

(2007) 02 MAD CK 0018

In the Madras High Court

Case No : Criminal Appeal No's. 478, 560 and 661 of 2005

Prabhakaran and Others

APPELLANT

Vs

State, by Inspector of Police

RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 313
Penal Code, 1860 (IPC) — Section 120B, 364A, 365, 386, 506

Citation : (2007) 02 MAD CK 0018

Hon'ble Judges : R. Balasubramanian, J; M. Jeyapaul, J

Bench : Division Bench

Advocate : N. Chandrasekaran, for R. Kamaraj, for A2 and A6 in Criminal A. No. 478/2005, V. Gopinath for L. Mahendran, for A4 in CrI.A. No. 478/2005 and P. Venkatasubramanian, for A1 in CrI.A. No. 560/2005 and for A3, A5 and A7 in CrI.A. No. 661/2005, for the Appellant; N.R. Elango, Additional Public Prosecutor, for the Respondent

Judgement

M. Jeyapaul, J.—A2, A4 and A6 have preferred Criminal Appeal No. 478 of 2005, A1 preferred Criminal Appeal No. 560 of 2005 and A3, A5 and A7 preferred Criminal Appeal No. 661 of 2005.

2. Totally, nine accused faced the trial, but, A8 and A9 were acquitted by the Trial Court of all the charges framed as against them. A1 to A7 were found guilty for offence u/s 120B and were sentenced to undergo life imprisonment and pay a fine of Rs. 1000/= with default sentence. A2 to A7 were convicted for offence u/s 364A IPC and sentenced to life imprisonment and pay a fine of Rs. 1000/= with default sentence and they were also convicted for offence u/s 386 IPC and sentenced to undergo one year rigorous imprisonment and pay a fine of Rs. 500/= with usual default sentence. The aforesaid sentence imposed by the Trial Court was ordered to run concurrently.

3. The charges as against A1 to A9 are that they conspired together to abduct the industrialist Subramaniam for ransom and thereby all of them committed an

offence punishable u/s 120B IPC. During the course of the said transaction, A2 to A7 having abducted the said Subramaniam for ransom, extorted a gold chain and a gold ring apart from a sum of Rs. 2,00,000/= and thereby they committed offences punishable u/s 364A and 386 IPC.

4. The matrix of the prosecution case: Subramaniam, PW2 is residing at Annanagar, Chennai along with his wife Lalitha Subramaniam, PW3. Their daughter Nanthitha Srikumar, PW1 was married to one Srikumar. On 22.8.2003, PW1 came along with her husband to the house of her parents at Annanagar. As it was late, she stayed in the house of her parents during night. The next day, i.e., on 23.8.2003, at about 6.00 AM, PW2, as usual, proceeded to M.A. Chidambaram Stadium for a stroll by his Lancer Car bearing registration No. TN 01 Q 0186. The Car was self driven by PW2. A8 Suresh was serving as Watchman at the house of PW2. It was he who opened the gate for PW2 to take his car out. As PW2 was proceeding towards V.R.R. Road (old Spurtank Road), six persons came in two motorcycles and stopped the car driven by PW2. All those six persons picked up quarrel with PW2 on the allegation that PW2 had caused an accident wherein a friend of those persons sustained injury. PW2 pleaded that he was not the author of such accident. He was aware that he had not taken the vehicle at the point of time when the alleged occurrence, as spoken to by them, had taken place. He wanted to prove his innocence. Therefore, he asked those six interceptors to take him to the hospital where their friend who met with an accident was hospitalised for treatment. Four persons, out of the aforesaid six, boarded the car of PW2 and PW2 drove his car. The other two persons came by motorcycles following the car. As PW2 wanted to stop his car near Sundaram Medical Foundation, those persons directed PW2 to take the car to a far off place. All the four persons, having dumped PW2 in the mid of back seat of the car. PW2 was flanked by them in the back seat. They also informed PW2 that they had abducted him and that they would prefer to kill him if a ransom of Rs. 30,00,000/= was not paid. Using the cell phone of PW2, the abductors telephoned to his house. At that point of time, PW1, PW3 and the husband of PW1 were present in the house of PW2. They were surprised to receive a phone call at about 6.45 am from the abductors saying that PW2 was abducted for a ransom of Rs. 30,00,000/=. The abductors insisted over phone that the abductee will be released only when a sum of Rs. 30,00,000/=, as ransom, was paid. At the first instance, PW3 attended the call. The abductors kept on calling the house demanding the said ransom. PW1 also attended the call emanated from the abductors. She informed the abductors that the entire amount lay in the Account of PW2 and therefore, such a huge amount could not be withdrawn from the bank without the signature of PW2. The abductors enquired as to the cash on hand in the house. PW1 informed the abductors that a sum of Rs. 1,00,000/= was with her. But, the abductors directed PW1 to come in front of Rohini Theatre at Koimbedu with a sum of Rs. 2,00,000/=. She informed them of the Registration Number of the car proposed to be taken by her.

