

(2015) 06 KAR CK 0283

In the Karnataka High Court

Case No : Criminal Appeal Nos. 1218, 1330/2011 and 1095 of 2013

Shashank Shekhar Kunungo and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 120, 120-B, 347, 364-A, 397

Citation : (2015) 06 KAR CK 0283

Hon'ble Judges : Mohan M. Shantana Goudar, J;P.D. Waingankar, J

Bench : Division Bench

Advocate : M. Vinod Kumar, for the Appellant; Chetan Desai, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.D. Waingankar, J.—The appellants were accused Nos. 1, 2, 3 and 5 respectively in S.C. No. 606/2009 on the file of Fast Track Court-VIII, Bangalore City. By judgment and order dated 24.9.2011, they have been convicted for the offences punishable under sections 347, 364-A and 120-B and 397 of IPC and have been sentenced to undergo imprisonment for a period of three months for the offence punishable under section 347 IPC, for a period of three months for the offence punishable under section 364-A of IPC, life imprisonment for the offence punishable under section 120-B of IPC and rigorous imprisonment for seven years for the offence punishable under section 397 IPC. Hence, these appeals.

2. The prosecution case is that on 20.10.2008 one Vijaylaxmi(PW-3) was returning to her house at HSR Layout from Wipro Software Company in her Ford Icon car bearing No. KA-01-Z-9334 driven by her driver accused No. 1 at about 8.30 p.m. as usual. When the car reached at Sarjapur road, accused No. 1 alongwith four other accused in pursuance of conspiracy hatched by them, abducted PW-3, tied her hands, stuffed her mouth, robbed her of her gold ornaments and other belongings, took her in a shed nearby Parapanna Agrahara

and wrongfully confined her for ransom. She was compelled to speak to her father PW-1 to send her two pairs of clothes and her two blank cheques. After receipt of mobile call from her daughter while she was in the custody of accused and was weeping, her father Shivaramaiah(PW-1) passed on the information to Tilak Nagar police station whereby PW-14-Police Inspector of Tilaknagar police station rushed to the house of PW-1 at HSR Layout waiting for accused No. 1 the driver of the car. At about 11.30 p.m., accused No. 1-driver came to the house of PW-1 to take two pairs of clothes of PW-3 and blank cheques as desired by the accused. The accused No. 1 was taken to custody by PW-14. On interrogation, he was frightened and was unable to answer the queries. He was taken to police station by PW-14 alongwith PW-1 where PW-1 lodged a complaint as per Ex-P1. Accused No. 1 was arrested. His voluntary statement was recorded wherein he disclosed the necessary information as to the place where PW-3 was wrongfully confined after her abduction and committing robbery. Accused No. 1 took PW-14-Police Inspector of Tilaknagar police station and his staff to a shed nearby Parappana Agrahara early in the morning of 21.10.2008 where PW-3 was confined. The police entered the shed and saw PW-3 weeping, her hands were tied and the mouth was stuffed. The police untied both her hands, removed the tape pasted on her mouth, gave her medical aid. Accused Nos. 2 and 3 who were in the shed armed with knife and sword were taken to custody. The police seized the gold ornaments of PW-3 from the possession of accused Nos. 2 and 3, panchanama of the place from where she was abducted, where conspiracy was hatched and where she was confined were drawn. Subsequently, it transpired that the place of offence comes within the jurisdiction of HSR Layout police station and thereby the records were forwarded to HSR Layout police station. PW-13 Police Inspector of HSR Layout police station completed other formalities of investigation and filed charge-sheet against accused Nos. 1, 2, 3 and 5 since accused No. 4 was absconding for the offence punishable under sections 347, 364-A, 120-B and 397 of IPC.

3. In order to prove the charges against accused Nos. 1, 2, 3 and 5, the prosecution in all examined 14 witnesses as PWs-1 to 14, marked Ex-P1 to P26 apart from M.Os.1-19. The accused have not led defence evidence. Statement of the accused as required under Sections 313 Cr.P.C. was recorded. The defence of the accused was that of total denial. After hearing the arguments and appreciation of evidence, by the impugned judgment and order, they were convicted and sentenced to undergo life imprisonment.

Questioning the legality of the judgment of conviction and order of sentence, accused No. 1 preferred Cr.A. No. 1095/2011, accused Nos. 2 and 3 preferred Crl.A. No. 1218/2011 and accused No. 5 preferred Crl.A. No. 1330/2011.

