

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 431 of 2012**

- Lala @ Mahadev Sharma S/o Santosh Sharma, age 19 years, R/o Indira Chowk, Near Gupta Complex, Shyam Nagar, Thana - Telibandha, Raipur (CG)

---- Appellant**Versus**

- State of Chhattisgarh Through - Aarakshi Kendra Kotwali, District Raipur (C.G.)

---- Respondent

For Appellant : Shri Raza Ali and Chakresh Tiwari,
Advocates.
For Respondent/State: Shri Ramakant Mishra, Dy. A.G.

**D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment On Board**03.12.2018****Per Manindra Mohan Shrivastava, J**

01. This appeal is directed against the impugned judgment of conviction and order of sentence dated 04.04.2012 passed by learned 6th Additional Sessions Judge, Raipur, District Raipur (C.G.), in S.T. No.119/2009 whereby and whereunder appellant Lala @ Mahadev Sharma has been held guilty for commission of offence and sentenced as described below :-

<u>CONVICTION</u>	<u>SENTENCE</u>
Under Section 364 (A) IPC	R.I. for life with fine of Rs.1,000/- and in default of payment to further undergo R.I. for 3

	months.
Under Section 120 (B) IPC	R.I. for life with fine of Rs.1,000/- and in default of payment to further undergo R.I. for 3 months.
Under Section 411 IPC	R.I. for one year with fine of Rs.500/- and in default of payment to further undergo R.I. for 1 month.

02. The prosecution story, leading to conviction of the appellant is that Vivek Patel (PW/14), a passerby, lodged report in the police station in Ex.P/20 stating therein that on 19.03.2009 at 08.45 PM, while he was going to his house, he saw a light blue colour Maruti Van standing and its headlights were on as also the engine, and he also saw that two persons were pushing another person in the Maruti van and the faces of these two persons were covered. There was one person who was also standing nearby and his face was also covered. After forcibly pushing the person into the van, the van moved on and he (PW/14) saw a Suzuki Access moped lying on the road. It was also recorded in the FIR (Ex.P/20) that thereafter, informant went up to some distance to chase the Maruti Van and finally the matter was reported to the police station. Further case of the prosecution is that after some time, it was revealed that one Sunil Vaswani (PW/8) was kidnapped, when his brother Ravi and other persons came to the police station. It is the case of the prosecution that calls for ransom were made on the mobile phone of other witnesses, who are the family members of the kidnapped victim, demanding Rs. 50

Lac. Taking a clue from the call details, the police conducted raid in the house of one of the accused Dilshad Ahmad wherefrom victim Sunil Vaswani (PW/8) is said to be recovered. According to the prosecution, as many as 08 accused persons were involved in the incident. According to the prosecution, present appellant Lala @ Mahadev along with co-accused Manish Thorani was on the scooty and they intercepted and stopped the vehicle in which, kidnapped Sunil Vaswani (PW/8) was going and entered into a quarrel and then Maruti van arrived at the spot, Sunil was kidnapped by forcibly pushing him into the van and he was taken away and kept in the confinement in the house of co-accused Dilshad, until the kidnapped victim was rescued by the police team.

03. The learned trial Court held accused Manish Thorani, Govinda @ Sheikh Kaleem, Ehtesham Ahmad Khan @ Ayan, Dilshad Ahmad Khan, Vicky Nihal and Lala @ Mahadev (present appellant) guilty of commission of offence under Sections 364 (A), 120 (B) IPC and sentenced them life imprisonment along with default sentences. The two other accused namely Smt. Jahan Aara Khan and Ku. Sayyara were also convicted and sentenced life imprisonment holding them guilty of commission of offence under Section 368 IPC.

04. All the accused persons including the present appellant had preferred appeals before this Court in Cr.A.Nos. 381/2012, 383/2012, 397/2012, 420/2012 and 431/2012. All these

appeals were decided by a common order dated 4th March, 2015 and their appeals were dismissed.