5. P.Ws.1 and 3 started jittering. They made a call to Dr. Kamala Chidambaram

and Ravindran, PW4, a Public Relations Officer in the company of PW2 to come to their house. They also came down to the house of PW2. Thereafter, having discussed about the crisis, a complaint, Ex.P1 was drafted by PW1 and the same was submitted to Chetpet Police Station. The Inspector of Police, Mr. Sethu, PW13, having received the said complaint, Ex.P1 at about 10.30 am on 23.8.2003, registered a case in crime No. 692 of 2003 for offences under Sections 365, 385 and 506(II) IPC. He prepared the printed FIR, Ex.P19 and despatched the same to the learned Judicial Magistrate.

6. PW1, having loaded cash of Rs. 2,00,000/= in a small bag, took the Santro car bearing registration No. TN 01J 9965 to the road in front of Rohini Theatre. A person sporting beard came and tapped the front door glass pane. PW1 opened the front door of the car and, to her surprise, the said person took away the bag containing the cash and sped away from the said place. She waited for some time in the car. But she found that there was no sign of arrival of her father. Therefore, she contacted her mother over cell phone and informed her about the development. PW3, having profusely wept informed PW1 that PW2 had not returned home. Thereafter, PW1 informed the police officials about the aforesaid incident and came down to her house.

7. At about 8.00 pm on 23.8.2003, PW13 arrested Prabakaran, A2 and Chandramohan, A3 down below Thirumangalam over bridge in the presence of Kadhiresan, PW7. A rexine school bag, M.O.5 containing a sum of Rs. 2,00,000/= (M.O.4 series) was recovered from A3. A gold chain weighing five sovereigns (M.O.2) was recovered from A2 in the presence of PW7. As A2 and A3 were found sustained with injuries, they were taken to KMC Hospital for treatment. Thereafter, at 12.00 hours on 23.8.2003, the motorcycle bearing registration number TN 05 F 7239 (M.O.7) was recovered at the instance of A2.

8. When PW2 was in the car along with three accused, police also arrived at the place and immediately, thereupon, all the three accused, who stood guarding PW2, ran helter- skelter. By that time, the police officials brought the other two accused, who had gone to receive the ransom. After thoroughly co-operating for the investigation done by the police sleuths, PW2 returned home only in the morning on 24.8.2003.

9. PW13 proceeded to V.R.R. Road and having inspected the scene of occurrence, prepared observation mahazar, Ex.P20. He also drew rough sketch, Ex.P21 reflecting the scene of occurrence. The case was, thereafter, converted into one u/s 364A and an altered express report, Ex.P22 was prepared and despatched to the learned Judicial Magistrate. Thereafter, A2 and A3 and the Material Objects were remanded to judicial custody. Lalitha Subramaniam, PW3 has spoken to the call emanated from the abductors demanding a ransom of Rs. 30,00,000/= and the role played by PW1 in lodging a report to the police and also the efforts taken by her to secure PW2 from the clutches of the abductors. Raavanan, PW4 has deposed to the fact that the first information report had to be lodged by PW1 having received such a call demanding a ransom of Rs. 30,00,000/= from the

abductors. Subramaniam, PW2 is the victim of abduction. He has cogently detailed all the aforesaid facts and circumstances which had led to his abduction, demand of ransom by the abductors and his release from the clutches of abductors.

