
(2018) 03 MP CK 0177
In the Madhya Pradesh High Court
Case No : Cr.A. No.357, 759 OF 2004

Ramvaran, S/O Shri Chandan Singh	Vs	APPELLANT
State Of Madhya Pradesh & Ors		RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 364A
Code Of Criminal Procedure, 1973 — Section 232, 374

Citation : (2018) 03 MP CK 0177

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

Bench : Division Bench

Advocate : S.K.Tiwari, J.M.Sahni

Final Decision : Dismissed

Judgement

Since both the appeals are connected and arising out of a judgment dated 06.04.2004 passed by First Additional Sessions Judge, Shivpuri in S.T.

No.261/2001 whereby each appellant has been convicted under Section 364-A of IPC and sentenced to life imprisonment with fine of Rs.1000/- with

default stipulation. Each appellant has challenged above mentioned judgment by separate appeals filed under Section 374 of the Cr.P.C.

2. It would be significant to mention here that coaccused Fauji @ Badri Gurjar has been acquitted by the trial Court by order dated 1.8.2008 passed

under Section 232 of the Cr.P.C., who was tried separately from the appellants relating to this judgment.

3. Prosecution story in brief is that some residents of different villages Jorai, Devpura, Jariyakala, Saprara and Kemai went to the jungle nearby Piprai

for grazing their cattle.Â Relating persons have constructed their separate huts.Â In the mid night of 20-21 September, 2000 relating persons were

sleeping in their huts nearer to their cattle. At about 1-00 AM in total 14 unknown armed miscreants came there, out of which 12 miscreants had worn kakky coloured pant and shirt and two miscreants had worn white dhoti and kurta. One miscreant got collected all the relating persons and told that from each person contribution of Rs.1000/- is required. These miscreants took with them Harlal Dhakad, Ghanshyam Dhakad, Kalyan Dhakad, Rakesh Dhakad, Jagdish Yadav, Gajraj Singh Gadariya, Babloo Khangar, Bhanu Rawat and Badri Yadav to the jungle and after announcing that in near future, on bringing Rs.1000/- for each person in Gilai jungle then relating persons would be released. Next day Gajraj Singh Gadariya, Babloo Khangar, Badri Yadav and Bhanu Rawat returned to their huts, but remaining five persons, viz, Harlal Dhakad, Ghanshyam Dhakad, Kalyan Dhakad, Rakesh Dhakad, Jagdish Yadav were not released by the miscreants after recovering ransom amount. The relatives of the abductees searched them, but they could not be found. Complainant Marua Dhakad went to his village and informed his brother Shivcharan, Mannuram Nakturam, Panchi Gadariya and Hazarilal, R/o Devpura about the incident. Thereafter, complainant Marua Dhakad lodged FIR (Ex-P11) at Police Station Bairad, District Shivpuri on 28.09.2000 against 14 unknown miscreants, on which Crime No. 171/00 was registered by SHO Avnit Sharma (PW-17). During investigation, spot map (ExP-12) of the place where above mentioned persons were abducted was prepared.

It is clear from the evidence of investigating Officer Avnit Sharma (PW-17) that he had prepared recovery memo (ExP-9) of abductee Harlal (PW-2) on 22.10.2000, recovery memo (ExP-2) of abductee Jagdish (PW-1) on 30.10.2000, recovery memo (ExP-13) of abductee Rakesh (PW-11) on 8.11.2000, recovery memo (ExP-14) of abductee Ghanshyam Dhakdad (PW-4) on 8.12.200 and also prepared recovery memo (ExP-8) of abductee Kalyan Dhakad (PW-3) on 29.11.2000. Police Statements of released abductees were also recorded. On 21.3.2001 formal arrest memo of accused Lalla, on 9.3.2001 formal arrest memo of accused Preetam, on 18.6.22001 formal arrest memo of present appellant Ramvaran and on 24.9.2001 formal arrest memo of accused Munna were prepared as they were detained in other crimes. Accused Ramvishesh was called from Morena Jail through production warrant. Charge sheet was filed before the relating Magistrate against arrested accused persons describing

remaining accused persons absconding. After passing of the committal order by the relating JMFC, Shivpuri arisen sessions trial was transferred for trial by Sessions Judge, Shivpuri to above mentioned trial Court.

