

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL Nos.1251 and 1305 of 2011

COMMON JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

Since the accused is one and the same in both these appeals, they are disposed of by this common judgment.

2. Criminal Appeal No. 1251 of 2011:

(i) A1, A3, A5 and A6 in Sessions Case No. 63 of 2011 on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar, were tried for the offences punishable under Sections 364 read with 34, 341 and 506 IPC. Vide judgment dated 11.08.2011, the learned Additional District and Sessions Judge, while acquitting A3, A5 and A6, convicted A1 for an offence punishable under Sections 364-A IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of one year. He was further convicted for the offences punishable under Sections 341 and 506 IPC and sentenced to suffer rigorous imprisonment for a period of one year each, under the two counts. Assailing the same, Criminal Appeal No. 1251 of 2011 came to be filed.

(ii) The charge against the accused is that on 19.04.2009, the accused, along with three others, kidnapped one Syed Abrar (PW3) from Madina Masjid area of Mahabubnagar Town and demanded a ransom of Rs.3 lakhs from PW1, the father of PW3, and after collecting a sum of Rs.2 lakhs from PW1, released the victim on 20.04.2009.

(iii) The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PW1 is the father of the victim-PW3, and PW2 is the brother of PW1. On 19.04.2009, PW2 received a phone call from A1, stating that he has kidnapped PW3, and demanded a sum of Rs.3 lakhs as ransom for his release. PW2 informed A1 that PW1 was not in the house and that he can respond only after PW1 returns. After PW1 returned to the house, PW2 informed him about the call received from A1 and they were waiting for A1 to call again. On the next day, they received the call from A1, demanding the amount of Rs.3 lakhs. When PW1 expressed his inability to pay the amount of Rs.3 lakhs, A1 agreed to reduce the amount to Rs.2 lakhs. Thereafter, PW1 received a phone call from A1, asking him to come near the post office, and hand over the amount to a person wearing black T-shirt and a cap. PW1 alone went to the post office along with the cash of Rs.2 lakhs, where he noticed one person wearing a black T-shirt. He identified the said person with the colour of the T-shirt. The said person informed PW1 that his name is Munna and that A1 has sent him. While he was handing

over the amount to the said Munna, PW1 received a call from A1, on his cell phone. PW1 informed him that he has handed over the amount to his person-Munna. Then, the said Munna talked to A1, stating that he has received the money. A1 is said to have asked Munna to count the amount, to which he informed that it would take time to count the amount. Saying so, he left the place after collecting the amount of Rs.2 lakhs from PW1. But, however, no report was given by PW1 regarding the said transaction.

(iv) Subsequently, PW3 was released on 20.04.2009 at 6 p.m. On enquiry, PW3 is said to have informed PW1 as to how he was abducted, kept in Avanthi Hotel for some time, and the demand of Rs.3 lakhs made in his presence. After about 1 ½ months later, A1 again telephoned to PW1 and demanded him to pay the balance amount of Rs.1 lakh, as only Rs.2 lakhs was paid initially. The said phone call was received by PW1 on 06.06.2009, who informed A1 that he cannot pay the amount. When A1 threatened him with dire consequences, PW1 lodged a report with PW11-the Sub Inspector of Police, Achampet Police Station, basing on which a case in Crime No. 69 of 2009 came to be registered for the offences under Sections 364-A, 341 and 506 of IPC. Ex.P1 is the said report.

(v) During the course of investigation, PW11 examined and recorded the statements of PW1 and PW2. He visited the scene of offence and prepared Crime Details Form-Ex.P2 in the presence of PW4. On 12.06.2009, he arrested A2 at his residence and took him into custody. In the presence of PW5-K.Balaraju and PW6-Mirza

Hassan Baig, he recorded the confession-cum-recovery panchanama of A2. A2 is said to have confessed that he, along with A1, A3 to A6, committed the offence, and that they have also committed a similar offence, which is the subject matter of Crime No. 68 of 2009. Pursuant to the confession made, A2 led PW11 and panchas to Geetha Hotel, where A4 and A5 were arrested. PW11 interrogated A4 and A5 in the presence of mediators, recorded their confessional statement and recovered an amount of Rs.500/- from A5 and Rs.1,000/- from A4. Subsequently, A6 surrendered before the police and was remanded to judicial custody. On 17.06.2009, A3 was arrested and the confession made by him was recorded by him in the presence of PW9. An amount of Rs.1,000/- was also recovered from him. However, PW11 could not effect the arrest of A1 who was absconding.

