

(2013) 06 GUJ CK 0003
In the Gujarat High Court

Case No : Criminal Appeal No's. 1090 of 2007, 1254 of 2008 and 604 of 2009

Shivkumar @ Lalo Ranjitsingh @ Jandusingh Rajput

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2014) 2 Crimes 258 : (2013) 3 GLR 2440

Hon'ble Judges : K.S. Jhaveri, J;K.J. Thaker, J

Bench : Division Bench

Advocate : Sadhana Sagar in Criminal Appeal No. 1090 of 2007, Shailesh C. Sharma in Criminal Appeal No. 1254 of 2008 and Vaibhav A. Vyas in Criminal Appeal No. 604 of 2009, for the Appellant; C.M. Shah, Assistant Public Prosecutor in Criminal Appeal Nos. 1090 of 2007, 1254 of 2008 and 604 of 2009, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Thaker, J.—The present appellants have preferred all the three appeals under Sec. 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 15-3-2007 passed by the learned Addl. Sessions Judge, Court No. 7, City Sessions Court, Ahmedabad in Sessions Case No. 332 of 2005, whereby, the learned trial Judge has convicted all the appellants under Sec. 364A of I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- each, in default, to undergo further R.I. for one year. The appellants are also convicted under Sec. 342 of I.P.C. and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs. 1,000/- each, in default, to undergo further S.I. for six months. The appellants also convicted under Sec. 325 of I.P.C. and sentenced to undergo R.I. for a period of five years and to pay a fine of Rs. 5,000/- each, in default, to undergo further S.I. for one year. The appellants are also convicted for the offence under Sec. 120B of I.P.C. and sentenced to undergo R.I. for life and to pay a fine of Rs. 5,000/- each, in default, to undergo further S./I. for one year, which is impugned in this appeal. Criminal Appeal No. 1090 of 2007 has been preferred by

Shivkumar @ Lalo Ranjitsingh @ Jandusingh Rajput, Criminal Appeal No. 1254 of 2008 has been preferred by Ravikumar Hariprasad Bhumidar and Criminal Appeal No. 604 of 2009 has been preferred by Ajaysingh Jandusingh @ Ranjitsingh Rajput. All the above appeals arise out of the same judgment and order dated 15-3-2007 passed by the learned Addl. Sessions Judge, Court No. 7, Ahmedabad in Sessions Case No. 332 of 2005, and therefore, they are being disposed of by this common judgment.

1.1. The brief facts of the prosecution case is that on 11-1-2005 in the evening at about 5-30 when complainant Vijendra, a boy was going to his friend Bhupendra residing near Gebanshah Dargah, one Shivkumar @ Lalo and Ajaysingh @ Chhotu whose sister is married in the native of father of this boy, and therefore, they were addressed to as maternal uncles, living at Chandanpark Society behind Gebanshah Pir Dargah in the rented house, forcibly kidnapped him by making him sit on the Splendor motorcycle driven by Ajaysingh. His mouth was gagged by Shivkumar sitting at the end of the motorcycle, who also threatened him with dire consequences of killing by knife if he raised the voice. As his face was covered with cloth, he was unaware of the route taken by them, but in about 1-minutes" time he was taken to a room where he found 22 years old person, who was addressed to as Ravi by Shivkumar. The victim was beaten up and he was forcibly made to lie on the bed. Both his legs and hands were tied with nylon string. This was done for extorting the amount of ransom from his fattier to the tune of Rs. 3 lacs. He was also beaten up with belan (wooden stick used in preparing roti). On arrival of the police two of them could be caught at the place and a complaint to this effect had been given by boy Vijendra on 12-1-2005 early morning at 1:45 a.m., which was registered as 1st C.R. No. 26 of 2005 against three persons for the offences punishable under Secs. 364A, 384, 342, 323, 114 read with Sec. 120B of I.P.C. and under Sec. 135(1) of the Bombay Police Act, on the basis of the report prepared under Sec. 157 of Cr.P.C.

1.2. The appellants accused came to be arraigned for committing the said offence and after the investigation was complete, the charge-sheet was laid against the present appellants. Thereafter, as the case was exclusively triable by the Court of Sessions, the same was committed the case to the Court of Sessions, which was given number as Sessions Case No. 332 of 2005.

1.3. Thereafter, the Sessions Court framed the charge at Exh. 8 against the appellants. The appellants-accused have pleaded not guilty and claimed to be tried.