4. Charge framed for offence punishable under Section 364-A of IPC was abjured by appellants Geetam, Ramvaran @ Murlidhar, Munna, Lalla and

Ramvishesh. During trial, Ramvishesh and Lalla were declared absconders. Before the trial Court, prosecution witnesses, Jagdish (PW-1), Harlal

(PW-2), Kalyan (PW-3), Ghanshyam (PW-4), Gajraj Singh (PW-5), Hazarilal (PW-6), Sobran Singh (PW-7), Ballu (PW-8), Brikbhan Singh (PW-9),

Marua (PW-10), Rakesh (PW-11), D.S.Tomar (PW-12), Fera Singh (PW-13), Subodh Dixit (PW-14), Manu (PW-15), Hakim Singh Yadav (PW-16),

Investigating Officer Avnit Sharma (PW-17), Shivcharan (PW-18), Sultan Singh (PW-19) and Naval Singh (PW-20) were examined. It was

defence of each appellant that he has been falsely implicated, no defence witness was examined for any appellant before the trial Court. The trial

Court after hearing, relying on the evidence of prosecution witnesses convicted and sentenced each appellant as aforesaid, hence these criminal

appeals.

5. Learned counsel for the appellants Shri S.K.Tiwari vehemently contended that FIR was lodged about eight days after the incident against 14

unknown persons and though some prosecution witnesses identified the appellants before the Court, but during investigation, no test identification

parade was conducted for identification of any of the appellants and on this point, the evidence of relating witnesses, who deposed against the

appellants, is contradicted by the evidence of other prosecution witnesses and even by some abducted persons. It is further argued that though

relating abductees and their relatives have deposed that abductees were released after receiving ransom money by the abductors, but this material

fact is missing in their police statements, according to which each abductee had fled away from the custody of abductors on getting chance. Much

emphasis has been given on the fact that even complainant Marua (PW-10), Gajraj Singh (PW-5), Ballu (PW-8), Manu (PW-15), Shivcharan (PW-

18), Ghanshyam (PW-4), Naval Singh (PW-20) have not identified any appellant before the trial Court, hence the evidence of other prosecution

witnesses Jagdish (PW-1), Hazarilal (PW-6), Harlal (PW-2), Kalyan (PW-3) and

Rakesh (PW11) is materially contradicted by the above mentioned witnesses.Â Â By placing reliance on some citations, it has been argued that in absence of any test identification parade during investigation, doc identification made by some prosecution witnesses at the time of recording of their evidence before the trial Court is totally suspicious and unbelievable.Â Similarly, it is also argued that the payment of ransom to appellant Geetam or any other appellant was not proved beyond reasonable doubt by the evidence available on record, hence it is argued that the trial Court has erred in convicting the above appellants, therefore, their acquittal is prayed.

6. Per contra, learned Public Prosecutor appearing on behalf of the prosecution has supported the conviction recorded by the trial Court against the appellants and it is also argued that the relating abductees remained in the custody with the appellants for a period of about a month and fifteen days, hence identification by them in the Court could not be doubted.

7. According to prosecution's case, Gajraj Singh (PW5), Ballu (PW-8), Badri Yadav and Manu Rawat (PW-15), who were also abducted at the time of incident were released soon after the incident by the abductors.Â Manu (PW-15), Shivcharan (PW-18) Gajraj Singh (PW-5) Ballu (PW-8) and Naval Singh (PW-20) were declared hostile by the prosecution and similarly complainant Marua (PW-10) and Ghanshyam (PW-4) have not deposed against any appellant, though they were not declared hostile.

8. Complainant Marua (PW-10) deposed that when he was with his son Harlal (PW-2) at the place of occurrence, then at about mid night his son Harlal, Kalyan, Rakesh and some other persons were abducted by armed dacoits and his son Harlal and other abductees were kept in detention by the dacoits in jungle for about 20-25 days and he searched his son Harlal and thereafter he received intimation sent by appellant Geetam regarding demand of ransom amount of Rs.2 lacs, then he paid Rs.1,80,000/- .Â Thereafter, his son Harlal was released but some abductees were released later on.