(vi) On 09.11.2009, PW10-the Assistant Sub Inspector of Police, Jadcherla Police Station, on credible information about the availability of A1 near Headquarters Hospital, Mahabubnagar, rushed to the hospital and arrested A1 near the cycle stand at the said hospital. The said arrest was made in the presence of PW8. Basing on the confession made, an amount of Rs.500/- was recovered from A1.

(vii) After collecting all the necessary documents, PW11 filed a charge sheet against the accused for the offences punishable under Sections 364-A, 341 and 506 IPC, which was taken on file as PRC No. 43 of 2010 on the file of Court of the Judicial Magistrate of

First Class, Mahabubnagar. After complying with the requirements of Section 207 of Cr.P.C. As the offences are triable by a Court of Sessions, the matter was committed to the Court of Sessions, wherein it came to be numbered as S.C.No. 63 of 2011 on the file of Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar. Basing on the material available, charges for the offences punishable under Sections 364-A, 341 and 506 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

(viii) In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P8 and M.Os.1 to 4. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

3. Criminal Appeal No. 1305 of 2011:

(i) A1, A3 to A6 in Sessions Case No. 659 of 2010 on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar, were tried for the offences punishable under Sections 364 read with 34, 341 and 506 IPC. Vide judgment dated 11.08.2011, the learned Additional District and Sessions Judge, while acquitting A3 to A6, convicted A1 for the offence punishable under Sections 364-A IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/-, in

default to suffer simple imprisonment for a period of one year. He was further convicted for the offences punishable under Sections 341 and 506 IPC and was sentenced to suffer rigorous imprisonment for a period of one year each under the two counts. Assailing the same, Criminal Appeal No. 1305 of 2011 came to be filed.

(ii) The charge against the accused is that on 20.05.2009, the accused, along with three others, kidnapped one Mohd. Sadullah @ Danesh (PW2) and demanded a ransom of Rs.2 lakhs from PW1, and after collecting Rs.75,000/- from PW1, released PW2 on 21.05.2009.

(iii) The facts, as culled out from the evidence of the prosecution witnesses, are under:

PW1 is the father of the victim-PW2, while PW3 is the Headmaster of Girls High School, Mahabubnagar. As per the evidence on record, about two years back, when PW2 was in his house, one person by name Rasheed took him to Avanthi Lodge, Mahabubnagar and confined him in a room. In the room, A1 and A2 were present, when A1 is said to have beat PW2 and thereafter threatened him by showing him a knife. Later, A1 telephoned to PW1 and demanded a ransom of Rs.5 lakhs, stating that he has kidnapped PW2.

(iv) The evidence of PW1 shows that after kidnapping PW2 on 20.06.2009, he received a call from A1 at about 8.30 or 9 p.m., stating that his son-PW2 was abducted and is being taken to Kurnool. He demanded him to pay a sum of Rs.2 lakhs within 24

hours for release of his son. A1 also instructed PW1 not to give any report to the police. When PW1 expressed his inability to pay the amount of Rs.2 lakhs, A1 reduced the amount to Rs.75,000/- . PW1 was instructed to hand over the said amount to one person by name Arbaz-A2, who would be available near M.J.Market, Hyderabad. On the next day morning, PW1, PW4 and one Mohd. Samad together left Mahabubnagar in a car along with the cash of Rs.75,000/- . On their way to Hyderabad, they received a phone call from A1, asking them to handover the amount to A2, who will be waiting near Chermas, Abids. Within ten minutes, PW1 received another call shifting the address of A2 to Taj Mahal Hotel, Abids. All three of them reached Taj Mahal Hotel, identified A2, where PW1 handed over a sum of Rs.75,000/- to Samad, who, in turn, handed over the same to A2. Then, PW1 received a phone call from A1, stating that PW2 would be released within one or two hours. They all returned to Mahabubnagar from Hyderabad. At about 6.30 p.m., PW2 telephoned to PW1, stating that he was released at Kothur near Shadnagar, and that he is returning to Mahabubnagar in a bus.

(v) About fifteen days later, PW1 again received a phone call from A1, asking him to pay the balance amount of Rs.1,25,000/- . At that point of time, PW1 lodged a report with PW15-the Assistant Sub Inspector of Police, Jadcherla Police Station, basing on which a case in Crime No. 68 of 2009 under Sections 364, 341 and 506 IPC came to be registered. Ex.P1 is the said report.

