

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 618 of 2002**

Judgment Reserved On : 04/07/2018

Judgment Delivered On : 16/11/2018

1. Parvez Khan, S/o Kamar Khan, aged about 24 years, Pan Supplier, Takiyapara, Durg (CG)
2. Shakeer, S/o Sarvar Khan, aged about 25 years, Taxi Driver, Takiyapara, Durg (CG)
3. Hisam, S/o Nizam, aged about 26 years, Fruit Seller, Takiyapara, Durg (CG)
4. Abdul Sayeed, S/o Abdul Gaffar, aged about 26 years, Fruit Seller, R/o Gram Varad, P.S. Varad, District Amrawati (M.S.)

---- Appellants

Versus

- State Of Chhattisgarh, through P.S. Somni, Tehsil & District Rajnandgaon (CG)

---- Respondent

For Appellants : Smt. Fouzia Mirza, Advocate.
For Respondent : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Smt. Vimla Singh Kapoor, JJ

C A V JUDGMENT

The following judgment of the Court was delivered by Prashant Kumar Mishra, J :-

1. All the four appellants would challenge their conviction under Sections

364-A and 365 of the IPC and sentence of RI for life with fine of Rs.500/-, in default additional RI for 2 months and RI for 7 years with fine of Rs.500/-, in default, additional RI for 2 months, respectively.

2. The appellants have allegedly kidnapped victim Sudhir Manek for ransom with intent and secretly and wrongfully confining him from the date of kidnapping i.e. 26.10.99 from Bhilai till 6.11.99 at village Jarad (Maharashtra). The prosecution also alleged commission of offence by appellant No.4 Abdul Sayeed @ Abbu for committing offence under Sections 25 & 27 of the Arms Act, 1959, as he was allegedly found in possession of country made revolver (*Desi Katta*) and cartridges.
3. As per the prosecution, in the evening of 26.10.99, Sudhir Manek was driving Ambassador car No.MP24-G/2147 from Bhilai to Rajnandgaon. When he reached near village Tedesara at about 5 pm, one white Maruti Car overtook the Ambassador Car near Sinha Dhaba, Tedesara. Two accused persons namely, Shakir and Parvej @ Chhotu alighted from Maruti Car and pointed knife and country made revolver on the victim, criminally intimidating and making him to sit on the back seat of Ambassador Car and tied his mouth by clothes. Two other accused namely, Hasan and Abdul @ Abbu also sat in the Ambassador car and all of them left the place. After some distance, they left Ambassador car and shifted Sudhir in white Maruti car and travelled through different routes in that car for about 4-5 days. On 5th day, Sudhir was taken to the house of one Kamla of village Jarad where they stayed for about 4-5

days. During this period, the accused persons pressurized Sudhir to write a letter to his father for satisfying demand of the accused persons. This letter was taken out by Baba @ Shakir; he returned back to Jarad in Ambassador car after 3 days (after delivering the letter).

4. During investigation of some other crime, SI Dilip Badkul of Police Station Varad got secret information that 4-5 persons have come in a car and are staying in the house at village Jarad. SI Dilip Badul raided the house of Kamla at village Jarad where all the four accused persons were present and victim Sudhir was sleeping with his eyes tied by clothes (*Patti*). When Dilip Badkul was interrogating the accused persons, the victim awoke and enquired from Dilip as to whether he is a policeman. On Dilip Badkul's admission that he is a policeman, the victim informed that he has been abducted by the accused persons on 26.10.99. All the four accused persons were taken into custody and the car bearing No.MP-24W/2674 was seized. The information was sent to Rajnandgaon police on which the police personnel at Police Station Varad became aware that for kidnapping of victim Sudhir, Crime No.143/99 has been registered at Police Station Rajnandgaon. Inspector Dwivedi of Police Station Rajnandgaon reached Varad Police Station on 7.11.99 and obtained custody of the accused persons as well as victim Sudhir and brought all of them to Rajnandgaon on 7.11.99 itself.
5. FIR at Police Station Pulgaon, Durg was lodged at 12.30 am during intervening night of 26th and 27th October, 1999 regarding kidnapping of

the victim. Ambassador car of the victim was found in an abandoned condition at village Tedesara on 28.10.99. Since the place of abduction was within the jurisdiction of PS Somni, Rajnandgaon, case diary was transferred to the said Police Station on 29.10.99. Memorandum statements of the accused persons were recorded on 8.11.99 vide Ex.-P/23, P/24, P/25 & P/26 respectively and on the said basis, golden ring of Sudhir was recovered at the instance of accused Parvej vide Ex.-P/18. One watch was recovered at the instance of accused Hisam vide Ex.-P/19. Similarly, one country made revolver was recovered at the instance of accused Shakir vide Ex.-P/20 and another 0.315 bore country made revolver with cartridges was recovered from accused Sayeed vide Ex.-P/21. Ambassador car No.MP-24W/2874 was seized from the premises of PS Varad (Maharashtra) on 10.11.99. After seeking permission from the District Magistrate, Rajnandgaon for prosecution under the Arms Act, 1959, charge sheet was filed.

