
(1975) 01 RAJ CK 0020
In the Rajasthan High Court
Case No : Criminal Appeal No. 195 of 1971

Ramdayal and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-01-1975

Acts Referred:

Penal Code, 1860 (IPC) — Section 361, 362, 363, 365, 395

Citation : (1975) 8 WLN 362

Hon'ble Judges : P.D. Kudal, J; Kan Singh, J

Bench : Division Bench

Judgement

Kan Singh, J.—This is a joint appeal by five accused appellants against their conviction and sentences for various offences, under Sections 396 398 and 365 I.P.C., passed by the learned Additional Sessions Judge, Ganeapur City by his judgment dated 31.8.70. The sentences awarded were life imprisonment for the offence u/s 395, 7 years rigorous imprisonment for the offence u/s 398 and for the offence u/s 365 each of the accused was awarded seven years rigorous imprisonment together with a fine of Rs. 2000/-, in default one year's rigorous imprisonment.

2. On the night between 23rd and 24th June, 1969 some miscreants came to the Nohra of P.W. 1 Girvarlal in village Dargavan, Tehsil Mandar Girvarlal was sleeping in his "Nohra" along with his nephews P. W. 2 Mohanlal aged 14 and one Jagdish Prasad on three cots. About 11.30 P.M., Girvarlal was aroused when two persons who had guns with them flashed their torches at him. On seeing them Girvarlal was frightened and, therefore remained lying on the cots. Then he saw that 6 persons had entered into the "Nohra". The miscreants had surrounded all the three cots. Then they accosted Girvarlal and commanded him to accompany them to his house. They further asked him to keep quiet lest he would be shot dead. Girvarlal was terrified and he accompanied the miscreants. He went to the house in which his brother Hiralal and his wife were sleeping. Girvarlal called his brother and asked him to open the door. When the door was

opened all the miscreants entered into the house. They then asked Girvarlal to light a laetern which he did, and then all of them ransacked the house. Various articles and some ornaments were taken possession of by the miscreants. Girvarlal was asked to tie a bundle which he did. Girvarlal was then taken to his shop and the miscreants carried away some pieces of cloth and cash as also some ready made clothes from there. They asked him to produce gold and money but Girvarlal could not and accordingly they carried away the boy Mohanlal with them. On the way many of the articles were dropped by the miscreants Mohanlal was carried by the miscreants to a jungle. On the way the miscreants came across a truck and they asked the driver to stop it. The truck stopped but then the occupants who were Police people opened fire at the miscreants. The miscreants returned the fire. Mohanlal took cover behind a tree, but the miscreants were able to escape with Mohanlal. On the following day there was again an encounter between the Police and the miscreants. There was exchange of fire. One of the miscreants was hit and was injured. At this the miscreants surrendered themselves and the police arrested them. Mohanlal too was found with ten at the time; the miscreants surrendered themselves to the police. From the accused Taken the police recovered some ornaments and articles at the time of his arrest. The accused were kept in the Police Station Bari. They were got identified by P.W. 2 Mohanlal and P.W. 1 Girvarlal. Girvarlal identified three accused Ramdayal son of Brijlal, Ramdayal son of Ghhatarsingh, and the accused Nahne. Accused Mohammed and Teekam were not identified by him. P.W. 2 Mohanlal identified all the five accused. The articles that were recovered by the Police from the accused Teekam were identified by Girvarlal at a test parade. The articles are mentioned in the recovery list Ex. P/10 dated 28.6.69. The list of test identification is Ex. P/4 dated 17.7.69. The prosecution case thus depended on the direct evidence of P.W. 1 Girvarlal and P.W. 2 Mohanlal as also on the evidence of recovery of the articles as per list Ex. P/10 which were subsequently identified by Girvarlal P.W. 1 both at the test parade and in the court. There is further the evidence of P.W. 7 Ramchander and P.W. 12 Ravindra Kumar about the encounter and the consequent arrest of the miscreants and of the recovery of P.W. 2 Mohanlal.

3. We have been taken through the record Learned counsel for the appellants submitted that there was no satisfactory evidence for holding that it were the accused appellants who had gone to the because of Girvarlal or that they had committed any dacoit. Learned counsel further submits that even the case of abduction is not proved. In the alternative, he argues that, if at all, was an offence u/s 363 I.P.C was made out against the accused. At any rate, according to learned Counsel, the sentence of imprisonment for life was not warranted as the accused had treated Mohanlal well and had even served him with "Halva" when he was in their custody.