05. Appellant herein Lala @ Mahadev, thereafter, filed an appeal before Hon'ble the Supreme Court. Vide order dated 27.01.2017, the appeal of the present appellant Lala @ Mahadev Sharma was allowed, the order dated 04.03.2015 passed by this Court in Cr.A.No.431/2012 in so far as present appellant is concerned, was set aside and the matter has now been remitted to this Court for hearing afresh after affording an opportunity of hearing to the appellant, though without interfering with the findings of this Court in other appeals. Their Lordships in the Supreme Court were of the view that the appellant entitled to be afforded an opportunity of hearing to put-forth his submissions.

06. Learned counsel for the appellant argued in extend that in so far as conviction of the appellant, based on the evidence of identification and recovery is concerned, is unsustainable in law because, both identification as well as recovery of looted article are highly doubtful. His argument is that there is inconsistency and contradiction in the prosecution evidence with regard to appearance of the accused persons who are alleged to have pushed kidnapped victim Sunil (PW/8) into the van. According to the victim (PW/8), he could see the person who had kidnapped him and while he was being thrown into the van and, thereafter, taken away until his eyes were

closed. However, the FIR informant, an independent witness (PW/14), has emphatically stated in his evidence that those, who were pushing the victim into the van, and involved in kidnapping, had their faces covered and, therefore, despite there being ample light, he could not recognize their faces. Learned counsel for the appellant would submit that because of this contradiction in the evidence of Sunil Vaswani (PW/8) and Vivek Patel (PW/14), the identification of the appellant must be held doubtful particularly when the prosecution has chosen not to hold identification parade soon after the arrest of the accused including present appellant Lala @ Mahadev.

07. The next submission of learned counsel for the appellant is that the prosecution has come out with the case of recovery of a golden ring with precious stone (Panna) alleged to have been looted, and seized from the possession of the present appellant, vide Ex.P/47, which also is highly doubtful because firstly the seizure witness does not say that the ring was recovered from any particular place in the residence of this appellant, and secondly the prosecution evidence with regard to identification of the golden ring by the kidnapped victim Sunil Vaswani (PW/8) itself is highly doubtful. Learned counsel for the appellant would submit that according to the prosecution itself, at the time of recovery of kidnapped victim Sunil Vaswani (PW/8), the present appellant was not present in the house where the victim was kept in confinement. This,

according to him, was another circumstance why test identification parade (T.I.P.) was extremely necessary to clear the doubt and translate suspicion into truth to convict the present appellant. He would also submit that even the prosecution witness Sanjay Jaadwani (PW/19), who was examined to prove the disclosure statement of the appellant and so called seizure of the looted ring, has stated that the recovery was made from accused Govinda @ Sheikh Kaleem, whereas the name of the present appellant is Lala @ Mahadev Sharma. Lastly, it is submitted that even according to the prosecution, it is not a case that appellant Lala @ Mahadev Sharma had demanded Rs.50 Lac so as to say that call for ransom was given by the present appellant, therefore, such shaky evidence of doubtful identification on the dock could not be made a basis to hold the appellant guilty and, therefore, the appellant may be acquitted by giving him benefit of doubt. In support of his submission, learned counsel for the appellant placed reliance on the judgments in the cases of **Jadunath Singh & another v. The State of U.P.¹**, **Bhagwan Singh & others v. State of M.P.²** and **Devinder Singh & others v. State of Himachal Pradesh³**.

08. On the other hand, learned counsel for the State would submit that as far as the present appellant is concerned, according to the prosecution case and according to the

