

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 381 of 2012

1. Vikki Nihal S/o Chhotu Nihal , R/o Arvind Nagar , Panjabi Colony , Opposite To Sant Kanwar Ram School, P.S. Civil Line Raipur , Distt. Raipur C.G.

---- Appellant

Versus

1. State Of Chhattisgarh Through - P.S. Kotwali, Distt. Raipur C.G.

---- Respondent

And

CRA No. 383 Of 2012

1. Smt. Jahanara Khan & Ors. S/o Chhotu Nihal , R/o Arvind Nagar , Panjabi Colony , Opposite To Sant Kanwar Ram School, P.S. Civil Line Raipur , Distt. Raipur C.G.
2. Ku. Saiyyara D/o Dilshad Ahmad Khan , R/o Surya Vihar Apartment , D-1/05, Pachpedi Naka , Thana Tikrapara, Raipur C.G.

---- Appellants

Vs

1. State Of Chhattisgarh Through - P.S. Kotwali, Distt. Raipur C.G.

---- Respondent

And

CRA No. 397 Of 2012

1. Manish Thorani S/o Chhotu Nihal , R/o Arvind Nagar , Panjabi Colony , Opposite To Sant Kanwar Ram School, P.S. Civil Line Raipur , Distt. Raipur C.G.

---- Appellant

Vs

1. State Of Chhattisgarh Through - P.S. Kotwali, Distt. Raipur C.G.

---- Respondent

And

CRA No. 420 Of 2012

1. Govinda @ Sheikh Kaleem & Ors S/o Chhotu Nihal , R/o Arvind Nagar , Panjabi Colony , Opposite To Sant Kanwar Ram School, P.S. Civil Line Raipur , Distt. Raipur

C.G.

2. Ehteshyam Ahmad Khan @Ayan S/o Dilshad Ahmad Khan, R/o Surya Vihar Apartment , D-1/05, Pachpedi Naka , Thana Tikrapara, Raipur , Distt. Raipur C.G.
3. Dilshad Ahmad Khan S/o Late Haji Habib Ahmad Khan, R/o Surya Vihar Apartment , D-0 Surya Vihar Apartment , D-1/05 , Pachpedi Naka , Thana Tikrapara , Raipur , Distt. Raipur C.G.

---- Appellants

Vs

1. State Of Chhattisgarh Through - P.S. Kotwali, Distt. Raipur C.G.

---- Respondent

And

CRA No. 431 Of 2012

1. Lala @ Mahadev Sharma S/o Chhotu Nihal , R/o Arvind Nagar , Panjabi Colony , Opposite To Sant Kanwar Ram School, P.S. Civil Line Raipur , Distt. Raipur C.G.

---- Appellant

Vs

1. State Of Chhattisgarh Through - P.S. Kotwali, Distt. Raipur C.G.

---- Respondent

For Appellant in Cr.A.No.381 of 2012 – Mr. Janak Ram Verma, Advocate
For Appellants in Cr.A.Nos.383, 420 and 431 of 2012 – Mr. Neeraj Mehta, Advocate
For Appellant in Cr.A.No.397 of 2012 – Mrs. Kiran Jain, Advocate.
For Respondent/State – Mr. Neeraj Jain, G.A.

Hon'ble Shri Justice T. P. Sharma
Hon'ble Shri Justice Inder Singh Uboweja

Judgment/Order On Board By T.P.Sharma, J.

04/03/2015

1. By filing the Criminal Appeals No.381, 383, 397, 420 and 431 of 2012, the aforesaid appellants have challenged the legality, validity and propriety of the judgment of conviction and order of sentence dated 04.04.2012 passed by the 6th Additional Sessions Judge, Raipur in Sessions Trial No.119 of 2009 whereby and whereunder after holding the appellants guilty for commission of kidnapping for

ransom, criminal conspiracy and wrongful confinement, the trial Court convicted and sentenced the appellants as under:

Sl. No.	Appellant's Name	Conviction Under Sections	Sentence
1. 2. 3. 4. 5. 6.	Manish Thorani, Govinda @ Sheikh Kalim, Ehteshyam Ahmed Khan @ Ayan, Dilshad Ahmed Khan, Vikki Nihal; and Lal @ Mahadev Sharma	364 (A), 120 (B) I.P.C.	Imprisonment for life with fine of Rs.1000/- each and in default of fine amount, to further undergo RI for three months on each count
		411 I.P.C.	One year RI with fine of Rs.500/- each and in default of fine amount to further undergo RI for one month.
7.	Smt. Jahanara Khan and Ku. Saiyyara	368 I.P.C.	Life imprisonment with fine of Rs.1000/- each and in default of fine amount to undergo RI for three months each.