4. It will be seen from the above that the prosecution case rests : (1) on the direct evidence of P.W. 1 Girvarlal and P.W. 2 Mohanlal, and (2) on the recovery of articles as per list Ex. P/10. So far as the statement of P.W. 1 Girvarlal is

concerned, he has been able to identify only three of the miscreants; other than Mohammed and Teekam Tae articles have been recovered from the accused Teekam only P.W. 2 Mohanlal had identified all the accused. So far as identification of the accused by Girvarlal is concerned, we find it difficult to accept it He would have us believe that when the dacoits entered the house there was already a lantern burning though its wick was considerably lower and the miscreants asked him to just put it on fully, but in his police statement the witness has stated that the miscreants had got a lantern fetched from a house and then it was lighted. Further he has stated that the miscreants were flashing torches That may be so, but we cannot readily accept the version that with the flashing of the torches Girvarlal would be able to identify the miscreants so as to mark their features. The miscreants would not be flashing the lights on themselves Any way, there is the statement of P.W. 2 Mohanlal which is a forthright one though Mohanlal does not prove any looting. It appears to us that it is really a case of a boy aged 14 being abducted obviously with the object of extorting ransom from his relatives otherwise there would be no fun in carrying away the boy. So far as the various articles are concerned, even according to the prosecution a good deal of articles were dropped on the way vide list Ex. P/7. The articles mentioned in Ex. P/10, which were recovered from one of the accused namely, Teekam, do not have any special marks on them. The silver ornaments are such as are generally worn by ladies. They are of common pattern. We could have understood if the lady who used to put them on were produced and able to identify them. It is normally not easy for a male member of the family to identify such ornaments of common pattern generally worn by women in the villages on that side. Apart from this there is one further deficiency in the prosecution. P.W. 2 Mohanlal who is the star witness in the case has not stated anything about the bundle of the articles being carried away by the miscreants or it being dropped by them on the way, nor has he said that during his captivity these articles were seen by him with any of the miscreants. In the totality of circumstances we do not find it safe to hold that the accused had carried away the articles as mentioned in the list Ex. P/7 or the list Ex. P/10. for that matter. However, after careful examination of the statement of P.W. 2 Mohanlal we have, no doubt that it were these five accused who had carried him away and had kept him in captivity. He remained with the accused till he was able to have his liberty as a result of the encounter between the miscreants and the police which led to the arrest of the accused Earned Counsel for the appellants contended that Mohanlal was a boy of 14 and there is no corroboration of his statement regarding the kidnapping or abduction as the case may be. Earned Counsel relies on Bharvad Bhikha Valu and Others Vs. The State of Gujarat, . In that case one Falji Teja was coming to his house from Bhurkhi Railway station. When he passed over a culvert he was assaulted by three accused. Accused No 1 in that case came from behind and gave a blow with an axe to Falji on the left leg. Falji fell down. Thereafter accused No. 2 and 3 ran up to the spot, Accused No. 3 was armed with a spear and accused No. 3 with a Dharial the three then started giving blows to Falji. As a result of the injuries

Falji died on the spot and the accused ran away. Falji deceased had a gun with him which fell down during the assault and accused No. 1 carried away that gun. The case depended against the accused on the evidence of one Khengar who was a young boy of about 14, He got frightened and ran away He informed his mother about the assault on Falji. At the time of the assault Pitambar Bhura a Koli Patel was proceeding from his house in Gondi to Bhurkhi Railway station. It is in this context that their Lordships observed that the High Court was right in seeking corroboration of Khengar's evidence even though there were no infirmities in it. Their Lordships added that as Khengar was along boy it would be prudent to seek corroboration. This thus raises the question as to what should be the correct approach in dealing with the evidence of a child witness.