1.4. To prove the case against the present appellants, the prosecution has examined the following witnesses:

1. P.W. 1 Vijendra Ramprakash Bhadoriya Exh. 15
2. P.W. 2 Ramprakash Lallusingh Bhadoriya Exh. 16
3. P.W. 3 Dr. Laxmanbhai Kalubhai Kariya Exh. 18

4. P.W. 4 Gopalbhai Arvindbhai Patel Exh. 21
5. P.W. 5 Madhavbhai Parsingbhai Vasava Exh. 22
6. P.W. 6 Jahir Hussain Gulam Rasul Malek Exh. 25
7. P.W. 7 Munnasingh Lallusingh Bhadoriya Exh. 35
8. P.W. 8 Punjabhai Ukabhai Khetariya Exh. 38

1.5. The prosecution also relied upon the following documentary evidences so as to bring home the charges against the appellants-accused.

1. Complaint Exh. 17
2. Report under Sec. 157 of Cr.P.C. Exh. 23
3. Vardhi written to Vatva P.S.O. Mark-B
4. Message given to Vatva Mobile Operator Exh. 24
5. Panchnama of scene of offence Exh. 39
6. Inquiry Certificate given from L.G. Hospital Exh. 29
7. Case property receipt Exh. 44
8. Broadcast message Mark-C
9. Letter addressed to Crime Branch by Vatva P.I. Exh. 42
10. Letter from P.S.I. Isanpur Police Chowki to R.T.O. Exh. 43
11. Vardhi given by Vatva Police Station Mark-D
12. Closing purshis Exh. 45
13. Medical injury certificate Exh. 19
14. Medical case papers Exh. 20

2. Thereafter, after examining the witnesses, further statement of the appellant-accused under Sec. 313 of Cr.P.C. was recorded in which the appellants-accused have denied the case of the prosecution.

3. After considering the oral as well as documentary evidence and after hearing the parties, learned trial Judge vide impugned judgment and order dated 15-3-2007 held the appellants-accused guilty to the charge levelled against them and convicted and sentenced the appellants-accused, as stated above.

4. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Court No. 7, Ahmedabad, the present appellants have preferred all the three appeals.

5. Heard Ms. Sadhana Sagar learned Advocate for the appellant-original accused No. 1, Mr. Shailesh C. Sharma learned Advocate for appellant-original accused

No. 2 and Mr. Vaibhav A. Vyas learned Advocate for appellant-original accused No. 3 and Ms. C.M. Shah learned A.P.P. for the respondent-State in all the appeals

6. The learned Advocates for the present appellants have contended that the trial Court has committed an error in passing the impugned judgment and order, inasmuch as it failed to appreciate the material on record in its proper perspective, and hence, the present appellants deserve to be given the benefit of doubt and be acquitted.

7. On the other hand, learned A.P.P. has strongly opposed the contentions raised by the learned Advocate for the present appellants and has submitted that the trial Court has passed the impugned judgment and order after taking into consideration the facts and circumstances of the case as well as the material, in the form of oral and documentary evidence, produced before it, and hence, no interference is called for and the appeal deserves to be dismissed. Learned A.P.P. has further contended that the guilt proved is of serious nature having far-reaching consequences in the society where such incident occur apart from affecting adversely a particular family, it would essentially in general cause fear psychosis in the minds of others as well as being viewed as making the society unsafe, and therefore, no leniency should be shown to the accused and all the appeals deserve to be dismissed.

8. We have gone through the oral as well as documentary evidence produced on the record. We have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the appellants. The learned trial Judge has raised three point which has been answered by the learned trial Judge against the accused and in favour of the prosecution.

9. P.W. 1 complainant Exh. 15, in his complaint Exh. 17 has categorically mentioned that he was kidnapped and the manner in which he was kidnapped was mentioned in the F.I.R. which was given by him in the early morning after he was rescued from the accused by the police and his nearer. The complainant in his complaint very categorically mentioned the facts and has stood the said facts by his ocular version. Nothing has been brought out on record to suggest that there was no kidnapping. The definition of kidnapping will also have to be looked into. In the recent decision of the Apex Court reported in Bakshish Ram and Another Vs. State of Punjab, in the case of Bakshish Ram v. State of Punjab, wherein, the Apex Court has held that the High Court should apply its independent mind and record its own finding by making independent assessment of evidence.