2. Conviction of the appellants is impugned on the ground that without there being any iota of evidence against the appellants, the trial Court convicted and sentenced the appellants as aforementioned and thereby committed an illegality.

3. As per case of the prosecution, on 19.03.2009 at about 8.45 pm, victim P.W.8 Sunil Vaswani was passing near old circuit house, Raipur, by two wheeler vehicle Suzuki Access. He was followed by the appellants Manish Thorani and Lala @ Mahadev Sharma by Scooty, they overtook and stopped the vehicle of the victim. At

the same time one more Maruti Van came, appellants – Govinda, Vikki Nihal and Ayan @ Ehteshyam Ahmed Khan were present in the Maruti Van, they forcibly took him inside the Maruti Van and they covered eyes of the victim by cloth. Manish was leading by Scooty. They threatened him. They were talking by calling their names, i.e., Ayan, Vikki, Lala and Govinda. After sometime vehicle was stationed then out of the aforesaid appellants, one accused person told by naming Ayan to call his father by telephone for change of vehicle. Accused Ayan called his father by telephone and informed about the condition of vehicle and also informed about the place where they were waiting for, i.e. they were awaiting at Jal Vihar. After sometime, one car came, they got down the victim from Maruti Van and got him boarded in the second vehicle, which was in good condition. Thereafter, they proceeded to Saddu. After sometime, they got down the victim from the Car and he was directed to sit in an open place, after one hour again one Car came and they again got him boarded. After 3 – 4 hours, they took him to one house by lift. Female members were present and his legs and hands were tied and he was confined in the house. After some time, tea was provided by some woman, who also facilitated him for toilet. They snatched golden chain with locket of Lord Krishna, golden ring with Panna stone, purse containing Rs. 9,000/- - 10,000/-, Timex golden dial watch, Nokia Mobile. Female accused provided him meals. The Victim was confined in that house. He heard the sounds of some peoples who were compelling the accused persons for opening the door, the accused persons were pointing Pistol. After sometime, door was opened, somebody removed the cloth tied in and around the eyes, thereafter he saw the Police personnel present and he was freed from chains. At that time, five persons were present in the house, out of five persons, one was appellant Dilshad Ahmed, second was appellant Ayan, third was Jahanara, fourth was Saiyyara and fifth Asna. They also threatened to kill him. The Police personnel brought all the appellants with them to Police Station, Civil Lines, Raipur. On 19.03.2009, at about 09.00 pm, P.W.14 Vivek Patel was passing near the place of kidnapping. He noticed the victim. He followed the Maruti Van upto some distance, then he went to Police Station and lodged report vide

Rojnamchasanha Ex.P.21C and P.22C and F.I.R. Ex.P.20. Police personnel reached to the spot where victim was recovered by them on 21.03.2009 at 4.00 am vide Ex.P.28 from the possession of the appellants Dilshad Ahmed Khan, Ehteshyam Ahmed Khan @ Ayan, Smt. Jahanara, Ku. Saiyyara and Ku. Asna Khan from their house.

Alleged Maruti Van used in the commission of offence was seized from Ramesh Singh vide Ex.P.1. Documents relating to Maruti Van were seized from Alakh Rai vide Ex.P.2. Address proof of the appellant – Dilshad Ahmed Khan was obtained from Surya Vihar Resident's Association vide Ex.P.13. Scooter Suzuki Access with documents were seized from the victim Sunil Vaswani vide Ex.P.14. Receipts of purchase of ring, chain, Mobile, Watch Ex.Ps.5 to 7, 16,17 and 18 were seized from the victim vide Ex.P.15. One black colour cloth used for closing the eyes of the victim, Cello tape with cotton, Cello tape, Rs.9,400/- in one brown colour purse were seized from the appellants Ku. Saiyyara Khan, Smt. Jahanara vide Ex.P.29.