5. The House of Lords in *Director of Public Prosecutions v. Hester* 1972 (3) All. ER 1056 had occasion to make certain observations in this regard. Lord Morris of Broth-Y-Gest in his speech observed:

The accumulated experience of courts of law, reflecting accepted general knowledge of the ways of the world, has shown that there are many circumstances and situations in which it is unwise to found settled conclusions on the testimony of one person alone. The reasons for this are diverse. There are some suggestions which can readily be made but which are only with more difficulty rebutted There may in some cases be motives of self-interest; or of self-exculpation; or of vindictiveness. In some situations the straight line of truth is diverted by the influences of emotion or of hysteria or of alarm or of remorse. Some times it may be that owing to immaturity or perhaps to lively imaginative gifts there is no true appreciation of the gulf that separates truth from falsehood. It must, therefore, be sound policy to have rules of law or of practice which are designed to avert the peril that findings of guilt may be insecurely based. So it has come about that certain statutory enactments impose the necessity in some instances of having more than one witness before there can be a conviction. So also has it come about that in other instances the courts have give guidance in terms which have become rules. Included in such cases are these in which charges of sexual offences are made. It has long been recognised that juries should in such cases be told that there are dangers in convicting on the uncorroborated testimony of a complainant although they may convict if they are satisfied that the testimony is true. As this is no more idle process it follows that there are no set words which must be adopted to express the warning Rather must the good sense of the matter be expounded with clarity and in the setting of a particular case. Alto included in the types of cases above referred to are those in which children are witnesses. The common sense and the common experience of men and women on a jury will guide them when hey have to decide what measure of credence and dependence they should accord to evidence that they have heard.

All the rules which have been evolved are in accord with the central principle of our criminal law that a person should only be convicted of a crime if those in

where hands decision rests are sure that guilt has been established. In England it has not been laid down that such certainly ought never to be reached in dependence on the testimony of but one witness. It has, however, been recognised that the risk or danger of a wrong decision being reached is greater in certain circumstances than in others. It is where those circumstances exist that rules based on experience, wisdom and common sense have been introduced.

6. This was a case in which a girl of 12 had been criminally assaulted and one Hester was prosecuted for an offence under the Sexual Offences Act, 1966. The general principle, as pointed out in the above passage, is that a person should only be convicted of a crime if the Court is sure that the guilt has been established. What should be the nature of corroboration and to what extent there should be corroboration will, in our view, depend on the facts and circumstances of the case in hand.

7. In the present case there are the statements of P.W. 7 Ramchander P.W. 12 Ravindra Kumar that there was an encounter between the miscreants and the Police and after the exchange of fire the miscreants (the five accused) had surrendered themselves with their guns. At that very time P. W. 2 Mohanlal was found with them and the police gave him their protection. Thus, even if one were to seek corroboration of the testimony of Mohanlal, it is there, It lends assurance to the statement: of Mohanlal that he had been taken by the accused to the jungle and was kept by them. Therefore, we have no difficulty in accepting this statement of P.W. 2 Mohanlal. Learned counsel for the appellants wanted to make a point by trying to show that the offence of kidnapping was complete as soon as Mohanlal was removed from the guardianship of his parents and once that offence was complete, the other accused who may have joined at the later stage could not have done anything regarding kidnapping and as such the prosecution has not been successful in showing which of the accused had really carried away Mohanlal from his house. We are unable to accept this contention of learned Counsel.

8. It is true, an offence of kidnapping u/s 361 I.P.C. will be complete as soon as a minor is removed from the custody of his guardian, but it is nevertheless a case of abduction as defined in Section 362 I.P.C. whenever a person by force is compelled to go from any place he is abducted and when the abduction is accompanied with the requisite intention as mentioned in Section 365 I.P.C., even persons who join at a subsequent stage while the victim is being so taken from place to place, will be guilty Hence the accused had kept Mohanlal in the jungle and he was certainly in confinement when he was kept by them under their thumb. It cannot be suggested with any cogency that Mohanlal was a free person when he was kept in the jungle. Therefore, he was secretly and wrongfully confined by his captors within the meaning of Section 365 I.P.C. We are, therefore, satisfied that the offence u/s 365 I.P.C was rightly held proved by the learned trial Judge. We are, however, not satisfied beyond all manner of doubt that the accused were guilty for the offence u/s 395 or Section 398 I.P.C.,

for that matter. We therefore, give them the benefit of doubt on these counts. The accused appellants have already remained in custody for more than six years and it will be in consonance with justice if the sentence is reduced to that already undergone by the accused appellants.

9. We, therefore, allow this appeal in part. While we maintain the conviction of the accused for the offence u/s 365 I.P.C, we reduce the sentences to what has already been suffered by the accused. We set aside the sentence of fine. The accused are acquitted of the offences under Sections 395 and 398 I.P.C. The accused shall be released from custody, if not required in any other case.