9. Marua (PW-10) deposed that he lodged FIR (ExP-4) at police station Bairad and he had paid ransom money to a person named Geetam and Geetam was with 15-16 persons whose names were not remembered by him, but in his re-examination on 23.2.2004 complainant Marua (PW-10)

deposed that he paid ransom amount in the dark night, hence he could not see the faces of the abductors and on 23.2.2004 he deposed before the trial

Court that he could not identify Geetam from the accused persons in the Court, but he reiterated that he had paid ransom amount to a person named

Geetam, hence it cannot be inferred that complainant Marua (PW-10) has not supported prosecution's case or has not deposed against any appellant.

10. Jagdish (PW-1) clearly deposed that he is acquainted with the accused persons present in the trial Court on the date of recording of his evidence

and he deposed that he with Badri, Kalyan, Harlal, Shivcharan, Rakesh and some others were abducted from the jungle of Piprai and he identified the

accused persons, Geetam, Munna, Gunga, Lalla, Nabba, Bengali and Baira by their names at the time of recording of his evidence and clearly

deposed that those were the persons who have abducted him with others. Jagdish deposed that Badri, Manu, Kemei and one another person

were released soon but he was kept by the assailants for about one month and ten days and when his father Hazarilal gave Rs.1,50,000/- to the gang

leader Geetam then he was released by the abductors. He clearly deposed in his cross-examination that the miscreants were not covered their

faces and he and other abductees were wandered around the jungle by the miscreants for about one month and ten days, hence he could identify

them. In para 3, he admitted the suggestions given by the learned defence counsel that if any person remained with any other person for about one

and a half months, then even after lapse of one or two years when he saw him, then he could identify such persons. His memory was tested by

the defence counsel in cross-examination and he rightly identified Lalla, who was present at the time of recording of his evidence. He clearly

deposed that he was released only after receiving ransom amount and he had not stated 'b to b' portion of his police statement (ExD-1) to the

investigating officer.

11. Harlal (PW-2) deposed before the trial Court that he is acquainted with the accused persons Geetam, Goonga, Munna, Lalla, Murlidhar, Bengali,

Nabba, Pappu, who were present at the time of recording of his evidence before the trial Court and he deposed that he was also abducted with eight

other persons from the jungle of Piprai and just after abduction, four abductees were released in the way, but he with four other abductees were taken

in jungle by the abductors and about a month later he was released after payment of Rs.1,80,000/ransom amount to the abductors by his family

members. Harlal (PW-2) deposed in cross-examination (para 2) that after his release, police called him to identify accused persons in police station,

but at that time only appellant Geetam was present in the police station. Much emphasis has been given to this fact by the learned counsel for the

appellant. Harlal also deposed in cross-examination that during their detention, four abductors were in open face, but in cross-examination (para 4)

he deposed that another person named Ramvaran was not included in the abductors and he had not mentioned the name of Ramvaran to police. It

is argued by the learned counsel for appellant Ramvaran that in view of above mentioned unchallenged evidence of Harlal (PW-2), appellant

Ramvaran is entitled for acquittal. Jagdish (PW-1), Hazarilal (PW-6), Kalyan Singh (PW-3) have identified appellant Ramvaran at the time of

recording of their evidence, hence in relation to Ramvaran, evidence of Jagdish could not be discarded only on the ground that Harlal (PW-2) has not

mentioned the name of Ramvaran among the abductors.

12. Kalyan Singh (PW-3) clearly deposed that he is acquainted with all the five accused persons present at the time of recording of his evidence

and also deposed that at the time of incident he was abducted by the abductors named Geetam, Goonga, Munna, Murlidhar and Lalla and he did not

know the names of remaining abductors. Kalyan also deposed that he was kept by the abductors in jungle for a period of two months and he was

released after payment of ransom amount of Rs. 1,50,000/-. He also deposed that abductors remained open faces with them in the jungle but he

was not beaten after his abduction. He also deposed in cross-examination (para 4) that at the time of his abduction no person named Ramvaran

was present. In para 6 he deposed that he was called at police station Morena to identify appellant Geetam.

