

(2013) 11 BOM CK 0110

In the Bombay High Court

Case No : Criminal Appeal Nos. 704 of 2010 and 1301 of 2011

Raja Hiralal Yadav

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 2040

Hon'ble Judges : P.V. Hardas, J;Mridula Bhatkar, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

Mridula Bhatkar, J.—These two Appeals are directed against the judgment dated 14th November, 2009 passed by Additional Sessions Judge, Kalyan thereby convicting the appellants/original accused nos. 1 and 3 and other original accused nos. 2 and 4 for the offences punishable u/s 364A read with section 34 of IPC sentencing them to suffer imprisonment for life and to pay a fine of Rs. 1,000/- each, in default, to suffer R.I. for six months. The prosecution case, briefly stated, is as under:

A boy named Chirag Narayandas Keshwani, aged 3 years was kidnapped on 5th December, 2005 at Ulhasnagar. On that date, Chirag was playing outside the house at around 8 to 8.30 p.m. and thereafter he was missing. Despite the search by the family members for the whole night, Chirag could not be traced out. On the next date, i.e. 6th December, 2005, Kishor Daulatram Keshwani, uncle of Chirag, lodged a missing report of Chirag (Exhibit 23) at Ulhasnagar Police Station. A photograph of Chirag was given to the police. As a part of an investigation, a caller ID was fixed to the telephone instrument of Narayandas Keshwani. On 6th December, 2005, Narayan Daulatram Keshwani, father of Chirag received phone call from the kidnappers demanding ransom of Rs. 4 lakhs. On the basis of the number which appeared in Caller ID, the police could trace out that the call was from Barhanpur. The person who made phone call told Mr. Narayandas Keshwani to bring Rs. 4 lakhs at Barhanpur. P.S.I. Omprakash Ahir

PW-9 along with two constables went to Barhanpur. They contacted Superintendent of Police of Barhanpur and under his supervision, they found that Chirag was taken to Tirupati Lodge in Barhanpur. So, police raided the said room of the lodge and found the boy Chirag along with four persons. While taking custody of Chirag, those four persons attacked the police with knife and P.S.I. Ahir and two constables were injured. All the accused were arrested on the same day. The Police handed over Chirag to his father Narayandas Keshwani on 8th December, 2005. The Investigating officer P.S.I. Ashok Bagul drew memorandum pursuant to the statement made by accused no. 1 from where Chirag was taken away. The police recorded the statement of the witnesses and after completion of the investigation, charge sheet was filed against all the four accused. The case was committed to the Sessions Court. The accused were charged for the offence punishable u/s 364A read with section 34 of Indian Penal Code. The trial was concluded in conviction of all the four accused under the said section. Hence, these Appeals.

2. The prosecution has examined in all nine witnesses to prove the case against the accused. The learned counsel for the appellants has submitted that the prosecution did not tender any evidence on the point of kidnapping of Chirag and identification of the accused. No nexus is established between the accused and culprits, who have actually kidnapped the child. The learned counsel argued that panchanama (Exhibit 15), i.e. of the place from where Chirag was kidnapped, does not help the prosecution to prove a fact of kidnapping. He submitted that prosecution could not establish the offence of kidnapping much less the offence u/s 364A of the IPC.

3. The learned APP while opposing the appeals supported the judgment of the Sessions Court.

4. The submissions of learned counsel for the appellants that the prosecution has failed to prove the case of kidnapping do not hold substance, so cannot be accepted. On perusal of evidence of PW-4 Narayandas Daulatram Keshwani, father of Chirag and evidence of PW-6 Kishor Daulatram Keshwani, uncle of Chirag, it is found that both the witnesses have stated that on 5th December, 2005 Chirag was playing at around 8 p.m. outside the house and thereafter he was missing. PW-6 Kishor Keshwani approached the police and lodged missing report Exhibit 23 on the same night. On 6th December, 2005 at around 11.35 a.m. PW-4 Narayandas Keshwani received a phone call from kidnappers demanding ransom of Rs. 4 lakhs. It is true that PW-4 Narayandas Keshwani has not deposed anything about the said phone call and demand of ransom. However, evidence of PW-8 P.S.I. Ashok Bagul throws light on this fact as he has stated about the further investigation.