Appellant Dilshad Ahmed Khan was taken into custody, he made disclosure statement of Mobile Phone, golden chain with locket, golden ring, wrist watch and purse containing Rs.9,400/- vide Ex.P.35 disclosing the fact that Mobile set is in possession of Ehteshyam Khan, golden locket is in possession of Manish Thorani, wrist watch is in possession of Govinda, Purse and money are in possession of Vikki, golden ring and golden chain are in possession of Lala and amount of Rs.9,400/- is in possession of his wife – Smt. Jahanara. On the basis of aforesaid disclosure statement, Govinda was taken into custody, he made disclosure statement of wrist watch vide Ex.P. 37 and the same was recovered at his instance vide Ex.P.38. Appellant Vikki was taken into custody, he made disclosure statement of purse vide Ex.P.39 and one purse in grey colour, photocopy of the Pan Card and driving licence of Victim Sunil Vaswani were recovered at his instance vide Ex.P.40. Appellant Manish Thorani was taken into custody, he made disclosure statement of Nokia Mobile vide Ex.P.42 and the same was recovered at his instance vide Ex.P.43.

Appellant Manish Thorani further disclosed about the locket and golden chain vide Ex.P.44 and the same were recovered at his instance vide Ex.P.45. Appellant Lala @ Mahadev Sharma was taken into custody, he made disclosure statement of golden ring vide Ex.P.46 and the same was recovered at his instance vide Ex.P.47. Appellant Ahteshyam Ahmed Khan was taken into custody, he made disclosure statement of all the articles with different appellants and a Sim has been recovered from him vide Ex.P.49.

Scooter Suzuki Access and BSNL bill were seized from the spot vide Ex.P.34. Hyundai Car and Scooty Pep were seized from the appellant – Dilshad Ahmed Khan vide Ex.P.36 and document of Scooty Pep was also seized from the appellant – Dilshad Ahmed Khan vide Ex.P.41. Memorandum of speech of appellant Ehteshyam Ahmed Khan was prepared vide Ex.P.10 and P.11.

Articles seized from the appellants were identified by the victim Sunil Vaswani (P.W.8) vide test identification memo Ex.P.19. Speech was recorded vide Ex.P.23 and 24. Tape Recorder was sent for chemical examination to F.S.L. vide Ex.P.25. Nokia Mobile was seized from R.K.Sahu vide Ex.P.26. Tape Recorder was seized from Vipin Raj Walia vide Ex.P.27. Call details were obtained from the concerned Department vide Ex.P.41. Information relating to disconnection of Mobile Numbers were obtained vide Ex.P.42. Information relating to diversion of Mobile numbers were also obtained vide Ex.P.59 & 60.

4. Statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code') were recorded.

5. After completion of investigation, charge sheet was filed before the Court of C.J.M. Raipur, who in turn committed the case to the Court of Sessions Judge, Raipur. The learned Additional Sessions Judge received the case on transfer for trial.

6. In order to prove the guilt of the appellants, prosecution examined as many as

25 witnesses. The appellants were examined under Section 313 of the Code, in which, they denied the circumstances appearing against them and innocence and false implication in crime in question was claimed.

7. After providing an opportunity of hearing to the parties, learned Additional Sessions Judge has convicted and sentenced the appellants as aforementioned.

8. We have heard Mr. J.R.Verma, Mr. Neeraj Mehta and Mrs. Kiran Jain, learned counsel for the appellants at length and perused the judgment impugned and record of Court below.