1 1907 (3) SCC 518

2 (2003) 3 SCC 21

3 (2003) 11 SCC 488

evidence of kidnapped victim Sunil (PW/8), his role was that of the person who was sitting on the scooty which had intercepted the victim and had entered into quarrel, therefore, there is no doubt in so far as identification of the present appellant is concerned, as the evidence of Vivek Patel (PW/14) is only confined to those who were seen pushing the victim (PW/8) into the van and, in-fact, Vivek Patel (PW/14), according to his evidence, was a passerby, who arrived at the place of incident after some time. Therefore, there is no inherent contradiction in the evidence of victim Sunil Vaswani (PW/8) and Vivek Patel (PW/14). Learned State counsel next submits that merely because test identification was not held, if otherwise, the evidence of victim Sunil Vaswani (PW/8) and Vivek Patel (PW/14) is reliable, dock identification is sufficient to bring home guilt. He would further argue that the evidence of recovery of ring on the disclosure statement given by the appellant to the Investigating Officer has been proved from the evidence of independent witness Sanjay Jaadwani (PW/19) and, therefore, fully corroborates the evidence of Investigating Officer who had deposed in the Court regarding recovery of ring from the residence of the present appellant, duly identified in the presence of the witnesses, by the victim (PW/8). As the recovery of the ring was soon after the incident, as soon as the victim was recovered, failure on the part of the appellant to explain how he came of the possession of the golden ring with precious stone therein, is

an adverse circumstance pointing towards his guilt as held in the case of **Ganesh Lal v. State of Rajasthan**⁴.

09. We have heard learned counsel for the parties and perused the records.

10. So far as the identification of the present appellant is concerned, the appellant has been identified on the dock during trial by victim Sunil Vaswani (PW/8). It is also clear that the present appellant was not known to the victim prior to the date of incident, which fact has been clearly elicited in his cross-examination. Sunil Vaswani (PW/8), the victim, having identified the accused in the Court which included the present appellant, has stated that his evidence is that while he was returning home after closing his shop, on the road, at about 8.15 PM, a scooty came by his side and started moving along with him until that intercepted his vehicle and stopped. He says that after overtaking and stopping him, two boys sat on that vehicle, started quarreling with him and at that point of time, a Maruti van came and stopped by his side from which three boys came out and he was thrust into the van. He further states that out of two boys, who had come on the scooty, one of them was escorting the van and was being driven by accused Manish and other boys sitting on the scooty, namely, Lala had come in the van along with other persons. The evidence of this witness from the point of time he was intercepted until he was thrust into the vehicle and the

4 (2002) 1 SCC 731

vehicle started moving, has been subjected to a detailed cross-examination and victim has affirmed that he had very clearly seen the number of scooty also. He has denied suggestion that those who came out of the Maruti van had covered their faces. Further, in his cross-examination, a discrepancy with regard to total number of persons, who were involved in pushing him into the vehicle, has also been elicited. But then, this witness has denied suggestion regarding the faces of those, who had pushed him into the vehicle, were covered.

11. Vivek Patel (PW/14) is the FIR informant. He was a passerby, a student. He deposed that when he was returning from the temple, he saw a van standing and its light was on his face. He saw that two or three boys were pushing another boy into the van. Thereafter, he came behind the van and at that time one boy came covering his face with a cloth and sat inside the van and then the van started moving. According to this witness, though he chased the van, finally he lost the sight and he also could not see the number and then he had reported the matter to the police and FIR in Ex.P/20 was recorded. He has proved his signature. In the cross-examination, he has stated that those 2-3 boys had their faces covered, therefore, despite sufficient light on the spot he could not identify them. His statement that after crossing the van he stopped and when the van moved on he started

chasing it from some considerable distance has also come in the evidence.

12. If we closely scrutinize the evidence of victim Sunil Vaswani (PW/8) and Vivek Patel (PW/14), a passerby, who happens to reach the spot, there is no contradiction in their evidence at-least, in so far as, those accused who had already come at the spot in scooty, are concerned. The victim (PW/8) has given the entire story right from the time, a scooty started moving along with him until he was intercepted and stopped and a quarrel having taken place between them, followed by arrival of Maruti van from which 2-3 persons came out and pushed him into the van.

