

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 880 of 2014

- Ku. Ajita Bek D/o Telesphor Bek Aged About 24 Years R/o Dumardih, Patratoli, P.S. Kurdeg, Civil And Rev. Dist. Simdega Jharkhand, Jharkhand

---- Appellant

Versus

- State Of Chhattisgarh S/o Through The Incharge Arakshi Kendra Kunkuri, Dist. Jashpur C.G. , Chhattisgarh

---- Respondent

CRA No. 891 of 2014

- Mohammad Julfikar @ Amin S/o Mohammad Aarif Aged About 22 Years R/o Azad Mohalla Kunkuri, PS Kunkuri, Distt. Jashpur, Chhattisgarh

---- Appellant

Versus

- The State Of Chhattisgarh S/o Through Ps Kunkuri, Distt. Jashpur (CG)

---- Respondent

CRA No. 1540 of 2015

- Maqbul Alam, S/o Adil Khan, Aged About 22 Years R/o Village Kunkuri, Nearby The Tahsil Office Kunkuri, P.S. Kunkuri, Distt. Jashpur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh S/o Though S.H.O., P.S. Kunkuri, District Jashpur.

---- Respondent

CRA No. 1584 of 2017

- Tawrej Khan, S/o Rushtam Khan, Aged About 23 Years, but in impugned order age mentioned as 19 Years, R/o Sarhadih, Police Station Samri, District Balrampur, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh S/o Through The Police Of Police Station Kunkuri, District Jashpur, Chhattisgarh, Chhattisgarh

---- Respondent

	<u>Cr. A. No.880/2014</u>	
For Appellant	:	Shri J.K. Saxena, Advocate
For Respondent	:	Shri Vivek Sharma, Govt. Advocate
	<u>Cr. A. No.891/2014</u>	
For Appellant	:	Shri Adil Minhaj, Advocate
For Respondent	:	Shri Vivek Sharma, Govt. Advocate
	<u>Cr. A. No.1540/2015</u>	
For Appellant	:	Shri Hemant Gupta, Advocate
For Respondent	:	Shri Vivek Sharma, Govt. Advocate
	<u>Cr. A. No.1584/2017</u>	
For Appellant	:	Shri Sandeep Dubey, Advocate
For Respondent	:	Shri Vivek Sharma, Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Judgement

Per P. Diwaker, J

30/8/2018

1. Since the above criminal appeals arise out of the common judgment, they are being heard and decided together by this common judgment.
2. The above appellants have challenged the judgment of conviction and order of sentence dated 30.8.2014 passed by the Additional Sessions Judge, Kunkuri, District Jashpur in ST No.39/13 thereby convicting them under Sections 365, 387 & 364A r/w 120B of the Indian Penal Code (for short 'the IPC') and sentenced each of them to suffer RI for 5 years & fine of Rs.3,000/-; RI for 3 years & fine of Rs.2,000/- and RI for life & fine of Rs.5,000/-, with usual default clauses, respectively.
3. Prosecution case, in brief, is that on 13.2.2013 at about 10.30 in the night Murarilal Agrawal (PW-1) lodged a missing complaint (Ex.P-1) of his son Pankaj Jindal (PW-9) stating that on that day at about 7.30 p.m. his son left the house on motorcycle and thereafter he did not return. Based on this complaint, missing report (Ex.P-34) was registered in the roznamcha at 11.30 p.m. Dehati FIR (Ex.P-2) was registered on 14.2.2013 at the instance of PW-1 at 8.15 p.m. On 14.2.2013 at 8.35 p.m., on the basis of

Ex.P-2, numbered FIR (Ex.P-35) under Sections 365 & 387 of IPC was registered against unknown accused persons having mobile numbers 8105916708 & 8103271328. On 14.2.2013 at about 9 pm the police seized motorcycle of Pankaj Jindal (PW-9) from near Eeb River in village Hastinapur vide seizure memo Ex.P-32. Further case of the prosecution is that on 15.2.2013 at 7.30 a.m. Murarilal Agrawal (PW-1) received a call from the kidnapper, who told him that Pankaj (PW-9) had been kidnapped by them, and he demanded Rs.60 lakh from him to release him. The telephone caller asked him to come to Bene Forest, village Dara to deliver the ransom money and recover his son (PW-9). PW-1 immediately left with money on his motorcycle and when he reached near the place as told by the kidnapper, he met with one of the accused persons who asked him about the money whereupon PW-1 asked him to first show his son. Thereafter two accused persons brought his son and handed over to him after receiving the money. No sooner said Pankaj Jindal (PW-9) was handed over to PW-1, the police party reached the spot and apprehended four accused persons i.e. appellant No.2 to 5. Accused No.1 was apprehended subsequently on 16.2.2013. Baramdagi Panchnama (Ex.P-33) was prepared at the spot on 15.2.2013 at 7.30 a.m. showing PW-9 to have been recovered from the custody of four accused persons.