9. Mr. J. R. Verma, learned counsel for the appellant – Vikki Nihal in Cr.A.No.381/2012, vehemently argued that presence of this appellant has not been proved at the time of the incident by the prosecution beyond shadow of doubt. This appellant has been convicted only on the basis of disclosure statement of purse Ex.P.39 and recovery of purse and photocopy of pan card and driving licence of the victim vide Ex.P.40. As per seizure Ex.P.40, colour of purse is black but as per evidence of PW.19 Sanjay Jadwani, especially in para 19 the purse, which is brown colour and not black, is identified as Article – F as a brown colour purse. He further submits that there is specific inconsistency in seizure and evidence. Except this evidence, prosecution has not collected any evidence to connect the appellant in crime in question. Therefore, conviction and sentence of the appellant – Vikki Nihal is not sustainable in law. He further submits that P.W.23 Shoukat Ali, Investigating Officer, has specifically deposed in his evidence that at the time of seizure of alleged purse, family members of Vikki were present in the house, therefore, it would be difficult to hold that alleged disclosure of material and recovery of the article was exclusively from the possession of the appellant – Vikki Nihal. He placed reliance in the matter of ***Dhanraj alias Dhand vs. State of Haryana, (2014) 6 SCC 745***, in which, the Supreme Court held that in case of only recovery of robbed article and absence of other chain of circumstances, appellants' conviction for commission of

murder and robbery is not sustainable under the law.

10. Mrs. Kiran Jain, learned counsel for the appellant – Manish Thorani in Cr.A.No.397/2012, vehemently argued that appellant – Manish Thorani was not known to the victim. No test identification parade has been conducted by the prosecution. At the time of recovery of victim P.W.8 Sunil Vaswani, appellant was not present in house. Prosecution has further failed to collect any evidence against the appellant – Manish Thorani to connect him in crime in question. Under these circumstances, he is entitled for acquittal.

11. Mr. Neeraj Mehta, learned counsel for the appellants in Cr.A.Nos.383, 420 and 431 of 2012, i.e., Govinda @ Sheikh Kaleem, Ehteshyam Ahmed Khan, Dilshad Ahmed Khan, Smt. Jahanara and Ku. Saiyyara, submits that prosecution has failed to conduct test identification parade to connect the appellants in crime in question. Prosecution has further failed to adduce any evidence to show that the appellants kidnapped the victim for ransom and threatened for causing hurt or death, inter alia, as per evidence of P.W.8 Sunil Vaswani (victim), especially in para – 2 that some boy pointing the gun threatened him that if they will not receive money then they will sell him, therefore, the conviction under Section 364-A of the I.P.C. is not sustainable under the law. He further submits that lady appellants, namely Smt. Jahanara Khan is the house-wife and Ku. Saiyyara is her daughter, both are residing in the house of appellant – Dilshad Ahmed Khan as wife and daughter. They were not known to the victim on any commission of crime, inter alia, they have provided facilities to the victim in a human manner. They have provided the victim tea and meals and also provided space for sleeping, therefore, their conviction and sentence as aforementioned is not sustainable under the law.

12. On the other hand, Mr. Neeraj Mehta, learned counsel for the State opposed the appeal while making submissions that evidence of P.W.8 Sunil Vaswani, ocular and documentary evidence adduced on behalf of the prosecution is sufficient to prove

the fact that all the appellants entered into conspiracy as the members of conspiracy. They participated in kidnapping the victim for demanding ransom. They have snatched the valuable articles of victim, which have been recovered from their possession on the basis of their disclosure statements. Victim was taken into the house of Smt. Jahanara and Ku. Saiyyara. Victim's hands and legs were tied while providing tea and meals. The lady appellants have not objected the same. They were having knowledge about the offence by cooperating in commission of offence. Therefore, by convicting and sentencing the appellants, the trial Court has not committed any illegality.

13. In order to appreciate the arguments advanced by the parties, we have to examine the evidence adduced on behalf of the prosecution. P.W.8 Sunil Vaswani is the person, who has been kidnapped. As per his evidence, on 19.03.2009 at about 8.15 after closing the shop, he was going to his house situated at Civil Lines by two wheeler Suzuki Access vehicle. While crossing C.M. road, he was followed by two persons by Scooty, after overtaking him, they stopped and quarrelled (raised disputes). They were holding Scooty bearing registration No.C.G.04 5791. At the same time, one Maruti Van came, three persons got down from the Maruti Van and there were total five members. All the five members took him inside the Maruti Van. Appellant Manish Thorani was leading the Maruti Van by Scooty. Other appellants were sitting inside the Maruti Van. They were talking by names – Govinda, Vikki and Ayan. Appellant – Govinda covered his eyes by cloth. After 10 – 15 minutes Maruti Van was stationed, then out of five members, one had a discussion with his father for providing other vehicle on account of fault in the Maruti Van. He also had discussion with his father that they were standing near Jal Vihar. After sometime, the victim heard the sounds of stopping of vehicle. He was shifted from Maruti Van to other Car. He has seen two persons, who over took him by their Scooty and three persons, who have been identified as appellants. After shifting him in second Car, one of the accused persons told to take him to Saddu. Thereafter, they proceeded towards