6. In course of trial, the prosecution examined 20 witnesses to bring home the charges against the accused persons. The prosecution has also proved FIR, memorandum statements and seizure of articles including the letters asking the father of the victim to satisfy the demand of ransom amount etc. The accused persons denied to have committed any offence. According to them, all the accused persons are known to each other. Parvej, Hisan and Shakir are resident of the same locality in Durg. Shakir is a taxi driver whereas Parvej and Hisan are fruit sellers.

Abdul Sayeed is the resident of Jarad (Maharashtra) and he is also a fruit seller. His relatives reside at Takiapara, Durg, therefore, they frequently visit Durg. This accused had requested the other accused persons that if they wish to obtain lease of Orange Farm, he can arrange the same. They would further raise a defence that one Raza Khan of Takiapara, Durg had booked Ambassador car for his friend Altaf (Insurance Agent) of Chhotapara, Raipur for 4-5 days from 4.11.99, therefore, at about 9-10 pm on 3.11.99 Shakir and Parvej came from Durg to Rajnandgaon, met Akhtar Bhai Taxiwalla, stayed overnight at Rajnandgaon, booked Ambassador car No.MP-24W/2847 of Akhtar Bhai in the morning of 4.11.99 and reached Durg where they came to know that booking has been cancelled. But they went to Abdul Sayeed of village Jarad for purchasing Orange Farm and reached Jarad on 5.11.99. When after finishing their work at Jarad they were returning to Rajnandgaon on 6.11.99, the Police of Varad Police Station stopped them and taken them into custody. At that time, victim Sudhir was already sitting in the Police Station. Thus the accused persons have made a story that they have been falsely implicated and framed in the offence.

7. The trial Court has believed the prosecution case and has convicted all the accused persons for offence under Sections 364-A and 365 of the IPC. Accused Shakir @ Baba and Abbu @ Abdul Sayeed have been acquitted of the charge under Sections 25 and 27 of the Arms Act, 1959.

8. Smt. Fouzia Mirza, learned counsel for the appellants would submit that there is no evidence satisfying ingredients of offence under Section 364-A of the IPC and for the other offence also, the evidence adduced by the prosecution is not trustworthy, therefore, the appellants deserve to be acquitted. She would point out discrepancy and contradictions in the evidence concerning ransom letters with further submission that handwriting expert's report (Ex.-D/3) favours the accused. It was further argued that there are different dates/versions as to when ransom letters were received and the narration with respect to seizure of ransom letters is also different. According to learned counsel, ransom letters were not exhibited earlier but were introduced at later stage of trial, after the trial Court allowed the application under Section 311 CrPC. Learned counsel would lastly submit that discrepant evidence should be jettisoned and the accused persons deserve to be acquitted.
9. Per contra, learned State Counsel would support the impugned conviction. He would submit that from the defence raised by the accused themselves, it is proved that they were present at village Jarad and victim Sudhir was with them at the time Varad Police arrested them. Any discrepancy in the letter viz a viz seizure memo is only procedural which does not materially and substantially affect the prosecution case. Therefore, the Appeal has no substance.
10. The main thrust of argument raised by learned counsel for the appellants is against the trial Court's finding in respect of offence under

Section 364-A of the IPC. Therefore, while considering as to whether offence of kidnapping or abduction is made out, we shall mainly discuss whether the prosecution has successfully proved the ingredients of offence under Section 364-A of the IPC against the appellants.

11. Section 364-A of the IPC reads thus:-

“364A. Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

12. To bring home the charge under Section 364-A of the IPC, the prosecution has to prove that (i) the accused persons kidnapped or abducted the victim; (ii) have kept him in detention after such kidnapping or abduction, and (iii) threatened to cause death or hurt to such person or his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel any person to do or abstain from doing any act or to pay a ransom. Thus threatening to cause death or causing hurt or death to compel to pay ransom is one of the main ingredients of the offence without which Section 364-A of the IPC would not be made out. It is for the reason that mere kidnapping or abducting with intent to secretly and wrongfully confining a person is a separate offence under

Section 365 of the IPC.