We have heard learned counsel appearing for the appellants and High Court Government Pleader for respondent. Perused the records. The learned counsel for the appellant has argued that the identity of the accused is not established by the prosecution. No identification parade was conducted, the statements of the

interested witnesses viz., PW-1 and PW-3 have been relied upon to based the conviction without any corroboration by independent witnesses, PW-1 being the father and PW-3 being the daughter are interested witnesses, the panchas to all the mahazars have not supported the case of the prosecution. Under such circumstances, the accused ought to have been acquitted of all the charges levelled against them. The learned counsel placed reliance on the following decisions in support of his arguments:--

"a. Premakumar Vs. State of Karnataka, (2014) 4 AKR 689 : (2014) ILR (Kar) 4941 : (2014) 3 KCCR 2747

b. Jalpat Rai and Others Vs. State of Haryana, AIR 2011 SC 2719 : (2011) 3 Crimes 289 : (2011) 8 JT 55 : (2011) 7 SCALE 348 : (2011) 7 SCR 1037 : (2011) AIRSCW 4222 : (2011) 5 Supreme 739

c. State of Maharashtra Vs. Ahmed Shaikh Babajan and Others, (2008) 11 JT 442

d. Lakshman Prasad Vs. State of Bihar, AIR 1981 SC 1388 : (1981) CriLJ 1010 : (1981) 1 SCALE 580 : (1981) 1 SCC 22 Supp : (1981) SCC 22 Supp : (1981) SCC(Cri) 642 ."

On the other hand learned High Court Govt. Pleader argued in support of the judgment of conviction and order of sentence passed by the Sessions Judge.

4. PW-1 Shivaramaiah is the complainant who lodged the complaint as per Ex-P1 wherein he states that on 20.10.2008, at about 8.30 p.m., his daughter PW-3 Vijaylaxmi spoke to him over mobile and asked him to hand over two pair of her clothes, two blank cheques, credit card while she was weeping. But his daughter PW-3 did not return to the house. At about 10.30 p.m., again PW-3 informed PW-1 over phone while weeping that accused No. 1 her car driver would be coming to the house to take two pairs of her dresses and two blank cheques. Out of fear, PW-1 passed on information to Tilak Nagar police station, thereby the Police Inspector PW-14 came to his house at HSR Layout and informed him that while the car reached on Sarjapur road, some persons pelted stones towards the car and when he stopped the car and came out so as to find out who pelted the stones, accused No. 2 to 5 got into the car, abducted PW-3 the daughter of PW-1. Accused No. 1 the driver of the car was not able give satisfactory reply to the queries made by PW-1 and the Police Inspector; thereby he was taken to custody by the Inspector, who was waiting for accused No. 1; he lodged a complaint before Tilak Nagar police station; the police in-turn traced PW-3 the daughter of PW-1 who was abducted, robbed and was confined in a shed nearby Parappanna Agrahara; the police released her from the confinement of accused Nos. 2 and 3; it transpired from PW-3 that it is accused No. 1 who alongwith other accused hatched conspiracy and in pursuance of conspiracy, they abducted, robbed and wrongfully confined his daughter. His further evidence would go to show that about two months prior to the incident, accused Dilip under the pretext of taking the grand child of PW-1 by name Divya to school had abducted PW-1 alongwith Divya for ransom of 1 1/2 crores of rupees.

PW-3 Vijaylaxmi the daughter of PW-1 is the victim of the incident. Her evidence is that PW-1 is her father; at the time of incident, she was working in Wipro company Bangalore as Senior Consultant and residing in the house of her father PW-1 at HSR Layout alongwith her two minor children; as usual, she was returning from her company on a Ford Icon car No. KA-01-Z-9334 which was being driven by accused No. 1 Laxmipathy her driver; on 20.10.2008 at about 8.30 p.m., when the car was proceeding on Sarjapur road, on road humps, accused No. 1 the driver of the car slowed down the speed of the car and at that time, someone pelted stones towards the car; the accused No. 1 stopped the car and got down from the car and at that time, the other accused persons entered the car, abducted her, tied her both hands with nylon rope, stuffed her mouth and relieved her of all her gold ornaments under threat by showing a knife; they took her to a shed near Parapanna Agrahara inspite of her resistance. Further, they asked her to talk to her father over a mobile belonging to the accused persons and inform her father over phone that accused No. 1 Laxmipathi her driver would be coming to their house to whom to hand over her two pair of clothes and cheque leaves and that the police came early in the morning at 4.00 -5.00 a.m. and released her from the clutches of accused No. 2 and 3, who were also in the shed alongwith her with arms. She has also spoken about the mahazar conducted by the police after arrest of accused Nos. 1 to 3 of the place where she was abducted, the place where she was confined and where conspiracy was hatched. Further she has deposed that she has also identified the accused Nos. 1 to 3 and 5 apart from another person who abducted her and robbed her.