10. From the evidence one fact which emerges is that the two accused were caught from the scene of offence and third was also immediately arrested. There is no delay in arrest. The second point is that the medical evidence shows that there were fractures on limb of the juvenile victim. Learned Advocate appearing for the appellants have contended that there is delay in lodging the F.I.R. There is evidence only of the interested witnesses is taken and recorded. It is

submitted that no ransom was asked for by any of the accused. It is not proved that Shivkumar @ Lalo Ranjitsingh @ Jandusingh Rajput has taken any ransom or accused Ajaysingh Jandusingh has asked for any ransom or it was only Ranjitsinh has conveyed, and if at all, it is only Ranjitsinh who can be held guilty. It is submitted that the provisions of Sec. 364A read with Secs. 339, 340, 359 and 363 of I.P.C. requires to be seen because this is a case under Sec. 364A of I.P.C. where it is argued that no ransom was asked for, and therefore, no case is made out against accused.

11. From the evidence of P.W. 1-Vijendra Ramprakash Bhadoriya Exh. 15, it is clear that he had lodged the complaint very soon, that is, immediately after the release. The evidence is very clinching and the endeavor is made that no demand of ransom is made. In examination-in-chief, this witness has categorically stated that when he was walking, he was asked by Shivkumar @ Lalo and Ajaysingh Jandusingh to board the motorcycle. Shivkumar @ Lalo and Ajaysingh @ Chhotu who are brothers but they are not related to complainant who is the victim, but as their sister was married in their native, he was addressing them as maternal uncle. Ajaysingh @ Chhotu was driving the motorcycle. He was made to seat between Chhotu and Lala. On the way, he was not permitted to even shout as his face was covered with cloth. In his evidence, he has categorically stated that he was threatened with knife dire consequences and he was told to keep quite otherwise he would be murdered there and there. He was taken in a house and there was another person sitting there. There he was tied up with nylon strings and he was beaten up by belan (wooden stick). This witness has categorically conveyed that as he was only son of his father and if his father would not pay Rs. 3 lacs, he would be murdered. He had been relieved from the captivity as his father and the police people came at the place where he was kept. His father is a businessman, if his father would not pay Rs. 3 lacs he would be murdered. He has withstood with the cross-examination and nothing has come out in the cross-examination which can be help the accused. An endeavor is made that the genesis of the incident was because he was harassing a girl whom Chhotu and Lalo had been treating as sister. He denied this fact also. The age factor also cannot permit us to believe the same.

12. The medical evidence will now have to be seen in light of the evidence of this witness. The medical evidence coupled with F.I.R. shows that there were fractures on the forearms and there were certain marks over both the wrists. This shows that his statement that he was tied with nylon strings is inspiring confidence. The further fact that two accused have been apprehended and caught by the public also supports his say about presence of the accused. Coupled with these facts, the fact that Rs. 3 lacs were demanded is borne out from the police version where one Ranvijaysingh who has not been joined as an accused nor he has been examined, but he was residing as a tenant in the bungalow No. 66 where the boy was kept. Although, there is no direct demand from P.W. 2, his brother Munnasingh is categorical about the demand of Rs. 3 lacs made by the accused was conveyed by one Ranvijaysingh who intimidated

that the nephew was abducted. The complainant also speaks of demand of Rs. 3 lacs. The learned trial Judge has not believed that the story of ransom that has come is improvised version in the trial. Section 364A was added when the offence was registered as 1st C.R. No. 26 of 2005 at Vatva Police Station against all the three accused. The name of Chhotu was already there in the report prepared under Sec. 157 of Cr.P.C. If the complainant had not seen any phone-call being made when he was confined illegally at house No. 66 can be no ground not to attract ingredients of Sec. 364A, where not only abduction of P.W. 1 forcibly and his illegal confinement get proved, but his having been put to fear of death and his apprehension of either death or hurt writs large in his oral evidence and also in the complaint. There is no enmity at all between the parties to allege such serious allegation against the accused.