13.(PW-3) Madhukant, who has lodged FIR (Ex.-P/3) on 26.10.99 is the father of victim Sudhir (PW-18). Madhukant has proved the FIR. After 3-4 days of the incident, this witness received a letter by post and 8 days thereafter he received another letter. Both the letters were handed over to the police but initially the record contained only one letter although two letters were seized vide seizure memo Ex.-P/5. The letter initially exhibited was marked as Ex.-P/4. During cross-examination, he firstly admits that both the letters were written in Inland letter but subsequently he would say that both the letters were received in envelope. He would further admit that he received the letter (Ex.-P/4) (after 3-4 days of the incident i.e. about on 30th October, 1999), but the police recovered this letter after 10 days thereafter, which means the letter (Ex.-P/4) was recovered on or about 9.11.1999. This witness was further cross-examined after the application under Section 311 of the CrPC moved by the prosecution was allowed. In subsequent cross-examination, he would submit that the letter (Ex.-P/4) was received in an envelope marked as Article 'H' and one more letter was received in an envelope having address 'Ratan Shri Shivji' which was marked as Article 'F'. It contained one more small envelope carrying the name of this witness Madhukant Manek, which was marked as Article 'G' and the letter kept inside this small envelope was marked as Article 'E', which was written in Hindi and Gujrati. He admits handwriting of

Sudhir over the letter Article 'E'. In this letter, Sudhir (victim) has requested that the demand made by the accused should be fulfilled. Otherwise, they may have to repent later on. During further cross-examination, he states that he had received one more letter Article 'H' inside the envelope Article 'G'. In this letter there was demand of Rs.50 lakhs. However, Article 'H' is the envelope in which first letter (Ex.-P/4) was received by this witness, as stated in paras-13 & 16 of his cross-examination. Therefore, this witness is not sure as to whether both the letters were received on the same day being kept in small envelope Article 'G' or they were received in 2 separate envelopes on two separate dates. If the first part of the statement is believed, the letters were received on two different dates having much interval and not on the same day, in the same envelope as stated later on in para-17. In this para, PW-3 would further admit that both the letters were handed over to the police on the same day after the victim was recovered and he returned to the house. It would mean that recovery of these letters were made after 7.11.99 when Sudhir returned to his house, whereas seizure memo (Ex.-P/5) by which the letters were recovered was prepared on 5.11.99. This witness is thus making a statement which is contrary to the seizure memo prepared by the police, making the entire story of recovery of the letters doubtful. Interestingly, this witness would again admit in further cross-examination that the letters were received by him on separate dates and ultimately in para-21, he would make a statement that he has received 3 letters of which one single letter was received

earlier and subsequently 2 letters were received in one envelope. If this witness had received 3 letters, there was no reason for the police to have produced only 2 letters with the charge sheet or subsequently after the application under Section 311 of the CrPC was allowed.

14. We shall now concentrate on the statement made by the victim himself, who has been examined as PW-18. After narrating the entire incident and naming the accused as the persons who kidnapped him and took him to Jarad, he would state that he had written one letter in Hindi and Gujrati. From his statement, it would appear that this letter in Hindi and Gujrati Article 'E' was written by him on or about 2.11.99, because he states that 3 days after writing of this letter, one of the accused came back and thereafter on the next day Varad Police recovered him. The accused having been recovered on 6.11.99, probably the date 3-4 days prior would be 2.11.99. This statement is contrary to the statement of PW-3, who has stated that he had received first letter after 4 days of the incident and the second letter 8 days thereafter. Victim Sudhir would further state that he has never disclosed to lady Kamla Bai (PW-7) that the accused persons are threatening him in connection with demand of ransom amount. He would further state that the letters which the accused persons had obtained from him were handed over to them. When he reached Rajnandgaon, he enquired from his family members as to whether they had received any such letter which was handed over by him to the accused persons, the family members stated that they have

not received that letter but they have received some other letter. If this statement is believed, the letter written by him in Hindi and Gujarati (Article 'E') was not received by his family members. In respect of identity of the accused persons, the victim would state in para-32 and 33 of the deposition that he was not previously acquainted with them and he came to know about their names when they were speaking to each other during his captivity. He denies that he was never called by the Rajnandgaon Police to identify the accused persons.

15. In further cross-examination, the victim has owned the letter Article 'E' written in Hindi and Gujarati. He would also admit that he had written only one letter Article 'E' after 7-8 days of his kidnapping. Contrary to his statement in para-29 that his family members informed him that they had not received any letter written by him, the witness would make opposite statement in para-39 that they had received letter written by him and had also received other letters.