(vi) During the course of investigation, PW15 examined PW1 and recorded his statement. He then visited the house of PW1 at Vallabhnagar and prepared Crime Details Form along with the rough sketch. Ex.P15 is the crime details form containing the rough sketch. There, he examined PWs 2, 3 4 and 7 and recorded their statements under Section 161 Cr.P.C. Later, he handed over investigation to PW16-the Sub Inspector of Police, Achampet.

(vii) On credible information, PW16 proceeded to Madina Masjid Street, Aslam Khan Road, Mahabubnagar and arrested A2 at his residence on 12.06.2009. On interrogation, in the presence of PW12 and PW9, A2 is said to have confessed about the commission of the offence, along with A1, A3 to A6. Thereafter, he led them to Geetha Hotel, where A4, A5 and A6 were arrested in the presence of PW5, who disclosed about the commission of the offence. Pursuant to the same, an amount of Rs.1,000/- was recovered from A4, and an amount of Rs.500/- each was recovered from A5 and A6 pertaining to this case, and an amount of Rs.1,000/- pertaining to Crime No. 69 of 2009.

(viii) On 18.06.2009, A3 was arrested and the confession made by him was recorded in the presence of PW10 and PW11. An amount of Rs.500/- was also recovered from him. However, PW16 could not effect the arrest of A1, as he was absconding.

(ix) On 09.11.2009, PW15-the Assistant Sub Inspector of Police, Jadcherla Police Station, on credible information about the availability of A1 near Headquarters Hospital, Mahabubnagar,

rushed to the hospital and arrested A1 near the cycle stand of the said hospital. The said arrest was made in the presence of PW13 and PW14. Basing on the confession made, he recovered an amount of Rs.500/- from A1.

(x) After collecting all the necessary documents, PW16 filed charge sheet against the accused for the offences punishable under Sections 364-A, 341 and 506 IPC, which was taken on file as PRC No. 36 of 2010 on the file of Court of the Judicial Magistrate of First Class, Mahabubnagar. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, which came to be numbered as S.C.No. 659 of 2010 on the file of Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar. Basing on the material on record, charges for the offences punishable under Sections 364-A, 341 and 506 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

(xi) In support of their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P21 and M.Os.1 to 5. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

4. Relying upon the evidence of PWs 1 and 3 in Criminal Appeal No. 1251 of 2011, and the evidence of PWs 1 and 2 in Criminal

Appeal No. 1305 of 2011, the Court below, while acquitting A2 to A6, convicted A1 for the offences punishable under Section 364-A, 341 and 506 IPC. Challenging the same, the present appeals came to be filed.

5. The learned counsel for the appellant mainly submits that even if the entire case of the prosecution is to be believed to be true, no offence under Section 364-A IPC is made out. Apart from that, he would submit that the reports in both the cases were not lodged immediately after the abduction of the victims, though PW2 in Criminal Appeal No. 1305 of 2011 was examined by the police immediately. He further submits that the *modus operandi* of the crime in both the cases being similar, a doubt arises as to whether the incident really happened, and if really, the incident happened, as urged by the prosecution, there is no justification for the victims or their parents in both the crimes to keep quiet till a second demand is made, which is long after the first incident. He pleads that in normal circumstances, a report would have been lodged either before the payment of the ransom amount or at least after the release of the victim. In the absence of the same, he pleads that the conviction of the accused in both these crimes is illegal, improper and incorrect.

6. On the other hand, the learned Public Prosecutor opposed the same, contending that the evidence on record, more particularly, the evidence of PW3 and PW2-the victims in both the cases, coupled with the evidence of their parents, who are

examined as PW1 in both the cases, establish beyond reasonable doubt that there was abduction, pursuant to which ransom of Rs.3 lakhs (in Criminal Appeal No. 1251 of 2011) and Rs.2 lakhs (in Criminal Appeal No. 1305 of 2011) came to be demanded by A1. Though there is no recovery with regard to the amount paid, that by itself, cannot be a circumstance to throw out the entire case, more so, when the victims categorically speak about the alleged abduction and their release after paying the amounts.

7. The question that falls for consideration is whether A1 is liable for the offences for which he is charged.

8. The fact that the investigation in both the crimes was conducted by the investigating officer of I Town Police Station, Mahabubnagar, is not in dispute. It is also not in dispute that the report in both the crimes came to be lodged only when the second demand was made, meaning thereby, that after the release of the victims, A1 in both the cases is said to have called the fathers of the victim, demanding to pay the balance amount. At that time, reports came to be lodged in both the crimes before the same police station. In fact, no explanation is given as to why no report was lodged immediately when the ransom was made or after the release of the victims.

