
(2018) 04 MP CK 0080
In the Madhya Pradesh High Court
Case No : Cr.A. No.813 OF 2000

Lambu @ Ramdayal, S/O Chote Adiwas	APPELLANT
Vs	
State Of Madhya Pradesh	RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 374
Indian Penal Code 1860 — Section 364A

Citation : (2018) 04 MP CK 0080

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Susheel Goswami, J.M.Sahni

Final Decision : Dismissed

Judgement

Appellant has filed this Criminal Appeal under Section 374 of the Cr.P.C. being aggrieved by the judgment dated 28.09.2000 passed by Third

Additional Sessions Judge, Shivpuri in S.T. No. 162/99 whereby the appellant is convicted under Section 364-A of IPC (on two counts) and sentenced

on each count to Life Imprisonment with fine of Rs.2000/- and on default of payment of fine directed to suffer six months additional Rigorous

Imprisonment. It has also been directed in the impugned judgment that both the sentences of life imprisonment would run concurrently.

2. Prosecution's case, in short, is that on 12.02.1998 at about 1-00 PM in the forest of Vinyasi, complainant Shyamveer (PW-4), Hari Singh (PW-9),

Ranveer (PW-10), Lakhan (PW-5) and Girraj (PW-7) were grazing their cattle as usual. At that time two persons came nearer to them and asked

that where Silpura's Gurjars could met and they took with them above mentioned Ranveer and Hari Singh on the pretext of showing them the way.

One of the miscreants was having a gun.Â Thereafter, complainant Shyamveer (PW-4) with LakhanÂ (PW-5) and Girraj (PW- 7) after running reached to their village and in the meanwhile they saw that some other companions of the miscreants were also stayed at some distance, who joined them.Â Complainant and others informed about the abduction of Hari Singh and Ranveer to Babu Singh (PW3).Â Thereafter, Devendra Singh (PW-2) with watchman (Chaukidar) proceeded towards police station, Gopalpur for lodging FIR, but in the way Sub Inspector B.K.Mahore (PW-14) met them, who came to village Silvura during his routine patrolling.Â Complainant Shyamveer intimated him about the incident, then B.K.Mahore (PW-14) recorded Dehati Nalishi (ExP-1) which was sent later on through Constable Lalpat to police station Gopalpur for registration of crime and on the basis of Dehati Nalishi at police station Gopalpur, FIR (ExP-2) was recorded by Head Constable Rambaksh (PW-8).Â Copy of the FIR was sent to the JMFC, Shivpuri on 13.2.1998.Â After receiving the ransom amount the abductees Ranveer and Hari SinghÂ were separately released by the abductors.

3. Firstly, Hari Singh was released, who was interrogated by investigating officer, then information regarding accused persons of relating crime was received.Â Thereafter appellant Ramdayal @ Lambu was in custody in another crime. Present appellant was formally arrested on 10.07.98 in this case and after completing the formalities of the investigation, charge sheet against the appellant was filed in the Court of CJM, Shivpuri describing other co-accused persons as absconders.Â In compliance to arrest warrant issued by the CJM, co-accused Man SinghÂ was arrested on 9.2.1999, but other co-accused persons could not be arrested.Â CJM, Shivpuri committed the arisen criminal case to Sessions Court, who transferred the case to above mentioned trial Court.Â Trial Court framed charge forÂ offence punishable under Section 364-A of the IPC against present appellant and Man Singh.Â During trial, Man Singh expired.Â Before trial Court Faiya (PW-1), Devendra (PW-2), Babu Singh (PW-3), Shyamveer (PW-4), Lakahn (PW-5),Â Meherban (PW-6),Â child witness Girraj (PW-7), Head Constable Rambaksh (PW-8), Hari Singh (PW-9), Ranveer (PW-10), Ummed Singh (PW-11), Ghanshyam (PW-12), Sub Inspector C.S.Chauhan (PW13), and investigating officer Balkrishna Mahore (PW-14) were

examined as prosecution witnesses.Â It was the defence of present appellant that he has been falsely implicated.Â No defence witness was

examined for him before the trial Court.Â After hearing, the trial Court placing reliance on prosecution evidence convicted and sentenced present

appellant as aforesaid.