Pankaj Jindal (PW-9) informed the police that on 13.2.2013 he received a telephone call from one lady (accused Ajita) asking him to come near Ginabhar Road at 7.30 in the evening and on receiving the said call, he left for the said place on his motorcycle and on reaching near Ginabhar Road, he again received a telephone call asking him to come near the forest. When he reached near the forest, accused/appellants Maqbool, Julfikaar, Tabrez & one another came there, caught hold of him and took him inside the jungle beating.

Memorandums of accused/appellants Tabrej Khan, Maqbool Alam, Shrawan Bhagat & Ajita Beck were recorded on 15.2.2013 vide Ex.P-6 to P-9 whereas memorandum statement of accused Julfikaar was recorded on 16.2.2013 vide Ex.P-9. On 15.2.2013 five bundles of blank papers were seized from the possession of accused Tabrej vide Ex.P-14 which were purportedly handed over to the kidnappers by PW-1 as currency notes. On 16.2.2013 Test identification parade of accused persons was conducted and during test identification parade, PW-4 & PW-6 have correctly identified them. Accused Shrawan being minor was tried by the Juvenile Justice Board, whereas remaining four accused persons have been tried by the Sessions Judge.

4. After completion of investigation, the police filed the challan against the accused persons under Sections 365, 387, 364 r/w 120B of IPC and accordingly the charges were framed by the trial Court against them. The prosecution in order to bring home the charges levelled against the accused/appellants examined 12 witnesses in all. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they abjured their guilt and pleaded innocence & false implication. They examined two witnesses in their defence.
5. We have heard learned counsel for the parties and perused the record of trial Court including impugned judgment.
6. Learned counsel for the appellants submit that;-
 - in the totality of the facts situation, no case of kidnapping much less kidnapping for ransom is made out and the prosecution has miserably failed to establish the charges framed against the appellants.
 - there is no material to show that the appellants had conspired to kidnap Pankaj Jindal (PW-9) and demand ransom from his father to release

him. Even the call details collected by the prosecution in the course of investigation have not been proved as per Section 65B of the Evidence. Thus, it is apparent that a cock and bull story pertaining to kidnapping for ransom was built up by the prosecution.

- Testimony of Murarilal Agrawal (PW-1) shows that he did not inform the police that he had received ransom call on his mobile phone demanding Rs.60 lakhs for the release of his son (PW-9). When there was no information regarding ransom call to the police, the prosecution story that the police caught the accused persons red handedly from the spot becomes highly suspicious.
- As per Investigating Officer (PW-12), after receipt of ransom call, Crime Branch In-charge J.R. Sihare, prepared a bundle of papers in the shape of bundles of currency notes and handed over the same to PW-1 for giving the same to the kidnappers. Whereas according to PW-1, on receipt of ransom call, he immediately left to the place as was told by the kidnappers and when he was about to leave from the spot with his son, the police arrived there. This circumstance also raises a doubt against the correctness of prosecution version.
- As per prosecution, bundles of blank papers prepared by said J.R. Sihare and given by PW-1 to accused persons as ransom money were seized from accused Tabrej vide Ex.P-14. This shows, somewhat unnatural conduct on the part of PW-1. No father is expected to act in a manner which would put the life of his son in danger. Further, it is also not expected from the kidnappers, who have kidnapped PW-9 for money, that they would hand over PW-9 without ascertaining that the bag handed over to them contained currency notes or not.
- Two parallel stories were narrated by Murarilal Agrawal (PW-1) and

investigating officer making the prosecution case unreliable.

- Pankaj Jindal (PW-9) has informed at the time of baramdgi panchnama (Ex.P-33) that he was beaten by accused persons as a result of which he sustained injuries on his hand, abdomen and head, but he was not medically examined to ascertain of having been assaulted by appellants because there is no MLC report on record. This also put a serious dent on the story of prosecution.
- the motorcycle of PW-9 was recovered from a different place from that of the place from where he was abducted.
- appellants were known to the identifying witnesses, therefore, the test identification parade has no relevance in the facts and circumstances of the case.
- memorandum & seizure witnesses (PW-2 & PW-4) have not supported the prosecution case and turned hostile.
- PW-9, a spoiled child of PW-1, has staged drama of his kidnapping in order to extract money from his father and the case of kidnapping by these appellants is under serious doubts.