10. PW1 was summoned to the police station to identify the third accused in the police station. She could identify A3 before the Investigating Officer. PW13 received information that A4, A5, A6 and A7 had surrendered before the learned Judicial Magistrate, Arakkonam. He filed an affidavit before the court to secure the police custody of the aforesaid four accused for the purpose of investigation.

11. PW13 submitted a requisition to the learned XIV Metropolitan Magistrate Mr. Mohandas, PW11 for conducting Test Identification Parade in this case. PW11, having received necessary orders on 17.9.2003 from the Chief Metropolitan Magistrate, Chennai, sent communication to the jail authorities to arrange for Test Identification Parade in this case. He also directed the police officials attached to Chetpet Police Station to produce P.Ws.1 and 2 for the purpose of Test Identification Parade of the accused at 2.00 pm on 25.9.2003. Having adheard to all the formalities required for conducting Test Identification Parade, PW11 directed PW2 to identify the accused. Amongst 30 inmates of jail, PW2 identified A2 to A7 thrice by touching their body even after such inmates were directed to be present after changing their dress each time. PW1, on her part, touched A3 and identified him thrice in the aforesaid Parade. P.Ws.1 and 2 had identified those persons separately. The proceedings of the Test Identification Parade conducted by PW11 were marked as Ex.P18.

12. Viji alias Vijayakumar, PW12 has deposed before the Trial Court that at about 5.00 pm, when he was whiling away his time with his friend Senthil at Sathyamurthy park, about five or six persons were found sitting nearby and they discussed about abducting one Subramaniam for ransom. PW12 got frightened. There was some more discussion about apportioning the ransom amongst themselves. He identified the first accused as the person who was present during the course of such dialogue.

13. On 2.9.2003, PW13 took police custody of A2 to A7 for three days. A4, A5, A6 and A7 were interrogated at Chetpet Police Station itself by PW13 in the presence of Soliah, PW8. They gave voluntarily confession statements to PW13. At the instance of A4, TVS Victor vehicle, M.O.8 was recovered in the presence of PW8.

14. On 3.9.2003, at about 2.30 pm, A8 and A9 were arrested in front of Ega Theatre at EVR road, Chennai. They were interrogated in the presence of Narayanasamy, PW9. They also gave voluntarily confession statements to PW13. On the basis of the admissible portion in the confession statements given by A6, Mr. Rugaram, a Pawn Broker by profession (PW10) was interrogated and as a consequence, gold ring, M.O.1 which was reportedly pledged by A6 was recovered from him. Thereafter, all the aforesaid accused were remanded to

judicial custody. The first accused Roy alias Soman Roy could not be arrested inspite of the best efforts taken by PW13 to locate him at Calcutta. PW13, having completed the investigation, laid final report as against all the accused under Sections 364A and 386 read with 120B and read with 34 IPC on 14.10.2003.

15. As per the directions of the higher officials the entire case diary in this case was entrusted to CBCID on 7.4.2004. The Inspector of Police, PW14, attached to CBCID, Chennai, sought permission from the learned Judicial Magistrate for further investigation u/s 173(8) Cr.P.C. But, such permission sought for by PW14 was denied by the court.

16. The incriminating circumstances spoken to by the witnesses examined on the side of prosecution were put to the accused separately u/s 313 Cr.P.C. The accused denied their role in the crime alleged as against them.

17. On the side of the defence, a Weekly magazine Kumudham was marked as Ex.D1.

18. The learned Trial Judge, having placed reliance upon the testimony of Viji alias Vijayakumar, PW12, has come to the conclusion that A1 to A7 had conspired to abduct PW2 for ransom and extorted not only a gold chain and a gold ring but also cash of Rs. 2,00,000/= and thereby A1 to A7 committed an offence punishable u/s 120B IPC. Placing reliance on the evidence of P.Ws.1 to 4 in the background of the Test Identification Parade conducted by the learned Judicial Magistrate, PW11 and the evidence of Pawn Broker, PW10, coupled with the arrest and recovery made by PW13, the Trial Judge has returned a verdict of conviction as against A2 to A7 for offences punishable under Sections 364A and 386 IPC.

19. We heard the submission made by Thiru. N. Chandrasekaran for Mr. R. kamaraj for A2 and A6, the Senior Counsel Mr. V. Gopinath for Mr. L. Mahendran for A4 and Mr. P. Venkatasubramanian for A1, A3, A5 and A7 and the counter submission made by the learned Additional Public Prosecutor Mr. N.R. Elango appearing for the State.