4. Learned counsel for the appellant vehemently contended that no test identification parade in relation to appellant was conducted during investigation

of the relating crime and the trial Court erred in convicting the appellant only on the basis of doc identification of the appellant by relating abductees at

the time of recording of their evidence.Â It is further argued that at the time of formal arrest in this case present appellant was in custody in relation

to other crime and in the present case there is no reliable evidence about payment of ransom in relation to release of the alleged abductees by the

abductors, hence it is prayed that appeal be allowed and the appellant be acquitted.

5. Per contra, learned Public Prosecutor appearing on behalf of the respondent/ State contends that the abductees remained in custody of the appellant

and other abductors for a long period of about three months hence doc identification of appellant was reliable.Â It is also contended that test

identification parade is not compulsory in every case and only doc identification is substantial evidence, hence dismissal of the appeal is prayed.

6. The statements of prosecution witnesses i.e., complainant Shamveer Singh (PW-4), Lakhan (PW-5) and Girraj (PW-7) were recorded without

administering them oath, as they were child witnesses.Â All the child witnesses stated that on the date of incident they had gone in jungle for grazing

their cattle with Hari Singh and Ranveer and at that time two unknown persons armed with guns came nearer to them and they took Hari Singh and

Ranveer with them on the pretext of showing them way in the jungle.Â They deposed that after returning to village they informed the watchman and

in the way they saw that in total 8-10 persons were accompanying the two gun men.Â Shaym Singh (PW-4) and Lakhan (PW-5) deposed that

appellant was not that person among those two gun men, who had came nearer to them on the date of incident.

7. Hari Singh (PW-9) and Ranveer (PW-10) deposed that on the date of incident they had gone in relating jungle for grazing their cattle with above

mentioned other witnesses and after some time two dacoits came nearer to them and after enquiring, they captured both of them.Â Hari Singh

deposed that after abducting him those dacoits also gave beating to him and both of these abductees deposed that in jungle other companions joined

those two gun men and the dacoits asked them about their family members and their economic status. RanveerÂ (PW-10) also deposed that he was

beaten by the miscreants, butÂ he was released after one month by the dacoits saying that he should intimate the family members of Hari Singh that

they should pay ransom and got Hari Singh released.Â Ranveer clearly deposed that present appellant (Ramdayal) was included in those miscreants,

who had abducted him and Ramdayal and Man Singh were also members of dacoit gang, who had abducted them.Â RanveerÂ (PW-10) deposed

that in addition toÂ appellant and Man Singh, other 10-12 persons were in the relating gang.

8. Abductee Hari Singh (PW-9) deposed that he was kept in detention by the dacoits for a period about 3 Â½ months and thereafter he was released

when his family members paid the ransom amount.Â Hari Singh clearly deposed that appellant was not among those two gun men who firstly

captured him and Ranveer, but he clearly deposed that on the date of incident,Â Ramdayal and Man Singh also joined those dacoits who abducted

them and Ramdayal has also beaten him and after their abduction, the dacoits have sent a letter for ransom amount to their family members and after

abduction they were being kept by dacoits in different jungles often changing places.Â Hari Singh (PW-9) and Ranveer (PW-10) clearly deposed that

present appellant (Ramdayal), whoÂ was in the dacoit gang was called as â?? LambuÂ?.Â Much emphasis has been given by learned counsel for

the appellant that both abductees Hari Singh (PW-9) and Ranveer (PW-10) have admitted that after their release Lambu @ Ramdayal was shown

after his arrest and they were asked by police that whether appellant was included in those miscreants, who abducted them, then they replied that

Ramdayal was included in those dacoits.Â Hence it is argued that appellant's identification is not reliable.

9. If during investigation test identification paradeÂ of the appellant was not conducted, it could not be said to be a fault of above mentioned

abductees.Â In the light of case of State of Punjab Vs. Gurmit Singh and others (AIR 1996 SC 1393), it has been observed that the complainant or

victim is having no control over the investigating officer and only due to negligence or defect of investigation the evidence of otherwise reliable victim could not be discarded.