Saddu where they got him down from the Car and directed the victim to sit in an open place. After one hour again he heard the sounds of one coming vehicle and one of the accused told that probably his father has come carrying meals and they took the meals. After sometime, again one vehicle came, he was further shifted in that vehicle. After taking him inside the Maruti Van, the miscreants took his golden chain with locket containing Lord Krishna, golden ring with Panna stone, one Mobile, one purse having Rs.9,000/- - 10,000/-, one Times wrist watch. Thereafter, after sometime they got down the victim from the vehicle and took inside the lift shifted him in one house where lady appellants were also present. His eyes were covered, hands and legs were tied. One of the lady appellants provided tea and meals. She also facilitated for toilet. They further threatened by pointing some object like gun. Thereafter, he heard the sounds of some other persons. After sometime, the door was opened. Some person removed the cloth from his eyes then he saw the Police personnel present as well as other neighbours are also present. Persons present in the house were asked by the police and they told that their names are Dilshad Ahmed Khan, Ayan, Jahanra, Saiyyara and Asna. He was confined in the house of the appellant – Dilshad Ahmed Khan at Surya Vihar Colony. Police have seized papers vide Ex.P.14.

P.W.14 Vivek Patel has deposed that on the same day at about 8.30 pm, when he was passing near C.M. house, he noticed one Maruti Van standing near barricades. 2 – 3 persons were taking a person inside the Van. This witness came to behind the Van, at the same time one accused covered his face with cloth came to enter inside the Van. Then he followed the Van upto some distance but he could not find out the Van, its number plate covered with mud and thereafter he went to Police Station Civil Lines and lodged F.I.R. vide Ex.P.20 and Rojnamchasanaha vide Ex.P.21C & 22C.

14. Defence has cross-examined P.W.14 Vivek Patel, who was stranger to the victim and the appellants. Virtually, he has not put forward his version. Investigating

Officer has not conducted any test identification parade of miscreants but presence of appellants Dilshad Ahmed Khan, Smt. Jahanara, Ku. Saiyyara in the house of Dilshad has been duly established by P.W.23 Shoukta Ali, Investigating Officer, vide Ex.P.28 where appellant Dilshad, Ehteshyam Ahmed Khan, Smt. Jahanara, Ku. Saiyyara and Ku. Asna Khan were present in Qr. No.D-1/5, Surya Vihar, which further finds support from the evidence of P.W.7 Sapan Kumar Bose vide Ex.P.13. Therefore, identity of the appellant – Dilshad Ahmed Khan, Ehteshyam Ahmed Khan, Smt. Jahanara and Ku. Saiyyara is not in dispute. P.W.8 Sunil Vaswani has specifically deposed in para 2 that he has seen the appellants as they were talking with each other by names like Govinda, Vikki, Ayan and Manish, who was riding the Scooty. He has identified the assailants and Dok identification. He has denied the previous dispute with Dilshad in para 8 of his cross-examination. Nothing has been suggested in this regard relating to identity, inter alia, he has specifically deposed the names of the appellants. As per his evidence, he was having complete opportunity to see the appellants at a major incident of his life, in which, he was kidnapped. Therefore, only on the ground that test identification parade has not been conducted, his evidence cannot be brushed aside. Even otherwise, he has specifically deposed about snatching of articles. Disclosure statement Ex.P.35 has been duly proved by P.W.19 Sanjay Jadwani and P.W.23 Shoukat Ali, in which, he has disclosed about Rs.9400/- and also disclosed that which article was taken by which accused. On the basis of aforesaid, disclosure statement of appellant – Govinda has been recorded vide Ex.P.37, in which, he has disclosed about the watch and the same has been recovered at his instance vide Ex.P.38. Wrist watch has been identified vide Ex.P.19 by the victim. Appellant Vikki made disclosure statement of purse, which has been recovered along with photocopy of Pan card and driving licence of victim vide Ex.P.40. Colour of purse has been shown as black in Ex.P.40. P.W.19 Sanjay Jadwani has deposed in para 19 that colour of purse was brown but as per his evidence copy of Pan card and driving licence of victim Sunil Vaswani found inside the purse, this part of evidence remain unchallenged and shows nexus between offence and offenders. On the basis of