13. P.W. 7-Munnasingh Lallusingh Bhadoriya, who has been examined at Exh. 35, has deposed that he was working as a watchman in the Space Management near Mithakhali Six Roads, had received a phone call from his brother on 11-1-2005 at around 8-00 inquiring about his nephew Vijendra. After about 45 minutes his sister-in-law called up communicating that his brother was fuming with anger as Vijendra did not return home from tuition. When he reached his place at Isanpur, people had gathered in neighbourhood and at around 11-00 Ranvijaysingh came to the residence of his brother and was inquiring of P.W. 2. Initially, he was hesitant to say anything to this witness, but when he introduced himself as a paternal uncle of Vijendra, he said that Vijendra was abducted by A-1, A-2 and A-3 who were named by him and demanded Rs. 3 lacs as he was kept in the house No. 66 of Rangolinagar. Kamlesh in the neighbourhood who runs the security agency called up the police immediately. The neighbours in the society had made Ranvijaysingh to sit in the house and all of them went to Rangolinagar as they were apprehensive of killing of Vijendra. Accused had attempted to run away from the house of Rangolinagar choosing the back door, but the public had caught two of them. In five minutes time, police arrived there and accused Nos. 1 and 2 were in the custody of the public. They went inside the house and Vijendra was made free as he was tied with strings. His face and hands were swollen, both the accused Nos. 1 and 2 were brought to the police station. The witness states he knew accused Nos. 1 and 3 as they belong to native and they were frequently visiting the society of his brother as they were residing in the neighbourhood of his brother. Thus, evidence is very clear that ransom was asked and it is proved beyond reasonable doubt that Sec. 364A was there. It was argued by the learned Advocates for the appellants that T.I. parade was not held. The learned trial Judge has categorically discuss the case law on that point. No T.I. parade was necessary as the person having been caught from the place of offence. The version before the police and in the testimony given by the P.W. 1 complainant, P.W. 2 his father and P.W. 7 paternal uncle are very consistent and nothing else is found even on appreciation and re-appreciation and re-evaluation of the said evidence. The non-examination of persons of public and neighbour has been a major grievance by all the three learned Advocates appearing for the

appellants. The defence has tried to take the case to that level but in light of the finding of the learned trial Judge and the chain which is complete, no other view can be taken even in view of the latest decisions of the Apex Court, wherein, in catena of decisions the Apex Court has held that just because neighbours are not examined, it will not be fatal for the prosecution if otherwise witness inspires the confidence. In this case, even on the version of P.W. 1 and P.W. 5 and the case is full proof and there is no guessing work and the message was very clear and that is how the child has been released from the clutches of the present appellants-accused.

14. The finding of the learned trial Judge as far as the scene of offence is concerned, the same is strongly corroborated by the oral evidence. The panchnama of scene of offence was drawn by P.W. 8-Punjabhai Ukabhai Khetariya Exh. 38. In his evidence, he said that after the complainant was sent to L.G. Hospital, on his return from L.G. Hospital, he was asked to show the local place from where he was abducted, and thereafter, he was taken to the House No. 66 of Rangolinagar society where they found all the muddamal articles No. 1 to 5 and the same had been seized from the place of offence. He is also specific about Hero Honda Motorcycle bearing registration No. G.J. 1-CM-4249 having been found from the open plot near bungalow No. 66. The contents of panchnama of scene of offence Exh. 39 were found to be true through this witness. The panchnama corroborates completely the version of this witness. Hence, it would not be appropriate for us to take different view than the one taken by the learned Judge as far as injuries are concerned. Thus, the message sent to the control room also shows that it was with the police help the child could be returned from the accused.

15. The view taken by the learned trial Judge, is based on sound appreciation of facts. The T.I. parade is proved, and therefore, the submission of the learned Advocates that the appellants are not identified is not proved beyond reasonable doubt and the inducement is also given. There is a demand. The finding of facts cannot be said to be in any way such which would give benefit of doubt to the accused represented by the learned Advocates. We are in complete agreement with the findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial Court and we are of the view that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. Therefore, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence.

16. In the result, all these appeals are dismissed. The impugned judgment and order of conviction and sentence dated 15-3-2007 passed by the learned Addl. Sessions Judge, Court No. 7, Ahmedabad in Sessions Case No. 332 of 2005 is hereby confirmed. Bail-bond stands cancelled. R. & P. to be sent back to the trial Court forthwith. However, it is clarified that life would not be till last breath and their case may be considered by the appropriate authority. The appellant-

Ajaysingh Jandusingh @ Ranjitsingh Rajput of Criminal Appeal No. 604 of 2009 is directed to surrender before the Jail Authority within a period of six weeks from the date of this order, failing which, the concerned Sessions Court shall issue non-bailable warrant to effect the arrest of the appellant-original accused-Ajaysingh Jandusingh @ Ranjitsingh Rajput of Criminal Appeal No. 604 of 2009.