9. In Criminal Appeal No. 1251 of 2011, PW3 is the victim, who is said to have been abducted on 19.04.2009 at 5 p.m. His evidence discloses that on the very next day, i.e., 20.04.2009, he was released at Shamshabad. Thereafter, he proceeded to

Mahabubnagar in a bus. It is to be noted that immediately after release of PW3, no report was given to the police. On the other hand, the evidence of PW1 would show that on 06.06.2009, i.e., nearly after 1 ½ month, he received a phone call from A1 demanding to pay the balance amount of Rs.1 lakh. Then, a report came to be lodged by PW1. Even thereafter, A1 did not make any attempt to demand any amount from PW1. Long thereafter, A1 was arrested on 09.11.2009.

10. Similarly, in Criminal Appeal No.1305 of 2011, PW2 is the victim, who is said to have been released by the abductors on 21.05.2009., i.e., on the next day of his abduction. No report came to be lodged immediately after his release. The evidence of PW1-the father of the victim would show that about ten or fifteen days after release of PW3, which would be around 05.06.2009, he received a phone call from A1 asking PW1 to pay the remaining amount of Rs.1,25,000/- . Then, he went to the police station and lodged a report.

11. Since the reports in both the cases were lodged in the same police station within a span of two days, and as the *modus operandi* in lodging the report being same there appears to be some suspicion. The evidence in chief of PW1 in both the cases does not, anywhere indicate that A1 agreed to release the victims but with a condition of payment of the balance amount at a later point of time. Their evidence in both the appeals would show that on being satisfied with the amount agreed upon, A1 asked the

fathers in both the cases to come over to a particular place and hand over the amount to his person, and after receipt of the amount from the said person, released the victims within hours thereafter. If really the intention of A1 was to demand the balance amount, he would have informed the parents of the alleged victims about the payment of the balance amount later, which is not the case of the prosecution. Further, no person would pay any amount to the alleged abductors after the release of the victims. If really the version of the prosecution witnesses is true, when A1 was unsuccessful in getting the balance amount in Crime No. 69 of 2009 (Criminal Appeal No. 1251 of 2011), definitely, A1 would not have adopted the same method in Crime No. 68 of 2009 (Criminal Appeal No. 1305 of 2011), wherein the incident is said to have taken place on 20.05.2011.

12. Taking into consideration the similarities in both the crimes, more particularly, with regard to the demands made and the reports given at a very belated stage, a doubt arises as to the incident proper itself, more so, when no reasonable explanation is forthcoming from the prosecution witnesses as to why they did not lodge a report at the first instance. Further, in Crime No. 1305 of 2011, PW2, who is the victim, in his evidence in chief, states that on the next day of his abduction, he was taken to Hyderabad in a car and after receiving the amount, was released near Kothur on National Highway. He further deposed that at about 5 p.m., A1 gave Rs.200/- to him towards bus charges, and then, he returned home. After returning home, on the next day morning, police

enquired him and he narrated the incident. If really there was abduction and when PW2 claims to have informed the police about the incident when they came for enquiry, no effort was made by the police to register a crime, nor any effort was made by PW1 to lodge a report, disclosing the payment as well. All these circumstances throw some doubt with regard to the abduction, demand and payment made to A1.

13. It is to be noted that all the other accused in these two cases, i.e., the person to whom the amount was paid, the persons who were said to be present in the room along with A1, were acquitted. The evidence of PW1 in both the cases nowhere indicates that the amount was paid to A1. Except the victims, none have seen A1 nor paid any amount to him. It is not the case of the witnesses also that the said amount was received by A1.

14. Taking into consideration the totality of the circumstances, we feel that benefit of doubt can be given to A1 in both the cases.

15. In the result, the Criminal Appeals are allowed. The conviction and sentences recorded against the appellant/ accused in the judgment dated 11.08.2011 in Sessions Case No. 63 of 2011 and judgment dated 11.08.2011 in Sessions Case No. 659 of 2010 on the file of the Court of the Judge, Family Court-cum-Additional District and Sessions Judge, Mahabubnagar for the offences punishable under Sections 364-A, 341 and 506 I.P.C., are set aside, and he is acquitted for the said offences. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required

in any other case. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

26.06.2018
DMG