20. The submissions made on the side of the appellants:

Though the husband of PW1 was present, surprisingly, he had not chosen to either assist his wife to release PW2 from the abductors nor to set the law in motion by lodging a complaint. Therefore, the husband of PW1 would not have been present in the house of PW2. PW1 also would not have been present in the house of PW2 in the absence of her husband. PW2 had identified only A3 and not A2. Quite surprisingly, neither PW1 nor PW2 had come out with any description of the physical features of the accused before the investigating sleuths. It is quite impossible for PW2 to identify the motorcyclist who allegedly followed the vehicle driven by PW2. PW2 had not come out with specific evidence as to the role of each and every accused. The accused, who had allegedly been identified by P.Ws.1 and 2, have chosen to object to the Test Identification Parade even before

the learned Judicial Magistrate, PW11 that their photographs were shown to the witnesses and thereafter flashed in the daily newspapers. The delay in despatching the first information report to the court was not explained by the investigating officer. PW2 had categorically deposed before the court that he, on his own volition, took the Accused 2 to 7 to the hospital to verify the veracity of the statement of the accused about the occurrence. Therefore, the question of abduction as alleged by the prosecution does not arise for consideration. PW6 has come out with a revelation that he worked under PW2. Therefore, his testimony cannot be safely relied upon. There is a gaping hole in the prosecution version as to the manner in which PW2 was secured from the clutches of the abductors. PW2 has come out with a version that he was rescued by the police, but, quite surprisingly, PW13 has not spoken anything about his role in the release of PW2 from the clutches of the abductors. The arrest of A2 and A3 and the alleged recovery from them does not inspire judicial confidence. The court cannot give weightage to the story of recovery based on the confession of the accused who were in police custody. The evidence of PW12 is totally artificial and therefore, his evidence will have to be rejected. For the foregoing reasons, it is submitted on the side of the appellants that the accused are entitled to acquittal.

21. Learned Additional Public Prosecutor Mr. N.R. Elango appearing for the State would submit that the testimony of PW2, who was kept as abductee for about 15 long hours cannot be discarded by the court. The Test Identification Parade has been conducted to reassure the proper direction of investigation. A2 and A3 had been arrested by the police sleuths immediately after they relieved a sum of Rs. 2,00,000/= as ransom from the custody of PW1. The pledged ring was recovered from the Pawn Broker at the instance of A6. The Trial Court has returned a verdict of conviction based on the substantial evidence available on record. The judgment in challenge does not warrant interference.

22. It is true that the husband of PW1 had not taken any active role in releasing PW2. Blood is thicker than water. The abduction of the father would have definitely activated the daughter, PW1 to swing to action. It is quite natural for the daughter rather than the son-in-law to get excited on the abduction of her father. If we carefully analyse the evidence of PW1, it is found that PW1 had cautioned her husband not to answer the call of the abductors. Further, there is nothing wrong in taking any initiative by PW1 in her capacity as the daughter of the abductee. The reaction and response of a person to a particular crisis situation would vary from individual to individual. P.Ws.1 to 3 have categorically deposed before the court that even on the previous day of occurrence, PW1 and her husband had come to the house of PW2 and stayed over there. It is found that PW1 had set the law in motion. That apart, the voluminous evidence would establish that it was she who had gone, mustering courage, to a location specified by the abductors for the purpose of passing on the ransom to them. Therefore, we are not inclined to accept the plea of the appellants that PW1 would not have been present at the house of PW2, having been got married and set up a separate establishment in a different location.

23. As rightly pointed out by the learned Additional Public Prosecutor, Mr. N.R. Elango, PW2 had the occasion to see A2 to A7 from many angles for about 15 long hours during the tenure of abduction. The motorcyclists and the persons who boarded the car had entered into frequent discussion by parking the car. PW2 had ample opportunity to thoroughly see all the accused including the motorcyclists. It is true that he had not given before the police, the physical features of the accused, but, it is seen that he had no occasion to disclose about the physical features of the accused as he was not called upon to disclose such minute details by the police sleuths. The investigating official should have, in all fairness, extracted all those particulars about the physical features of the accused during the course of interrogation. But, such a failure on the part of the investigating official does not create any doubt in our minds about the veracity of the testimony of P.Ws.1 and 2. Though PW2 had not distributed the overtact to each and every Accused, we still find that his testimony cannot be doubted on that score.

