see who were cutting the ridge of the field. Then she went there and thereafter she was going towards Gomoh to

inform her father about these things and while she reached Kodadih Tand then Chhotan and Rozan slapped her and told her to return. Thereafter,

accused Chhotan, Rozna, Iswa, Pano, Khalil and Chhoto all kidnapped her and kept her in the house of Khalil. In the evening, they took her on the

motorcycle. Khalil was driving the motorcycle and she was sitting in the middle seat and Pano was also sitting behind her on the motorcycle. Khalil

asked her to keep her head down and Pano was slapping her from behind and ordered her to keep mum. She further deposed that she was kept in a

locked house for about 1½ months. She could not name the place where she was kept confined. Sometimes Pano was living there. Other persons

were living there but their names were not known to her. Khalil came after 1½ months on a vehicle and said that your parents have not come in your search.

She was taken on a motorcycle and was left near a road and jungle. The motorcycle was being driven by Khalil and she was sitting in the middle seat

and Pano was sitting behind her. The hotelwala near the road enquired about her village and then handed over to a Chowkidar and Chowkidar

accompanied her to Nawadih Police Station and from there she was taken to Nimiaghat Police Station. Nimiaghat Police produced her before the

Giridih court where her statement under Section 164 of the Code of Criminal Procedure was recorded and thereafter she was handed over to her

father at Gomoh. She recognized Yusuf and Chhoto present in court and identification of rest of the accused were waived by the defence. During

cross-examination, she stated that on the day of occurrence in her residence her grand-mother, her younger sister Salma and she herself were present.

They are altogether three sisters and five brothers. On the day of occurrence, other sisters and brothers were at Gomoh with their parents. She stated

that accused persons Khalil, Pano, Yusuf, Chhoto, Chhotan, Rozan were present and were cutting ridge of the field but she could not state name of

other persons present there. She further stated that no other persons were working in the nearby field as it was not a working season in the field.

They had cut four or five ridges of the field and had also cut the trees. She could not state the distance between Ramnagar and Gomoh but stated that

while she was returning to her home then she was forcibly taken to the residence of Khalil and at that time several persons of the village were present

but she could not state the number of persons present. While Chhotan and Rozan were taking her then Khalil came and ordered to keep her in lock.

She could not raise alarm as Khalil and Pano was assaulting her. She was transported in the evening from the residence of Khalil to another place by

motorcycle. Her eyes were not covered but was asked to keep her head down. She also stated that where she was kept and confined, only male

persons were residing there and no female members were there but she could not state their names because she was kept in a separate room. In that

house, there was Aangan and bathroom which were being used by her. She also stated that during her captivity Khalil has not met her. She stated that

the hotel where she was left by accused persons was a busy road and trucks and other transport vehicles were plying. She could not remember for

how much time she remained there. Her marriage was solemnized 56 years ago at Gomoh. She denied about the knowledge of pending cases

between the accused and her family. She replied that her statement was recorded, but could not remember when her statement was recorded by the

Police. She stated that her statement was recorded under Section 164 of the Code of Criminal Procedure where she had stated about the accused

persons as Khalil was driving motorcycle and Pano had asked her to keep her head down.

She denied the suggestion that nobody had kidnapped her and what she is deposing before the court had not occurred. She also denied the suggestion

that due to enmity false evidence has been given on the instruction of his father.Â

8. Learned counsel for the appellant submitted that this is a case of false implication as all the family members have been made accused in the case

due to land dispute as would appear from the Ext. A, B & C which was certified copies of the judgments. He further submitted that their previous

enmity has been proved and has been admitted by informant and his father. He also submitted that as per fardbeyan co-villager Ismail son of Alam

Mian had informed about the incidence but he was not examined as a witness in this case. Therefore, the falsity of this case cannot be ruled out. He

also submitted that it is strange that while the victim girl was being taken on a motorcycle in a day time or even in the evening as per the statement of

the victim girl but nobody had seen her while she was being carried on a motorcycle. He also submitted that no independent witness has been

examined in this case. It is also strange that no attempt to search was undertaken by the father or brother of the victim even no relatives were

contacted or searched. All the family members remained idle even after missing of the girl child. Lastly, he has submitted no injury on the body of the

victim was found although she was put in danger. The Investigating Officer of this case was also not examined so it prejudiced the case of the

prosecution.

9. Learned A.P.P. appearing on behalf of the State submitted that in the background of previous enmity between the families, the minor girl was

kidnapped by the appellants which has amply been proved in the statement

given by the victim girl before the court which was recorded under Section 164 of the Code of Criminal Procedure that has been marked as Ext.3 He also submitted that the entire case is based on the evidence of P.W.4, the victim girl and the case may fall under Section 365 of the Indian Penal Code.Â

10. Considering the above submissions of the learned counsels for the parties and on scrutiny of the evidences adduced on behalf of the prosecution, it

appears that the P.W.1 father of the victim, P.W.3 Anwar Ahmad, brother and informant of this case, have admitted that they are not eye witness but

deposing on the basis of the information given by Ismail. P.W.2 Salma Khatoon, sister of the victim is a minor witness and P.W.4 Gulzar Khatoon, the

victim girl, both have stated that the appellants have taken her on a motorcycle. It further appears that although her statement under Section 164 of the

Code of Criminal Procedure has been marked as Ext.3 but the same was not properly brought on record as the Judicial Magistrate who had recorded

the statement, has not been examined in this case. Likewise, the Investigating Officer is also not examined in this case. No independent witness or any

co-villager as well as Ismail who had given knowledge of kidnapping to the father of victim girl, has also not been examined in this case. Therefore,

the case of prosecution is not well proved and it is not based on sound reasonings.Â

11. In the result, this appeal is allowed. Â

12. Appellants Khalil Mian and Imam Mian @ Pano Ansari are acquitted of the charge. Since both these appellants are on bail therefore, they are

discharged from the liabilities of their bail bonds. 13. Let the Lower Court Records be sent back to the court concerned forthwith.Â