10. Even in the light of case of Ravi @ Ravicharan Vs. State Rep. by Inspector of Police (AIR 2007 SC 1729) it has been observed by the Apex

Court in para 17 as follows:-

“It is no doubt true that the substantive evidence of identification of an accused is the one made in the court. A judgment of conviction can be arrived at even if no test identification parade has been held.”

11. In the case of Bharat Singh Vs. State of MP (2017(3) MPLJ (Cri.) 142) it has been observed by this Court that in every case test

identification parade is not necessary and in fact direct identification is substantive piece of evidence and if evidence of witnesses is found reliable then

identification of accused in direct can be relied upon. 12. In the light of case of Santosh Vs. State of MP (2018(1) MPWN 14, wherein decision has

been reproduced in toto), a Division Bench of this Court has observed that it is clear that when the witnesses were having opportunity for seeing

accused persons for a long period, identification by such witnesses could not be doubted in absence of any reason for false implication.

13. In the light of above mentioned legal position, only due to absence of test identification parade during investigation, otherwise reliable evidence of

both the above mentioned abductees against the appellant Lambu @ Ramdayal could not be thrown out as it is clear that prior to incident appellant

was an unknown person for the abductees being resident of distant areas and there appears no possibility of false implication of appellant by both the

above mentioned abductees.

14. It is significant to mention here that investigating officer Balkrishna Mahore (PW-14) deposed that after release of the abductee Ranveer on

12.3.1998 he has recorded the police statement of Ranveer (PW-10), wherein Ranveer has mentioned the name of Lambu as one of the abductors

and the investigation of relating crime remained with him till 3.4.1998 and thereafter he was transferred and appellant was arrested after his

transfer. It is significant to mention here that Ranveer (PW-10) was not cross-examined by the learned defence counsel at the time of recording of

his evidence before the trial Court regarding his police statement, hence the

evidence of investigating officer appears to be reliable that much before the arrest of present appellant, the name of appellant as one of the abductors was disclosed on 12.3.1998 by one of the abductee Ranveer. The

evidence of investigating officer Balkrishna Mahore has not been challenged during his cross-examination by learned defence counsel on this point.

15. Ummed Singh (PW-11) deposed that about two years ago, his brother Hari Singh was abducted by miscreants and about 3½ months after when

he paid Rs.1,00,000/- to miscreants, then Hari Singh was released, thereafter recovery memo (ExP-5) dated 21.05.1998 was prepared in relation to

Hari Singh. He also deposed that ransom money was paid to the dacoit gang of Prem Bagi, though he had not gone personally for paying the

ransom amount. Sub Inspector C.S.Chauhan (PW-13) deposed that Hari Singh's recovery panchnama (ExP-5) was prepared by him on 21.5.1998.

16. In the light of above mentioned citations, it is clear that test identification parade during investigation is not a mandatory requirement in every

criminal cases. In such cases, where the abductees are detained or kept in custody by the abductors for a sufficient long time, till receiving the

ransom amount, then such abductees remained with the abductors for 24 hours of a day and the relating abducees were closely observed by the

miscreants to prevent the possibility of their escape. Even it is not suggested to prosecution witnesses including the abductees that the abductees

remained with closed faces and it is not possible for abductors to remain unidentified by the abductees for such a long period. Nothing was brought

in cross-examination of both of the abductees, which could even suggest any reason for false implication of the appellant by both of the abductees.

Due to these reasons, in above mentioned special circumstances of the present case where both the abductees remained in custody or detention of the

abductors for a sufficient long period, their identification could not be doubted.

17. We are of the considered opinion that the trial Court has properly and legally appreciated the evidence available on record and had not erred in

convicting the appellant for the charged offence. In the light of above mentioned referred citations, the appellant's appeal appears to be devoid of any substance.

18. Consequently, the appeal filed by the appellant Ramdayal @ Lambu is hereby dismissed and his above mentioned conviction and sentence as

recorded by the trial Court is affirmed.Â Appellant is released on bail in compliance to this Court's order regarding suspension of his custodial sentence.Â He is directed to immediately surrender before the trial Court to serve out his remaining jail sentence.Â With copy of this judgment, record of the trial Court be returned.