PW-2 Kandan and PW-4 Karthik are the two panchas to Ex-P2 and P3- the mahazar drawn at the place from where she was abducted and the place where the conspiracy was hatched by the accused to abduct and to commit robbery. But both of them have turned hostile to the prosecution case.

PW-5 Thomas is the owner of the shed where PW-3 was detained after her abduction. He went on record to depose that his brother-in-law Charles is the owner of the shed wherein PW-3 was detained by the accused. He is residing at Kerala. There are two houses in the shed, one was given to Samuel a watchman and another was given on a rent to one Vishnu Babu and Vishnu Babu had given on rent the house vacated by Samuel on a monthly rent of Rs. 2,000/- to some person. He has spoken that the police had come to the shed wherein a lady was brought and kept by the persons who had taken the shed for rent; the police recorded his statement. But in the cross-examination, he states that upon going through the newspaper report, he came to know about the said incident. Therefore, he cannot be called as an eye-witness to the incident and therefore his evidence may not be of helpful to the prosecution case.

PW-6 Seena is a pancha to seizure mahazar where under motor cycle belonging to accused No. 4 was seized at the instance of accused No. 5. But PW-6 has also turned hostile to the prosecution case.

PW-7 Imam is a pancha to a mahazar Ex-P7 as to the recovery of gold ornaments, nokia mobile, the driving licence of accused No. 5. He has also turned hostile.

PW-8 Nagesh is a mahazar witness to Ex-P9 mahazar which was drawn near the house of accused No. 5 on 20.10.2008. He too turned hostile.

PW-9 head constable of Tilak Nagar police station, who apprehended accused No. 5 on 23.10.2008 at Iblur village on Sarjapur road and produced before the Investigating Officer.

PW-10 and PW-11 CM. Thimmegowda and Raghu are the police constables attached to Tilak Nagar police station. Their evidence is that they accompanied the Inspector to trace PW-3 during the night of 20.10.2008 and 21.10.2008 to the house of PW-1 where they arrested accused No. 1 and brought him to the police station who in turn took them to Parapanna Agrahara near Vidyanikethan school to a shed where they saw PW-3 detained by accused Nos. 2 and 3 who were armed with knife and sword (M.O.8 and 9); her hands were tied and mouth stuffed with a tape. They have further spoken that on search on the person of accused No. 2, they recovered a gold chain, (M.O.5) a ring, (M.O.3) a knife (M.O.8) and from the person of accused No. 3, they recovered a sword, (M.O.9) a watch (M.O.7) and ear studs (M.O.6).

PW-12 Basavaraj is the police constable attached to HSR Layout police station who was deputed to trace the absconding accused No. 4. His evidence is that despite best efforts he could not trace him.

PW-13 L.Y. Rajesh is the Police Inspector of HSR Layout police station. His evidence would reveal that on 13.11.2008, he took up the file pertaining to this case from Tilak nagar police station since the offence had taken place within the jurisdiction of HSR Layout police station. He registered a case in Cr. No. 425/2008 against five accused persons for the offences punishable under sections 364-A, 347, 397 r/w 120 IPC and upon completion of all other formalities of investigation, he filed charge-sheet against them.

PW-14 N. Srinidhi has deposed that at the relevant point of time, he was working as Police inspector, Tilak Nagar police station. On 20.10.2008, at about 11.15 p.m. while he was on patrolling duty, he received a message from control room regarding abduction of PW-3 Vijaylaxmi mother of Divya who was kidnapped two months prior to this incident in respect of which Crime No. 263/2008 was registered for the offence punishable under Section 364-A of IPC against accused No. 2 and his accomplice; immediately, he rushed to the house of PW-3 with subordinate Police Officials; at about 11.30 p.m., accused No. 1 Laxmipathy came to the house of PW-1 and informed that some four unknown persons abducted PW-3 Vijaylaxmi and fled away; they sent him to bring two pair of dresses of PW-3 and a cheque book; he suspected him as he was unable to give satisfactory reply; he took him to custody, registered a case, arrested him and on his voluntary statement went near Parappanna Agrahara alongwith panchas to

a shed where PW-3 was detained and rescued PW-3 who was abducted, robbed and detained by accused Nos. 2 and 3 who were also there in the shed alongwith PW-3; he conducted the mahazar of the places where conspiracy was hatched, where she was abducted where the motor cycle of accused No. 4 was kept. His evidence would further go to show that when they opened the shed, accused Nos. 2 and 3 who were inside the shed attempted to attack them with a knife in order to run away, but they were arrested and on search of their person, they recovered gold chain, gold ring, lady watch, nylon rope with which she was tied, a plastic rope and a nokia mobile. Further he would depose that on 24.10.2008, accused No. 5 was arrested and in his voluntary statement, he volunteered and shown bajaj Pulsar motor cycle belonging to Kumar accused No. 4 which was parked in the compound of the shed wherein PW-3 was detained.

