

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1065 of 2012

Reserved on 20-8-2018

Delivered on 1-10-2018

- Rampreet Uranw S/o Tele Uranw aged about 22 Years
occupation Agriculture R/o Village Bada Katra, Thana Dumri,
Distt. Gumla Jharkhand ,

---- Appellant

Versus

- State Of Chhattisgarh Through, Police - Thana Bagicha, Distt. -
Jashpur C.G.

---- Respondent

&

CRA No. 481 of 2013

- Anup Ekka S/o Pitrus Ekka aged about 20 Years, occupation
Labour R/o Village Malam Nawatoli, Thana Chainpur, Distt.
Gumla Jharkhand.

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Jashpur, Distt.
Jashpur C.G.

---- Respondent

For Appellant in CRA : Mr. Sanjay Agrawal, Advocate.
No.1065 of 2012

For Appellant in CRA : Mr. Ashok Patil, Advocate
No. 481 of 2013

For Respondent/State : Mr. Sanjeev Pandey, Govt Advocate

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)
(CAV Judgment)

1. Since both the aforesaid appeals arise out of same incident, they are heard analogously and are being disposed of by this common judgment.
2. Both the appeals are preferred under Section 374 (2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 24-9-2012 passed by the Sessions Judge, Jashpur, District Jashpur in Session Trial No. 28 of 2012 wherein the said Court convicted the appellants for commission of offence under Sections 364(A) and 120(B) of IPC and sentenced them to undergo RI for ten years and fine of Rs.15,000/- on each count with default stipulations. In addition to that, appellant Anup Ekka in CRA No. 481 of 2013 has also been convicted under Section 25 (1-b)(b) of the Arms Act, 1959 (for short, "the Act, 1959") and sentenced to undergo RI for five years and fine of Rs.1000/- with default stipulations for conspiracy of kidnapping one Santosh Lakda on 5-11-2011 for ransom and for keeping illegal fire arm.
3. As per prosecution case, present appellants and some other co-accused kidnapped Santosh Lakda for demand of ransom and appellant Anup Ekka was having Desi fire arm without licence on 5-11-2011 while the said victim was going to village Ashta (Jharkhand) and he is released after getting ransom of

Rs.1,00,000/- . The matter was reported and investigated and after completion of trial, the trial Court convicted and sentenced the appellants as mentioned above.

4. Learned counsel appearing for the appellants submits as under:

- i) Version of PW/1 Gregori Lakda, PW/2 Santosh Lakda and PW/3 Lal Sai is not reliable as they exaggerated their version with their earlier statement recorded under Section 161 of the Code of Criminal Procedure.
- ii) There is no direct evidence regarding kidnapping of Santosh Lakda and articles recovered from the appellants are not belonging to them.
- iii) The trial Court overlooked the material contradictions and omissions and came to wrong conclusion which is liable to be set aside.
- iv) Telephonic conversion as alleged against the appellant Rampreet is not legally admissible evidence and therefore, there is nothing on record to incriminate the appellant Rampreet with commission of offence

- v) No fire arm was seized from appellant Anup Ekka even then he has been convicted for offence under Section 25 of Arms Act.

5. As against the aforesaid submissions, State counsel submits that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.
6. I have heard learned counsel for the parties, perused the judgment impugned and record of the trial court.
7. The first question for consideration of this court is whether victim was kidnapped by the appellants for ransom and whether both the appellants agreed to do such illegal act.
8. PW/2 Santosh Lakda is victim of the case. As per version of this witness he started from his house at 9.00 a.m. and reached to Navin Primary School, Karamtona at 10.00 am. He further deposed that he was going to village Astha for bringing his sister namely Sheelmanti. He was going on his motor-cycle and when he reached the place between Cheekpaat and Madhwa, three persons stopped him and enquired him about his regular earning. After enquiry they dragged him towards forest and took Rs.550/- from his pocket and thereafter they enquired mobile