7. On the other hand, learned counsel for the State has supported the impugned judgment.

8. Murarilal (PW-1), father of kidnapped Pankaj Jindal (PW-9), has deposed that on 13.2.2013 at 7.30 his son Pankaj (PW-9) had gone somewhere without informing anybody and when he enquired from the friends of his son, he came to know that he had gone towards Ginabahar Road. He has further deposed that when his son did not return till 10 in the night, he made a written complaint to the police mentioning therein suspected mobile number provided to him by one Ginni, friend of his son. Next morning he

came to know that motorcycle of his son (PW-9) is lying near the river in village Hastinapur and the same was recovered by the police. On the same day at about 9-10 in the morning, he had received a call on his mobile and the caller informed him that his son Pankaj is in their captivity and asked for making arrangement of Rs.60 lakh. The caller further asked him not to inform the police else life of his son would be in danger. He expressed his inability to arrange such a huge amount and told him that he can arrange some amount, but the caller insisted for arrangement of Rs.60 lakhs. Caller further told that they would inform the place where he has to come with money. On the same day at about 4-5 in the evening he again received call on his mobile from the same number and he was asked to come to Gumla Road if the money is arranged and there his man would tell him about the place where money is to be delivered. When he asked the caller to let him have talk to his son, the caller replied that his son is safe and he would be allowed to talk to his son later. He asked him to arrange the money and thereafter he disconnected the call. On 14.2.2013 he again received a telephone call asking him whether he had arranged the money, he replied in affirmative. On 15.2.2013 at about 7 in the morning he again received a call on his mobile asking him to immediately come with money, but the caller did not tell where to come. Thereafter he left on his motorcycle towards Keradih Narayanpur. He again received call asking him to come towards Bene Forest and after reaching there, he was directed to keep the money bag near a rock. However, he told the caller that he would not follow the directions unless he would see his son. On this, his son was brought beside the road by two persons i.e. accused Maqbool & Julfikaar. After receiving the ransom money, his son was released and handed over to him. He has further deposed that immediately thereafter the police party reached the spot and apprehended

the accused persons.

9. Kinni Tamrakar (PW-2) did not support the prosecution case and turned hostile. Rohit Kumar Sukra (PW-3) is the Patwari who prepared the spot map Ex.P-5. Badri Prasad Gupta (PW-4) is the witness of memorandum and seizure but he did not support the prosecution case and turned hostile. Imran Khan (PW-5) is the witness of seizure memo Ex.P-32 by which motorcycle of PW-9 Pankaj Jindal was seized. Vivek Khatri (PW-6) is the witness of test identification parade and he has duly supported the prosecution case. Santosh Kumar Banjare (PW-7) is the police constable who assisted in the investigation. Sudarshan (PW-8) is another witness of seizure memo Ex.P-32 by which motorcycle of PW-9 Pankaj Jindal was seized.
10. Pankaj Jindal (PW-9) is the person who was allegedly kidnapped by the accused/appellants. He has deposed that on 14.2.2013 accused Ajita telephoned him and called at Ginabahar and on reaching there he did not find her there. However, he received her phone call asking her to come further ahead and when he moved ahead on Ginabahar road in search of accused Ajita Bek, he was caught hold of by remaining four accused persons and after making him blindfolded, they took him inside the forest beating. All of them were saying that they want money else they would kill him. They were demanding Rs.60 lakh as ransom. They were already having mobile number of his father on which they contacted him and demanded Rs.60 lakhs from him for his release. They used to say that he would be released on payment of ransom money. He was kept confined for two days in forest by accused persons. On the next day of incident, on payment of ransom amount to the kidnappers by his father, he was released by them. In the cross-examination he has admitted that accused Ajita Bek is previously known to him and that he did not see her at the spot

on the date of incident. He has further admitted that in the police station the police had obtained his signature on baramdagi panchnama (Ex.P-32). He has further admitted that he had seen accused persons in the police lock up prior to holding of test identification parade.