disclosure statement of Dilshad, disclosure statement of appellant Manish Thorani was also recorded vide Ex.P.42 and P.44 whereby he has disclosed about golden chain locket and mobile handset vide Ex.P.43 & 45, which have been further identified by the victim vide Ex.P.19. On the basis of disclosure statement of Dilshad, appellant Lala @ Mahadev Sharma was taken into custody, he made disclosure statement of golden ring with Panna stone vide Ex.P.46, which has been recovered at his instance vide Ex.P.47. These facts find support from the evidence of P.W.23 Shoukat Ali and P.W.19 Sanjay Jadwani. Defence has cross-examined the witnesses P.W.23 Shoukat Ali and P.W.19 Sanjay Jadwani, but has not been able to elicit anything in their cross-examination to discredit their testimony to the extent that appellants have made their disclosure statements and as per disclosure statements articles found in their possession were recovered at their instance. Moreover, articles recovered from the appellants have been identified by P.W.8 Sunil Vaswani vide Ex.P.19. The recovery of articles was made within 5 days of the incident. Appellants have failed to offer explanation that how these articles owned and possessed by the victim came into their possession. Even otherwise P.W.8 Sunil Vaswani has clearly deposed about the presence of all the appellants, i.e., five persons were present at the time of kidnapping and other persons were present where he was kidnapped. His evidence further revealed that son of appellant Dilshad Ahmed Khan was regularly contacting with Dilshad during commission of offence. He asked for vehicle and finally he was confined in the house of Dilshad. His hands and legs were tied and his eyes were covered by cloth. He was kidnapped and kept in the house of appellant – Dilshad where Smt. Jahanara and Ku. Saiyyara were present. He was kept for more than 12 hours where Smt. Jahanara and Ku. Saiyyara have provided meals and tea. He was not their relative or guest. Even tying of hands and legs with chain and covering of eyes by cloth was clear and complete indication of commission of offence and despite that Smt. Jahanara and Ku. Saiyyara have not objected the same which clearly reveal that they were party to the offence of kidnapping and were closely connected and associated with the offence. The entire evidence of P.W.8 Sunil Vaswani further

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revealed that his kidnapping was under a plan and kidnappers entered into a conspiracy.

15. As held in the case of *Dhanraj alias Dhand vs. State of Haryana*, (2014) 6 SCC 745 in presence of any chain circumstances and the only evidence of doubtful recovery, conviction for commission of murder and robbery is not sustainable in law, in the present case, prosecution has proved other chain of circumstances including recovery of identified articles, i.e., identity papers and valuable articles of the complainant from the possession of the appellants, which were produced after the victim was freed from the appellants and later the victim has identified those articles vide Ex.P.19. Even otherwise, all the appellants have actively participated in the commission of kidnapping. Therefore, the above case is fully distinguishable to the facts of the present case.

16. After appreciating the available evidence on record, especially in the light of evidence of P.W.8 Sunil Vaswani, P.W.14 Vivek Patel and P.W.19 Sanjay Jadwani, the trial Court has convicted and sentenced the appellants as aforementioned. On close scrutiny of the evidence available on record, we do not find any illegality and infirmity in the judgment impugned requiring interference by this Court.

17. Consequently, all the criminal appeals, being devoid of merit and substance, are liable to be and are hereby dismissed.

18. Appellants – Smt. Jahanara Khan and Ku. Saiyyara in Criminal Appeal No.383/2012 are on bail. They shall surrender before the trial Court to serve remaining sentence. The trial Court shall take appropriate steps for sending them to jail to serve remaining sentence imposed upon them.

Sd/-
T.P. Sharma
Judge

Sd/-
Inder Singh Uboweja
Judge