24. PW1 had identified the third accused who sported beard as the person who snatched away ransom of Rs. 2,00,000/= from her custody. Immediately, thereupon, PW1 had informed the police about such an incident where her attempt to secure her father failed. Within an hour, PW13 and his police parties had descended at the scene of occurrence and having encircled A2 and A3 arrested them.

25. Kathidresan, PW7 is found to be a retired Teacher. He is not an usual stock witness from the stock files of the investigating sleuths. First, he had expressed his hesitation to co-operate with the process of investigation. After getting re-assurance from PW13, he has chosen to associate himself with the process of arrest of A2 and A3 and recovery from them. It is his definite version that A2 and A3 were arrested by PW13 and the cash M.O.3 and 4 series and the bag M.O.6 were recovered from A3. There is no reason to disbelieve the testimony of such an independent witness in this case. The evidence of PW1 was completely corroborated by PW7. The proximity of the time of arrest with the time of snatching of ransom by A3 completely seals the fate of the defence set up by A2 and A3 that arrest and recovery from them were completely stage-managed.

26. P.Ws.1, 3 and 4 have given graphic account of the demand of ransom emanated from the abductors. The abductee has also spoken to the above factum. PW1 has completely corroborated her version in the FIR.

27. The learned Judicial Magistrate, Mr. Mohandas, PW11 had taken all the precautions required for conducting Test Identification Parade. He had associated 30 jail inmates for the purpose of conducting Test Identification Parade. Out of 30 inmates, 18 inmates had closely resembled A2 to A7. All the three times, PW2 had chosen to identify A2 to A7 as that of the persons who abducted him. In spite of the change of style of dress as per the instruction of the learned Judicial Magistrate, PW2 could identify A2 to A7 all the three times by touching their body. PW1 also, on her part, could easily identify A3 all the three times before

PW11.

28. Except the objection raised by the accused and the suggestion made through their counsel to the star witnesses in this case to the effect that their photographs had been flashed previously in the newspaper and the same were also shown to P.Ws.1 and 2, there is nothing on record to show that such photographs were shown to P.Ws.1 and 2 to enable them to fix them as accused in this case. The identification of A2 to A7 by P.W.1 and A3 by PW2 reinforces the case of prosecution. There is no reason for P.Ws.1 and 3 to come and speak ill of the accused when they were not connected in any way with their family or their business. There is no necessity for PW2 to fix these accused if at all they had not participated in the crime, leaving the real culprit from the purview of this case.

29. The Pawn Broker, Rugaram, PW10 has deposed before the Trial Court that A6 came down and pledged the ring M.O.1. The ring M.O.1 was identified by PW2. The cash of Rs. 2,00,000/= M.O.3 and 4 series and the bag M.O.5 which was used to carry the cash were identified by PW1. The aforesaid Material Objects were recovered from A2, A3 and A6. A2 and A3 were arrested almost red-handed. A6 was taken police custody and thereafter, on the basis of the confession statement given by him, the ring, M.O.1 was recovered from the shop of Rugaram, PW10. PW10 has produced necessary receipt, Ex.P16 to establish that A6, in the name of Velu, pledged the jewels on 23.8.2003 itself at 5.00 pm. His testimony in the background of receipt, Ex.P16 is found to be credible and trustworthy.

30. The chain recovered from A2 and the cash recovered from A3 are not on the basis of any confession statement given by them. They had possessed those articles and cash with them at the time of arrest. When the accused had possessed such material objects, recovery thereof does not require the backing of any recorded confession statement from the accused.