13. Vivek Patel (PW/14), a passerby, has only seen later part of the incident. The part which he happened to see, while going on the road, was that when the victim (PW/8) was being pushed into the vehicle. The prior incident of victim having been intercepted by another scooty on which two persons were sitting, followed by a quarrel, was actually not seen by this witness PW/14. He was only a passerby and he happens to reach the spot only at the point of time when the victim was being pushed into the van. Though, there is considerable force in the submission of learned counsel for the appellant that there is contradiction in the testimony of victim Sunil Vaswani (PW/8) and Vivek Patel (PW/14) with regard to the fact as to whether those who had come out of the van and

thrust the victim (PW/8) into the van, had their faces covered or not, we are of the considered opinion that in so far as two accused, who intercepted and stopped the victim, and were riding a scooty and who also later on quarreled with the victim were not the same person who had come in the Maruti van. Neither in the evidence of victim Sunil Vaswani (PW/8) nor in the evidence of Vivek Patel (PW/14) anything has come to show that PW/14 was also witness to the first part of the episode of the victim being intercepted by scooty on which two accused were sitting. There is no suggestion given to any of the witnesses much less PW/14 that those who had come in the scooty had also their faces covered and for that reason, it was not possible to identify.

14. As has been deposed by victim Sunil Vaswani (PW/8) and which could not be impeached in his cross-examination, while he was going on the road at about 8.45 PM, a scooty came along with him and, later on, he was stopped on the road by interception of that scooty on which two persons were sitting who started quarreling with him, which shows that the victim (PW/8) had sufficient time to identify those persons and it is not a case of flash of a moment that the victim could see them. The evidence of victim (PW/8) clearly shows that present appellant is said to be one who had come in the scooty along with co-accused Manish and according to the testimony of victim (PW/8), later on, present appellant came

into Maruti van and accused Manish in the scooty escorted the van. Keeping, therefore, apart, the aspect of doubt with regard to identification of other accused who are alleged to have come in the van, as far as identification of the present appellant on the dock by the victim (PW/8) himself is concerned, we do not find any infirmity in it.

15. Learned counsel for the appellant has cited number of decisions. The settled legal position which by now has emerged is that test identification parade may not be necessary under all circumstance, though in appropriate cases, the Court may hold that non holding of test identification parade has rendered the prosecution story with regard to identification doubtful. This would depend upon the facts and circumstances of every case. Once the victim, by a reliable evidence, has clearly stated regarding role alleged to be played by the present appellant and the evidence is that he, had ample opportunity to see him and the doubt, if any, with regard to faces having been covered is more with regard to those who had come in the Maruti van and not those who were intercepting the victim on the road prior to arrival of Maruti van, we are of the view that non holding of test identification parade, in the facts and circumstances of the present case, would not be fatal to the prosecution case.

16. As far as recovery of the golden ring is concerned, we find that this aspect has been proved by the prosecution not

only from the evidence of Investigating Officer but also from the testimony of independent witness of memorandum and seizure Sanjay Jaadwani (PW/19). A doubt is sought to be raised on the veracity of the evidence of this witness on the ground that this witness says that when he was taken to the house of the appellant after the disclosure statement having been given by the appellant, he was standing in one room and from the another room the ring was said to be recovered. There is no suggestion given to this witness that the ring was already being brought by someone else. The fact regarding recovery of ring from one of the room of the residence of the appellant requires to be explained either claiming that this belongs to him or to give some explanation as to where-from he found, who gave it and under what circumstance. In view of the decision cites by learned State counsel in the matter of **Ganesh (Supra)**, failure to explain only strengthen the case of the prosecution and not of the defence. The other doubt raised with regard to the evidence of Sanjay Jaadwani (PW/19) is that he has said that recovery had been made from the house of accused Govinda. This argument does not appeal to us because during the course of examination, this witness has pointed at present appellant Lala @ Mahadev Sharma saying that according to his belief he was Govinda. Therefore, there is no doubt with regard to identity of the person whose disclosure statement was recorded and from whose house, the ring was recovered, though, it appears that the witness was

under an impression that the name of present appellant is not Lala but Govinda. This does not help to the appellant.

17. All other accused including who had come in the scooty namely Manish have been found guilty of commission of offence, their appeals have already been dismissed by this Court earlier.

18. In the result, we do not find any merit in the appeal and the same is liable to be and is hereby dismissed.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**

Sd/-

**(Rajani Dubey)
Judge**

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