5. Thus from the closer scrutiny of the evidence of all the witnesses examined on behalf of the prosecution, it is manifest that PW-1 the complainant, PW-3 the victim, PW-9 to 14 the official witnesses have supported the case of the prosecution. Panchas to all the panchanamas including the seizure panchanama in respect of articles robbed from the person of PW-3 have not supported the case of the prosecution. PW-3 the victim of the incident has given detailed account of how the driver of her own car accused No. 1 Laxmipathi hatched a conspiracy alongwith other accused, abducted her, robbed her of all her personal belongings and detained her in a shed for ransom by threatening to hurt by showing knife and sword by accused Nos. 2 and 3. She has very clearly spoken that accused No. 1 her own driver opened the door of the car and paved the way for other accused to rush into the car and abduct her. We have no reason to doubt the veracity of the evidence of PW-3 who is the victim of the incident. Her evidence is fully supported by the evidence of PW-1 who lodged the first information report after getting information from none other than accused No. 1 their driver who came to the house of PW-1 during night hours and asked for two pair of clothes of PW-3 and cheque leaves. PW-1 has stated that about 8.30 p.m. on 20.10.2008, her daughter telephoned her by weeping and asked to send two pairs of clothes and two cheque leaves through accused No. 1 the driver of the car. PW-1 has also spoken about earlier case of kidnapping his grand daughter Divya by accused Nos. 2 and 3. Thus if we read the evidence of PW-1 the father and PW-3 daughter their evidence is consistent in all respects. From their evidence, it is abundantly clear that these accused have hatched conspiracy much earlier to the incident to abduct PW-3 for ransom and that they could execute the conspiracy with the help of accused No. 1 their own driver who is mainly responsible for the abduction and robbery committed on PW-3. Of-course, PW-1 and 3 are the father and daughters. Therefore, we have considered their evidence with caution. We do not find anything in their evidence so as to disbelieve or discard their evidence. Their evidence is natural and it does inspire the confidence of the Court. Their evidence is further supported by the evidence of PW-14 N. Srinidhi Police Inspector of Tilak Nagar police station who apprehended accused No. 1 from the house of PW-1 within no time and collected

all the information regarding the abduction of PW-3. PW-14 has seized the gold ornaments and other valuable articles belonging to PW-3 (M.Os.3, 4, 5, 6, 7) from the possession of accused Nos. 2 and 3. It cannot be said that the police have brought those gold ornaments and planted in this case to falsely implicate these accused. Merely because the panchas have turned hostile, the evidence of the Investigating Officer on seizure cannot be disbelieved. Thus, from the evidence of PW-14 the Investigating Officer, PWs-10 and 11- the police constable, who had accompanied him, the seizure of articles of PW-3 from the possession of accused Nos. 2 and 3 is also established. Thus, the evidence on record is sufficient to reach a conclusion that all these accused hatched a conspiracy and in pursuance of the conspiracy, they abducted PW-3 while she was returning to her residence in her car which was driven by accused No. 1, they robbed her of all gold ornaments and other belongings on her person, they wrongfully confined her in an isolated place in a shed for extorting ransom from her and her father PW-1. The learned counsel for accused No. 1 has submitted that the accused No. 1 was only a party to the conspiracy and he is not responsible for abduction or commission of robbery, or her wrongful confinement, therefore, he is liable for maximum punishment of imprisonment for a period of six months, if it is established. There is no substance in the said submission made by the learned counsel for the accused No. 1. In fact accused No. 1 is the prime accused and mainly responsible for abduction, for commission of robbery and for wrongful confinement of PW-3. We have considered the decisions relied upon by the learned counsel for the appellant while appreciation of evidence. We do not find any illegality committed by the learned Sessions Judge. Coming to the sentence imposed by the Sessions Judge, it has to be stated that keeping in mind the alarming rise in kidnapping of young children and abduction for ransom, the legislature has in its wisdom provided stringent sentence. We have no reason to dilute the same. Suffice to say that the sentence imposed by the learned Sessions Judge commensurate with the gravity of the crime. All the appeals are devoid of merits.

6. Hence, we proceed to pass the following:--

"CrI.A. No. 1330/2011, CrI.A. No. 1218/2011 and CrI.A. No. 1095/2013 are dismissed."