5. Mr. Ashok Bagul has stated that he was attached to Ulhasnagar Police Station as P.S.I. and offence at C.R. No. 288/2005 was registered u/s 364-A of Indian Penal Code at Ulhasnagar Police Station. A caller ID was fixed to the telephone instrument of Narayandas Keshwani and on 6th December, 2005 at around 11.35

a.m. a phone call was received by Narayandas Keshwani. The police traced that the call was received from Barhanpur. PW-8 P.S.I. Bagul sent fax and photograph to the Superintendent of Police of Barhanpur and thereafter P.S.I. Ahir along with two constables went to Barhanpur. Thus, though PW-4 Narayandas Daulatram Keshwani kept mum about receiving phone call on 6th December, 2005, evidence of PW-8 P.S.I. Ashok Bagul is sufficient to prove the fact that the phone call was received from Barhanpur, especially, in the result when a boy indeed was found at Barhanpur in one Tirupati Lodge. PW-9 P.S.I. Omprakash Ahir is a key witness on the point of arrest of the accused. He deposed that he was having photograph of Chirag and with the help of Superintendent of Police of Barhanpur, he got clue and raided Tirupati Lodge. The police team found Chirag. He has stated that four persons including these two appellants were found in the said room. They were armed with knives and attacked the police. P.S.I. Aher and two constables got injured. Therefore, another criminal case was filed separately against these appellants/accused at Barhanpur. P.S.I. Ahir and P.S.I. Bagule thereafter handed over Chirag to his father. There is no reason to disbelieve the evidence of police officer who on the basis of telephone call reached to Barhanpur and thereafter at Tirupati Lodge. The prosecution has satisfactorily explained a sequence of events with the help of testimony of two police officers how Investigating agency could detect the place where Chirag was kept at Tirupati Lodge at Barhanpur. The Sessions Court has rightly relied on this evidence and held the offence of kidnapping is proved against the appellants. There is no need of identification of the appellants/accused, as they were caught red handed by the police.

6. The appellants were charged and are convicted u/s 364A read with section 34 of IPC. Section 364A reads as under:

364A. Kidnapping for ransom, etc. Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international intergovernmental organization or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.]

7. The Section contemplates the Act of kidnapping should be coupled with threatening to cause death or hurt to the person kidnapped so as to compel the other person to pay a ransom. In the present case, on this point, as per the case of the prosecution, the evidence of PW-4 Narayandas Keshwani, father of Chirag is material. He had received phone call on next date i.e. 6th December, 2005 from the kidnappers giving threats of life of Chirag and demanding amount of Rs. 4 lakhs. However, PW-4 Narayandas Keshwani did not depose anything to that effect.

8. PW-1 Arun Ramdas Khope, a friend of PW-4 Narayandas Keshwani has stated that Narayandas informed him about the phone call. PW-2 Murlidhar Daulatram

Keshwani, other brother of Narayandas Keshwani has also stated that a phone call demanding money was received at the shop. However, PW-4 Narayandas Keshwani in his examination-in-chief did not state about receiving a phone call from the kidnappers/persons who demanded ransom by giving a threat to the life of his son. In absence of his evidence, testimony of PW-1 and PW-2 on the point of demand of ransom is hearsay and no evidentiary value can be attached to it. Thus, prosecution has failed to prove the ingredients of Section 364-A of IPC. We are, therefore, of the view that the offence of kidnapping with intent secretly and wrongfully to confine Chirag at Tirupati Lodge, Barhanpur, is proved. The offence is u/s 365 of IPC which is of a lesser degree in which the punishment may extend to seven years with fine.

9. Both the Criminal Appeals are partly allowed. Conviction and sentence of the appellants for the offence punishable u/s 364A read with 34 of Indian Penal Code is hereby quashed and set aside and instead the appellants are convicted for the offence punishable u/s 365 of Indian Penal Code and are sentenced to rigorous imprisonment for 7 years and to pay fine of Rs. 1,000/- each, in default, to undergo further R.I. for six months.

10. The appellants are said to have undergone imprisonment for more than 7 years. Since the appellants have undergone the sentence imposed on them, the appellants be released forthwith, if not required in any other case. Both the Appeals are, thus, partly allowed.