11. Jitendra Kumar Kashyap (PW-10) is the police person who assisted in the initial investigation.
12. Dinesh Chincholkar (PW-11) is the Tahsildar who conducted the test identification parade vide Ex.P-28 & P-29. The entire procedure adopted by this witness in conducting the parade has been detailed in Ex.P-28 & P-29.
13. J.R. Sahare (PW-12) is the investigating officer who has duly supported the prosecution case. He has deposed that on the basis of complaint of Murarilal Agrawal (PW-1), FIR (Ex.P-2) under Section 365 & 387 of IPC was registered. He has further deposed that on the basis of mobile phone location, on 15.2.2013 the police force went to Bene Forest along with complainant Murarilal Agrawal for rescue of Pankaj Jindal (PW-9). He has further stated that bundles of papers in the shape of currency notes were handed over to complainant Murarilal (PW-1) for handing over it to the kidnappers. Three accused persons came along with PW-9 and handed over him to PW-1 after receiving money. When they came there, they were surrounded by the police and accused namely Tabrej, Maqbool, Shrawan Bhagat & Ajita Beck were apprehended. Baramdagi panchnama of Pankaj Jindal (PW-9) was prepared and thereafter he and apprehended four accused persons were brought to the police station.
14. Close scrutiny of evidence on record makes it clear that the prosecution has miserably failed to prove by leading clinching and cogent evidence that a criminal conspiracy was hatched by accused/appellants to kidnap Pankaj Jindal (PW-9) for ransom and to extort money by putting his father Murarilal

(PW-1) in fear of death of his son (PW-9). Though the investigating officer (PW-12) has deposed that the complainant (PW-1) gave information to the police regarding the ransom calls received by him, he also gave phone number (08103271328) through which the call of ransom was made and based on the location of said mobile number, the police party surrounded the accused persons in Bene forest and arrested four accused including one girl accused. But, Murarilal Agrawal (PW-1), has nowhere stated in his statement that he had informed the police about such call or that after receiving ransom calls, he went to the police station to solicit assistance from the police. What has been stated by this witness in his statement is that on 13.2.2013 when his son Pankaj Jindal (PW-9) did not return home late night, he made a written complaint to the police about missing of his son. Next morning he received a call from unknown number on his mobile phone informing him that his son (PW-9) had been kidnapped by them. The caller had asked him to arrange Rs.60 lakhs and threatened him to kill Pankaj in case he informed the police. On 15.2.2013 at about 7 in the morning, PW-1 again received call from the kidnapper asking him to immediately come with money whereupon he left on his motorcycle towards Keradih Narayanpur. On the way, he again received call asking him to come towards Bene Forest and when he reached there, one accused (Tabrej) met him and asked about the money. On being asked by this witness about his son, two accused persons brought his son and handed over to him after receiving the bag filled with currency notes.

Murarilal (PW-1) in his testimony has stated that next day in between 9 & 10 a.m. he received ransom calls informing him that his son (PW-9) is in his custody, asking him to arrange Rs.60 lakh and not to inform the police else life of his son would be in danger. The caller further told him that he would have to come with money to a place to be disclosed later on.

On 15th he again received call from another phone number asking him to immediately come with money but he did not disclose the place. On this, he alone left on his motorcycle towards Keradih Narayanpur and on the way he again received call asking him to move ahead towards Bene Forest. After some time he again received a telephone call asking him to keep the money near the stone.

From the above statement of PW-1 it is clear that he has nowhere stated that he had given mobile numbers to the police from which allegedly ransom calls were made nor he has informed the police that he was called by the kidnappers at a particular place. Whereas, it has come in the testimony of Investigating Officer J.R. Saharey (PW-12) that the complainant (PW-1) informed that on 14.02.2013 he received a ransom call on his mobile (9425250529) from mobile numbers 8905916708 & 08103271328 and on the basis of location of these mobile phones, they have apprehended four accused persons from Bene jungle. Therefore, it is very difficult to believe the story of prosecution as projected and the genuineness of genesis of the case of the prosecution becomes doubtful in view of the testimony of Murarilal Agrawal (PW-1).

That apart, as per prosecution version, all the calls that were received by PW-1 were made from SIM card numbers 8905916708 & 08103271328 and as per prosecution story the same were made from the mobile phones of accused persons which were seized by the police. Said mobile phones were seized by the police vide seizure memo exhibited as Ex.P-11, P-12, P-15 to P-19. IMEI numbers of seized mobiles were also mentioned in said memos. From the IMEI number it is possible to trace out the SIM card number which was used on that IMEI number. When it came to the knowledge of the investigating officer that ransom calls were made through SIM Card Nos.8905916708 & 08103271328, he should have