31. The first information report had been lodged by PW1 with PW13 at 10.30 am on 23.8.2003, but, the same has reached the court at 3.50 pm on 24.8.2003. There is some delay in despatching the printed First Information Report, Ex.P19 to the learned Judicial Magistrate concerned. We do not doubt the jotting done by the court officials with regard to the date and time of receipt of FIR on the printed First Information Report. The police officials would have thought that it was not such a serious matter as to warrant quick despatch of FIR. At any rate, such a delay has not caused any prejudice to the accused inasmuch as none of the names of the accused were found incorporated in the First Information Report. If at all, the First Information Report had been prepared on 24.8.2003, as argued at the Bar on the side of the appellants, the names of A2 and A3 would have been definitely introduced in the FIR. On the face of it, it is found that Ex.P1 is a document which has come into existence in normal course immediately on receipt of the threatening call emanated from the abductors demanding ransom. Therefore, we do not doubt the time of lodging the First Information Report. The delay in despatching the report had occasioned on

account of the sluggishness on the part of the investigating agency. Such a lapse does not create a dent in the case of the prosecution. Further, the delay in despatching the First Information Report in all cases does not deal a death blow to the prosecution story.

32. The hostility exhibited by PW5 and the employment of PW6 under PW2 do not go to the root of the matter. They are after all witnesses to the mahazar prepared by PW13. Their evidence is found not material.

33. It is the emphatic version of PW2 that he was rescued by the police sleuths. The abductors numbering three who guarded him had taken to heels on seeing the police party, he would depose before the court. PW7 also would state that an old man was found in the Lancer Car at the time when the police descended at Ambattur Estate, Chennai. Such a corroborated version would not have come to light, if no such rescue operation was undertaken by PW13. But, quite unfortunately, PW13 has burked such an exercise undertaken by him for no rhyme or reason. We are at a loss to understand as to why PW13 has hesitated to speak about such course of event that had taken place during the course of his investigation. It is his version that PW2, on his own, came down to the police station and subjected himself for interrogation. It is totally an immaterial issue whether PW2 was rescued by the police party or he had gone on his own to the police station to assist the process of investigation. It does not anyway shake at the foundation of the edifice built by the prosecution. The material questions which had arisen in this case are whether PW2 was abducted for ransom and whether the abductors extorted gold ornaments from PW2 and the ransom of Rs. 2,00,000/= from PW1. The rescue operation conducted by the police sleuths does not loom large in this matter. Therefore, on the strength of the contradictory versions as to the rescue of PW2 found on record, the accused cannot be given safe passage from the guilty region.

34. It is true that PW2 has chosen to challenge his involvement in an accident and volunteered to prove his innocence. But, it is to be noted that PW2 had become the victim of "deceitful means" employed by the accused. Therefore, there is no escape from the conclusion.

35. We find that the prosecution has established beyond reasonable doubt that A2 to A7 are the abductors who abducted PW2 demanding ransom, kept him under threat to cause death and extorted the gold chain and gold ring from PW2 and snatched away the ransom of Rs. 2,00,000/= from the custody of PW1 who had gone to rescue PW2. The Trial Court has rightly come to the conclusion that A2 to A7 committed offences punishable under Sections 364A and 386 IPC and the sentence awarded by the Trial Court for those offences are also found to be proportionate to the grave nature of offences committed by A2 to A7.

36. Coming to the conspiracy theory spoken to by PW12, we find that his testimony is found to be totally artificial. No conspirator will dare to discuss in the open about their design to execute the deadly plan meticulously. Further,

PW12 could identify only A1 and not others. Except the evidence of PW12 which is writ large with doubt, no material is available to rope in the accused for the offence u/s 120B IPC. In our considered opinion, the evidence of PW12 does not inspire judicial confidence. It is totally unsafe to rely upon such a shabby evidence of PW12 to rope in the accused for an offence u/s 120B IPC. The charge u/s 120B framed as against A1 to A7 is found not established by the prosecution beyond reasonable doubt. Therefore, A1 to A7 are acquitted of the aforesaid charge u/s 120B IPC.

37. In view of the above, we confirm the judgment of conviction and sentence recorded by the Trial Court for offence u/s 364A and 386 IPC as against A2 to A7, but, we set aside the verdict of conviction and sentence recorded by the Trial Court as against A1 to A7 for offence u/s 120B IPC and as a consequence, A1 to A7 are acquitted of the charge u/s 120B IPC. The first accused shall be set at liberty forthwith if he is not required in connection with any other case. Criminal Appeal No. 560 of 2005 stands allowed. Criminal appeal Nos. 478 and 661 of 2005 are disposed of accordingly.