13. Ghanshyam (PW-4), one of the abductees deposed that he is not acquainted with the accused persons present in the Court, but he was abducted

by 15 to 20 miscreants including Fauji, Daadi, Bengali, Chamiya etc. and his family members sent Rs.45,000/- to the abductors, thereafter he was

released by the abductors in jungle, but he also deposed that the persons present at the time of recording of his evidence were not included in the

abductors.

14. Another abductee Manu (PW-15) deposed that he could not identify present accused persons and other accused persons Lalla and Geetam , but

he deposed that heÂ was abducted by some abductors from Piprai jungle but as at that time there was darkness, hence he could not identify the

abductors.Â Manu (PW-15) was declared hostile by the prosecution.

15. Hostile declared witness Gajraj Singh (PW-5) deposed that he was not abducted at any point of time and he could not identify five accused

persons present at the time of recording of his evidence by the police or their functionaries.Â Gajraj Singh (PW-5) was also declared hostile by the

prosecution.

16. Ballu (PW-8), who was also declared hostile, deposed that he could not identify any accused and he was never abducted by any one and he did

not give any statement to police.

17. Another abductee Rakesh (PW-11) deposed that in his presence fourteen armed miscreants have abducted him with Harlal, Ghanshyam, Kalyan,

Jagdish and their family members were informed by the dacoits that after payment of contribution, their relating abductees will be released.Â Rakesh

also deposed that he remained in detention of dacoits for a period of about two and a half months and Harlal was released after two months, whereas

Kalyan was released five days prior to his release and Ghanshyam was releasedÂ even after ten days of his release.Â He also deposed that none of

the accused persons were present at the time of his abduction, but in para 2 he deposed that his abduction was performed by accused Geetam and his

four companions, but he could not identify the accused Geetam and other present accused persons Ramvaran, Ramvishesh and Munna because at the

time of recording of his evidence about three years have elapsed, hence he had forgotten their faces.

18. It is clear even from the evidence of hostile witnesses that above mentioned abductees were abducted for ransom and released after receiving

ransom amount from their family members.

19. Hazarilal (PW-6) deposed that at the time of incident he had also gone for grazing his buffaloes in Piprai jungle with his son Jagdish and in his

presence his son Jagdish was abducted by the accused persons, who were present at the at time of recording of his evidence before the trial Court

and after some days he had gone for giving contribution of Rs.11,000/- for release of his son as previously intimated by the abductors but at the intimated place the abductors were not present and accused persons have taken his son Jagdish to another jungle and his son Jagdish remained in detention of accused persons for one month and ten days and thereafter he paid Rs.1,50,000/- to the gang leader Geetam, thereafter, his son Jagdish was released by the accused persons in the jungle of Chamchama.Â Much emphasis has been given by the counsel for the appellant that facts relating to payment of ransom amount by him to Geetam are missing in his police statement (ExD-4) as Hazarilal deposed that the marked portion 'a to a' and 'b to b' of his police statement were not stated by him. He clearly deposed in his crossexamination that he had seen all the abductors at the time of incident.Â He also clearly deposed that in crossexamination (para 4) that abductors Munna and Ramvaran were also included in the abductors and after abduction he has received a letter from the abductors demanding ransom amount, but such letter was not shown by him to police or any one.Â His son was in the custody of the abductors, hence the conduct ofÂ not showing the demand letter to policeÂ or any one could not be termed as unnatural.

20. The contradictions and omissions among the depositions and police statements of the prosecution witnesses, who have supported the prosecution case are relating to the facts that how abductees were freed.Â It is common experience that the police tries to show its efficiency by registering an offence of robbery as theft and similarly abductees released after payment of ransom are shown in relating cases that they have escaped after getting chance or were released in a police encounter with dacoits.Â Such tactics are followed by the police officials to demonstrate their capability and efficiency, hence when all the prosecution witnesses who have supported prosecution's case and even some hostile witnesses have also deposed that each abductees were released after receiving ransom amount by the abductors.Â It is clear from the provision of Section 364-A of the IPC that actual payment of ransom is not a compulsory ingredient of the offence.Â It is established that abductees were abducted for getting ransom, hence such contradictions and omissions between relating prosecution witnesses and their police statements cannot influence the veracity of relating

prosecution witnesses.