visited the office of service provider company of said SIM Card numbers in order to ascertain as to whether the same belongs to accused/appellant or SIM card of these numbers were issued in the name of either of them or any of handsets seized from the accused persons was used on the SIM card pertaining to aforesaid numbers or were used from the IMEI numbers mentioned in seizure memos (Ex.P-11, P-12 & P-15 to P-19), but it appears that nothing like that has been done. Thus, there is no legally admissible evidence on record to show that any of the accused/ appellants was using aforesaid SIM card numbers from which ransom calls were made to PW-1 or that the said SIM card numbers were allotted to any of accused persons. Even there is nothing on record to show that PW-9 has received any phone call from one girl asking him to come to Ginabahar Road. In absence of any evidence that to whom aforesaid SIM Card numbers belong, it cannot be said that the appellants had used the said sim card numbers for demanding ransom. Therefore, by this piece of evidence also, none of accused can be connected with the crime in question.

Furthermore, the call details records (CDR) of the mobile phones of accused/appellants as well as PW-1 & PW-9 are also not admissible in evidence as they do not bear attestation/certification under the signature and seal of responsible officer of the service provider company in terms of Section 65B of the Evidence Act. In absence of any such authentication/certification, it is very difficult to ascertain as to whether aforesaid call details were retrieved directly from the system where they are ordinarily stored/ preserved.

Evidence of investigating officer further shows that bundles of papers in the shape of currency notes were prepared and handed over to complainant Murarilal (PW-1) for handing over it to the kidnappers. Neither Murarilal (PW-1) has supported the aforesaid version of the

prosecution nor any evidence has been led by the prosecution as to very factum of preparation of bundles of currency notes as also where the same were handed over to PW-1.

According to Investigating Officer (PW-12), he had apprehended four accused persons namely Tabrej, Maqbool Alam, Shrawan Bhagat & Kumari Ajita Beck at the spot and thereafter brought them to the police station along with Pankaj Jindal (PW-9). Whereas, Baramdgi memo (Ex.P-33) shows that Pankaj Jindal (PW-9) was rescued from the possession of accused persons namely Maqbool Alam, Julfikaar, Tabrej & Shrawan. The baramdgi panchnama (Ex.P-33) further shows that it has been prepared at the spot i.e. Bene forest, on 15.2.2013 at 7.30 in the morning, but in the arrest memo there is no mention about the place of arrest of accused/appellants as Bene Forest itself. Not only this, the date of arrest shown in the arrest memo is 16.2.2013 at 17.30 hrs i.e. 5.30 in the evening. Most importantly, PW-1 has denied any proceeding being conducted by the police on the spot. These facts create a strong doubt as to the preparation of baramdgi panchnama (Ex.P-33) and arrest of four accused persons at the spot in the manner and time claimed by the prosecution.

Evidence of Pankaj Jindal (PW-9) reveals that he was assaulted by the kidnappers as a result of which he had sustained injuries and therefore he was taken to the hospital for medical examination by the police. However, for the reasons best known, the prosecution neither examined the treating doctor nor placed any material to show that PW-9 had sustained any injury.

15. As regards the test identification of accused persons, the identifying witnesses i.e. PW-9, has stated that accused Ajita Bek, Julfikaar & Maqbool were previously known to him and that he had seen accused Tabrez in the

police station earlier to the identification parade. He has further admitted that when he went to the guest house where test identification parade was to be conducted, he saw all the accused persons standing with a police personnel. Thus, statement of Pankaj Jindal (PW-9) makes two things clear, firstly, accused Ajita Bek, Julfikaar & Maqbool were known to him and he had seen accused Tabrez prior to test identification parade and secondly, the accused persons were not kept baparda before the identification parade. In these circumstances, the value of TIP proceedings of accused/appellants got diminished because of the fact that some of accused persons were already known to the identifying witness (PW-9) and that he had seen all the accused persons before the test identification parade.

16. In view of the afore-noted deficiencies in the prosecution case, it becomes highly doubtful that accused/appellants had criminally conspired to kidnap Panjak Jindal (PW-9) and they all in pursuance of such criminal conspiracy. kidnapped PW-9, confined him secretly & wrongfully for a period of about two days and demanded ransom of Rs.60 lakh from his father i.e. Murarilal (PW-1), by putting him in fear to kill his son. This being the position, the accused/appellants are definitely entitled to the benefit of doubt.

17. On the basis of the aforesaid discussions, the appeals filed by the appellants deserve to be allowed and therefore, the same are allowed. Conviction as well as sentence directed by the trial Court for offence punishable under Sections 365, 387 & 364A/120B of IPC are hereby set aside. The appellants are acquitted from all such charges.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Rajani Dubey)
Judge

roshan/-