16. (PW-20) Harsukh Lal @ Himmat Bhai is the person to whom envelope Article 'F' was addressed. It is this envelope which contained another small envelope Article 'G' inside which the letter Article 'E' (in Hindi & Gujarati) was found. This witness is signatory to the seizure memo (Ex.-P/5) by which both the letters i.e. Ex-P/4 and Article 'E' were seized. However, this witness would admit in para-5 of deposition that at the time of preparing seizure memo (Ex.-P/4), only one letter was seized by the police.

17. SP Mishra (PW-19) is the Investigating Officer. He has proved seizure memo (Ex.-P/5). However, he admits that no TI parade was conducted for identification of the accused persons. He also says that the letter seized vide Ex.-P/5 was for demanding ransom amount of Rs.50 lakhs. The envelope which was sent for opinion to the handwriting expert is marked as Article 'D' and the letter kept inside was written in Hindi and Gujrati which was earlier marked as Article 'E'. However, in this letter Article 'E', there is no demand of ransom amount of Rs.50 lakhs. The first letter (Ex.-P/4) contained demand of ransom amount of Rs.50 lakhs, however, it is not signed by any person nor it was sent to the handwriting expert for opinion. It is this letter which was first received by the victim's father.

18. On the basis of above discussed evidence, the prosecution does not appear to have successfully proved that any ransom amount was demanded by the accused persons by writing a letter in their own handwriting because first letter (Ex.-P/4), which contains demand of Rs.50 lakhs, is not signed by any accused nor it was sent for opinion to the handwriting expert, as stated by the IO in para-26 of his deposition. The second letter Article 'E' written in Hindi and Gujrati does not contain demand of any specific amount. It only says that if the demand is not satisfied, they may have to repent later on. Moreover, there is no statement by the victim that the accused persons ever threatened him to cause death or hurt nor there is allegation that conduct of the accused

gave rise to a reasonable apprehension in the mind of the victim that he may be put to death or hurt. It is also significant to notice that there is no evidence that any of the accused persons tried to call or meet the family members of the victim in connection with demand of ransom amount. Thus ingredients of offence under Section 364-A of the IPC is not proved.

19. While reaching to the above conclusion, we may profitably draw support from the judgments rendered by the Division Bench of the Andhra Pradesh High Court in the matter of **Jaganatham Ravi Vs. State of A.P.** {2014 CRLJ 4782} and that of the Madhya Pradesh High Court in the matter of **Durga Shankar Alias Durgalal & Ors Vs. State of Madhya Pradesh** {2006 CRLJ 2494}.

20. Insofar as offence under Section 365 of the IPC is concerned, there is material evidence in the form of statement of the victim and identification of the accused persons made by him during his evidence that it was the accused persons who kidnapped and took him to Jarad (Maharashtra) and held him in captivity till 6.11.99. The defence raised by the accused persons that they are not involved in the offence does not inspire confidence. In view of the evidence on record, the accused persons have rightly been convicted for offence under Section 365 of the IPC.

21. Resultantly, the Appeal is allowed in part. Conviction and sentence imposed upon the appellants under Section 364-A of the IPC are set

aside. However, conviction under Section 365 of the IPC is maintained and the Appeal as against this conviction is dismissed.

22.Learned counsel for the appellants would submit that the accused persons have remained in jail from 8.11.99 till 24.10.05 (Appellant No.3 Hisam); till 2.12.05 (Appellants 1 & 2 Parvez Khan and Shakeer) and till 8.5.2006 (Appellant No.4 Abdul Sayeed) when they were directed to be released on bail in this appeal. Thus, they have already remained in jail for more than 6 years. In view of the evidence that they have not caused any hurt to the victim nor threatened him in any manner, the sentence may be reduced suitably.

23.In view of the fact that the appellant No.3 has undergone about 6 years of jail sentence, while appellants No.1 & 2 have undergone more than 6 years and appellant No.4 has undergone more than 6½ years of jail sentence, we are of the opinion that the sentence already undergone by them is sufficient for offence under Section 365 of the IPC. Accordingly, sentence imposed upon the appellants for offence under Section 365 of the IPC is reduced to the period already undergone by them. The appellants are on bail. Their bail bonds shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC. They shall appear before the higher Court, as and when directed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Vimla Singh Kapoor)

HEADLINES

Threat to cause death or hurt to the person kidnapped not established by the prosecution. Offence under Section 364-A IPC would not be made out.