number of his brother Gregori Lakda and called him on telephone and informed him regarding kidnapping of this witness and demanded Rs.5,00,000/- as ransom for his release. Again they dragged him into inner forest and at about 5.00 pm his brother Gregori Lakda reached there and gave Rs.1,00,000/- to kidnappers. This witness has identified the appellant Anup Ekka as kidnapper, but he did not identify the appellant Ram Preet as kidnapper of the incident. Version of this witness is supported by version of Gregori Lakda. Again it is supported by the version of PW/4 Dev Prasad Bhupal who was Executive Magistrate at Jashpur on 28-2-2012. As per version of this witness, test identification was conducted at District Jail, Jashpur and in that identification five other persons were mixed with appellant Anup Ekka and out of six persons Santosh Lakda identified Anup Ekka as culprit of the incident. All the witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of appellant Anup Ekka. His participation in commission of crime is established and it is also established that this appellant is amongst other three accused who committed conspiracy of kidnapping.

9. True it is that there may be some minor discrepancies in the statements of the witnesses, but there is no material contradiction regarding commission of offence by the appellant

Anup Ekka, therefore, argument advanced on behalf of the appellant Anup Ekka is not acceptable. His involvement is established by objective evidence and therefore, the ground raised in appeal (CRA No. 481 of 2013) for commission of offence under Section 364 (A) and 120-B of IPC for the appellant Anup Ekka is not sustainable.

10. So far as charge under Section 25(1b)(b) of the Arms Act, 1959 against the appellant Anup Ekka is concerned, no fire arm was seized from him though it is stated by Santosh Lakda that he was having country made fire arm with him. For establishing charge under Section 25 of the Act, 1959, it has to be established that any such fire arm was found fit to fire, but in absence of seizure of any fire arm, any ballistic report is not produced before the trial Court, the same is not proved. Again for taking cognizance under Section 25 of the Act 1959, it is compulsory that sanction must be granted by the District Magistrate under Section 39 of the Act, 1959 for prosecution. In the present case, no such sanction was granted by the District Magistrate and therefore, cognizance of offence under Section 25 of the Act, 1959 is not permissible. In view of the above, charge under Section 25(1-b) (b) of the Act 1959 is not proved against the appellant Anup Ekka.

11. So far as appellant Ram Preet is concerned, victim Santosh Lakda has not identified him as culprit of the incident. It is not proved that the appellant Ram Preet was in the company of Anup Ekka at the time of commission of offence. As per version of Gregori Lakda (PW/1), appellant Ram Preet was talking in telephone , but it is not clear with whom he was talking in telephone and what was the subject of his conversation. Though (PW/5) Jitendra Gupta who is Sub Inspector of Crime Branch, Jashpur deposed that he submitted the call details report of two SIM numbers, but the same is not sufficient to establish that any call was made in connection with kidnapping for ransom.
12. It is settled law that there is long distance between may be true and must be true. Prosecution is required to prove its case under the head “must be true”. Again, graver the offence, stricter the proof, therefore, only submission of call details report is not sufficient to establish that appellant Ram Preet had agreed with any of the kidnappers to participate in crime.
13. Looking to the evidence adduced by the prosecution, charge as levelled against appellant Ram Preet is not established. Accordingly, the appeal (CRA No. 1065 of 2012) filed by appellant Ram Preet is allowed. Conviction and sentence passed by the trial Court against him is set aside and he is acquitted of

the charges framed against him. He is reported to be in jail. He be set at liberty forthwith, if not required in any other case.

14. So far as appeal (CRA No. 481 of 2013) filed by appellant Anup Ekka is concerned, conviction and sentence passed by the trial Court against him for commission of offence under Section 364-A and 120-B of the IPC is not liable to be interfered with and same is affirmed. His conviction and sentence under Section 25(1-b)(b) of the Arms Act, 1959 is set aside and he is acquitted of the said charge framed against him.
15. With the aforesaid modification, CRA No. 481 of 2013 filed by appellant Anup Ekka is partly allowed. As the appellant is reported to be in jail, therefore, no further order for his arrest etc., is necessary.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju_