
(2009) 07 JH CK 0047

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 795 and 1513 of 2003

Md. Ekram Khan, Ashique Khan and Suraj Vikas Minz

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 363, 364A

Citation : (2010) CriLJ 1536

Hon'ble Judges : R.R. Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A.K. Sahani and P.S. Ghosh, for the Appellant; M.K. Sinha and Anita Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Both the aforesaid criminal appeals arising out of the same impugned judgment were heard together and hence are being disposed of by this common judgment.

These three appellants were put on trial along with Nazma Khatoon on the charge of kidnapping a minor boy for ransom. Learned trial court while acquitting Nazma Khatoon, did find the appellants guilty for the offence under Sections 363 and 364A read with Section 120B of the Indian Penal Code and hence sentenced appellants Md. Ekram Khan and Suraj Vikas Minz to undergo rigorous imprisonment for life u/s 364A of the Indian Penal Code and further to undergo rigorous imprisonment for five years u/s 363 of the Indian Penal Code. However, no separate sentence was passed u/s 120B of the Indian Penal Code. At the same time, appellant- Ashique Khan was sentenced to undergo imprisonment for life u/s 120B read with Section 364A of the Indian Penal Code and further to undergo rigorous imprisonment for five years u/s 363 read with Section 120B of the Indian Penal Code.

2. The case of the prosecution is that as usual, the driver, Suraj Vikas Minz

(appellant), on 23.12.1998 at about 7:00 a.m. took Kumar Vivek, P.W. 12, and Kumar Vaibhav, P.W. 11, both minor sons of the informant, Jagdish Prasad, P.W. 10, to D.A.V. Syamli School on a car bearing No. BR-14F-4942. At about 8:45 a.m., Kumar Vivek came home weeping and disclosed to his family members including the informant that when three unknown persons near A.G. More signaled the driver to stop the car, he stopped the car and then all the three persons boarded on the car and took out the revolver and by pointing towards him threatened not to raise any alarm. Thereafter, the driver, instead of taking the car towards the school, started taking at the instance of the accused persons, towards Ratu Road. After reaching ahead of Ratu market, he was given a letter with instruction to give it to his father, wherein his father was asked to pay a sum of Rs. 20 lakhs by evening, failing which his son, Kumar Vaibhav, would be done to death and then he was asked to get down. While Kumar Vivek was narrating about the occurrence, driver, Suraj Vikas Minz, came over there and he also handed over a same kind of letter to the informant. Thereupon, when driver, Suraj Vikas Minz, was interrogated intensively, he confessed his guilt in writing (Ext. 2) by disclosing that the previous day, he had been to the house of Md. Ekram Khan at Village Kairo, where Ashique Khan, Jasir and Mojib were present and there a plan was hatched to kidnap Kumar Vaibhav and, accordingly, that was executed, whereby Kumar Vaibhav after being kidnapped, has been kept with appellant Ashique Khan. He also disclosed that Md. Ekram Khan, Jasir and Mojib had boarded on a car. Thereupon, the informant, P.W. 10, submitted a written report before the Officer In-charge of Doranda Police Station along with written confession (Ext 2) of appellant- Suraj Vikas Minz and also two ransom letters (Ext. 3/1 and 3/2).

3. Upon receiving written complaint, a case was registered against the appellants and other accused persons and a formal FIR (Ext. 4) was drawn. P.W. 13, Bhagwan Prasad, the Investigating Officer, upon taking up the case for investigation, interrogated the driver- Suraj Vikas Minz, who in that course, confessed his guilt before the Investigating Officer and also disclosed about the place, where the victim has been kept confined. On his disclosure, when a raid was led in the house of appellant-Ashique Khan, the victim was not found there, but it could be known that the accused persons, after sensing possibilities of raid being laid, have taken the victim boy towards Taranga forest and hence the raiding party when came to the forest, it found victim-Kumar Vaibhav weeping near a tree, who disclosed that he had been brought there in the evening, but the accused persons, on getting information about arrival of the police, have fled away from there. Thereafter, the police, at the instance of the victim boy, raided a house, belonging to the appellant- Ashique Khan, from where a Tiffin Box and a Bottle were recovered over which the name of the victim-Kumar Vaibhav was there, which was seized under Seizure List (Ext. 7) in presence of Rajesh Munda, P.W. 5, and Habib Khan, P.W. 7, who have turned hostile.

4. After completion of the investigation, the police submitted charge-sheet, upon which, cognizance of the offence was taken against the appellants. On committal

of the case, charges were framed to which the appellants pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined as many as 13 witnesses. Of them, P.W. 10, Jagdish Prasad, the informant, as well as P.W. 9, Jitendra Bhagat, have testified about the fact which was disclosed to him by his son, namely, Kumar Vivek, P.W. 12, as well as by appellant- Suraj Vikas Minz while confessing his guilt. P.W. 11, Kumar Vaibhav, is the victim, who has testified that after being kidnapped, he was taken to Taranga forest, whereas his brother-Kumar Vivek after being given a letter of ransom was allowed to get down from the car. This witness identified appellant- Suraj Vikas Minz by name, whereas appellants- Md. Ekram Khan and Ashique Khan were identified by face. Similarly, Kumar Vivek, P.W. 12, who was kidnapped along with Kumar Vaibhav, but, was let off so that he may hand over a letter of ransom to his father, has testified about the incidence and has also identified all the accused persons.

6. The learned trial court, having placed reliance on the testimonies of the witnesses particularly, P.Ws. 11 and 12 and also on the extra judicial confession made by co-accused, did find the appellants guilty and hence recorded the order of conviction and sentence, as aforesaid.

7. Learned Counsel appearing for the appellants submits that though P.Ws. 11 and 12 have claimed to have identified the appellants, particularly appellants- Md. Ekram Khan and Ashique Khan, but admittedly, these appellants had never been put on test identification parade and, therefore, any identification, made by these two witnesses after such a long period of almost more than three years, loses its significance, but the learned trial court failed to consider this important aspect of the matter.

8. Learned Counsel further submits that the alleged extra judicial confession made by the co-appellant is a very weak piece of evidence so far it relates to the other co-accused and, therefore, in absence of any corroboration of the circumstances through independent source, it never leads to conclusion conclusively that the appellants committed offence and under these circumstances, the order of conviction and sentence is fit to be set aside.

9. Heard learned Counsel appearing for the State.

10. Having heard learned Counsel appearing for the parties and on perusal of the record, we do find that according to the victim, Kumar Vaibhav, P.W. 11, and his elder brother, Kumar Vivek, P.W. 12, while they were being taken to D.A.V. Syamli School in the morning by the driver- Suraj Vikas Minz (appellant), three persons got the car stopped near A.G. More and then according to P.W. 12, one of the persons took out pistol and the other accused by pointing revolver, asked the driver to go ahead. After going to some distance, accused persons gave a letter (Ext. 3/1), which was written from before, to P.W. 12 and made him to get down from the car. The said letter was a letter of ransom, whereby the accused persons had asked Rs. 20 lakhs with a threatening language that if the amount

would not be paid, his younger son would be done to death. Thereafter, according to P.W. 12, he handed over that letter to his family members and also told about the occurrence to them including his father; the informant. Meanwhile, driver- Suraj Vikas Minz reached home and he also handed over a letter to the informant, Jagdish Prasad, P.W. 10. According to him, when he put questions to the accused- Suraj Vikas Minz, he yielded and then confessed his guilt in writing (Ext 2), stating therein that after hatching a plan with the accused persons - Md. Ekram Khan, Ashique Khan, Jasir and Mojib, they kidnapped Kumar Vaibhav, P.W. 11.

11. Further, it appears from the evidence of the Investigating Officer, P.W. 13, that accused- Suraj Vikas Minz also confessed his guilt before the police disclosing therein that Kumar Vaibhav, P.W. 11, has been kept confined in Taranga forest. On his disclosure, when the police raided that forest, Kumar Vaibhav, P.W. 11, was recovered. Again as per version of the Investigating Officer, when the house of accused- Ashique Khan was raided, a Tiffin box and a water bottle, over which name of Kumar Vaibhav, P.W. 11, was there, were recovered. Going further in the matter, we find that P.W. 12, in course of trial, identified the accused persons by stating that all the three appellants had boarded on his car, but here this witness seems to have been mistaken so far appellant- Ashique Khan is concerned, as P.W. 11, the victim, has identified appellant-Ashique Khan in the court by saying that he was at the forest. In spite of the aforesaid discrepancy, no advantage could be derived by the appellant-Ashique Khan, as he has been identified by P.W. 11 and that apart, incriminating articles have also been recovered from his house, which establishes his involvement in the alleged offence beyond all reasonable doubts.

12. Further, we do find that P.W. 11, the victim, has also identified appellant- Md. Ekram Khan, but he is not sure as to whether the accused was seen at the forest or in the car, but this witness says convincingly that appellant- Md. Ekram Khan was involved very much in the occurrence. Thus, we do find that the victim, P.W. 11, and P.W. 12 have identified the appellants in course of evidence, though the accused persons had never been put on test identification parade, but in the facts and circumstances of the case, it will not have any adverse effect on the prosecution case.

13. It is true that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character, as has been held by the court in several decisions. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. But at the same time, it has been held at several occasions that failure to hold a test identification parade would not make the evidence of identification in court inadmissible. The identification parades belong to the stage

of investigation, and there is no provision in the Cr.P.C. which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. These parades do not constitute substantive evidence. The substantive evidence is the evidence of identification in court and the test identification parade only provides corroboration to the identification of the witness in court, if required. However, what weight to be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts to examine. In appropriate cases, it may accept the evidence of identification parade even without insisting on corroboration. This proposition of law gets reflected from a case of Malkhansingh and Others Vs. State of Madhya Pradesh, .

14. Coming to the fact of this case, we do find that Kumar Vaibhav, P.W. 11, was kidnapped along with his brother, Kumar Vivek, P.W. 12, at about 7:15 a.m. on 23.12.1998, whereas Kumar Vaibhav could be recovered in the afternoon of 24.12.1998 and hence, he must have got several occasions to see the face of accused persons and those scenes must have been imprinted so deep not to be wiped out for number of years to come. Under these circumstances, testimonies of the witnesses, P.Ws. 11 and 12, on the point of identification are quite acceptable.

15. That apart, accusation against the appellants further gets established, as one of the co-accused, namely, Suraj Vikas Minz, confessed his guilt in writing (Ext. 2) before P.Ws. 9 and 10, which never seems to have been retracted, as appellant- Suraj Vikas Minz, in his statement made u/s 313 Cr. P.C., has accepted that he had confessed his guilt in writing, wherein it has been stated that after hatching a plan with the other accused persons, they had kidnapped Kumar Vaibhav for ransom.

16. Thus, taking into consideration the evidences appearing against the appellants establishing the guilt of the appellants beyond all reasonable doubts, we do find that the trial court is absolutely justified in holding the appellants guilty and as such, the judgment of conviction and the order of sentence are hereby affirmed.

17. Accordingly, we do not find any merit in this appeal. Hence, this appeal is dismissed.