21. The time gap between preparation of recovery memos of these abductees also provides corroboration of evidence relating prosecution witnesses,

who deposed that they were released only after payment of ransom money to the abductors.Â Avnit Sharma (PW-17) has clearly deposed in cross-

examination (para 5) that abductee Ghanshyam (PW-4) has disclosed the names of total fourteen abductors in police statement (ExP-16).Â It could

not be presumed that the abductors, who have abducted abductees after getting ransom amount would keep relating abductees in such a condition that

they could easily escaped from their custody.Â Therefore, relating evidence of prosecution witnesses regarding payment of ransom money appears to

be totally trustworthy and reliable.

22. It is also well established that evidence of otherwise reliable prosecution witnesses could not be disbelieved only due to negligence or defaults of

the investigating officer.Â If test identification parade of the relating accused after his arrest was not conducted during investigation, then only due to

this evidence of reliable prosecution witnesses could not be discarded.

23. It has been observed by the Apex Court in the case of Ravi @ Ravicvharan Vs. State Rep. by Inspector of Police {AIR (2007) SC 1729} as

follows:-

â??It is no doubt true that the substantive evidence of identification of an accused is the one made in the court.Â A judgment of conviction can be

arrived at even if no test identification parade has been held.â??

24. It is observed by this Court in the case of Bharat Singh Vs. State of MP {(2017)(3) MPLJ(Cri.) 142} that in every case test identification parade

is not necessary and in fact doc identification is substantive piece of evidence and if evidence of witness is found reliable then identification of accused

in doc can be relied upon.Â It is clear that relating prosecution witnesses and appellants are resident of distant places and there appears no reason for

false implication of any appellant by the abductees Jagdish (PW-1) and his father Hazarilal (PW-6). Turning of some prosecution witnesses and even

the victims is not a normal phenomena in criminal trials and their actual reasons could be understood.

25. Though Harlal (PW-2) admitted in cross-examination that police had called him at relating police station for identification of Geetam, but abductee

Jagdish (PW-1) has clearly deposed in cross-examination (para 6) that after his release from abduction, he was seeing accused persons in Court for

the first time at the time of recording of his evidence before the trial Court.Â Similarly, his father Hazarilal (PW-6) in whose presence the abduction

of his son Jagdish was committed, has identified the gang leader Geetam and other accused persons present in the Court at the time of recording of

his evidence and from his cross-examination, it is clear that he had not seen relating accused persons after release of his son by the abductee till

recording of his evidence.Â In such specific facts and circumstances, the evidence of Jagdish (PW-1) and Hazarilal (PW-6) regarding identification

of the appellants appears to be totally believable and trustworthy and their firm evidence could not be discarded as prosecution witnesses have tried to

twist their evidence during cross-examination.Â In the light of above mentioned circumstances, it is clear that the trial Court did not commit any error

in convicting the above mentioned appellants for the charged offence. 26. We are of the considered opinion that the trial Court has properly and legally

analyzed the total evidence available on record and did not commit any error in convicting the above mentioned appellants for charged offences.Â

The sentence as awarded to each appellant could not be termed as harsh or unbalanced. The appeals filed by the above mentioned appellants appears

to be merit-less.

27. In the result, the appeals filed by appellants Ramvaran, S/o Shri Chandan Singh and Geetam, S/o Shreedhar are hereby dismissed and conviction

and sentence of each of the above mentioned appellants as recorded by the trial Court is affirmed.Â Appellant Ramvaran was released on bail after

suspension of his jail sentence.Â He is directed to immediately surrender before the trial Court for serving out his remaining jail sentence.Â

Appellant Geetam was on jail.Â He be informed regarding result of his appeal through relating Jail Superintendent.Â With copy of this judgment,

record of the trial Court be returned.

28. A copy of this judgment be kept in the record of connected Criminal Appeal No.759/2004.