

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1249 of 2011

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

A1 in SC.No.658 of 2010 is the appellant herein. Originally A1 to A4 were tried for the offences punishable under Sections 120-B and 364-A read with Section 34 of the Indian Penal Code. Vide judgment dated 11.08.2011, the learned Sessions Judge, while acquitting A2 to A4, convicted A1 alone for the offence punishable under Section 364-A IPC and sentenced to imprisonment for life and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for one year.

2. The facts, as seen from the evidence of the witnesses, are as under:

P.W.1 is the victim. P.W.2 is the brother of P.W.1. P.Ws.3 to 6 are official witnesses. It is said that on 28.03.2008, near State Bank of Hyderabad branch, Mahabubnagar, at about 07.15 PM while P.W.1 was proceeding along with his friends, Kamil, Arshad and Sohail, A1 came in an Indica Car bearing No.AP 9 AF 3536 and made P.W.1, Kamil and Arshad to sit in the said car and proceeded towards Hyderabad. On the way, A1 released Kamil, from their confinement, near Shadnagar. He took P.W.1 and Arshad to Chandrayangutta in the said car, where both of them were kept in a room belonging to one Imran Khan. At about 2.00 AM on 29.03.2008, A1 released Arshad. Thereafter, A1 collected cell phone number of P.W.2, from P.W.1 and he made a call to P.W.2 demanding a ransom of Rs.2 lakhs, for the release of P.W.1. According to P.W.1, his brother offered to pay only

Rs.1.25 lakhs. On the next day morning, P.W.1 was taken to a place called Boyapalli gate, which was near the Court premises. From there A1 telephoned to P.W.2 stating that he is sending one Shujahuddin for collecting money. It is stated that the said Shujahuddin collected Rs.1.25 lakhs from P.W.2 and thereafter on 29.03.2008 at 10.00 AM, P.W.1 was released near the Court premises.

Thereafter, P.W.1 and his family members went to Chandrayanagutta Police Station and lodged a report before P.W.5., the ASI of police. Basing on which, a case in Cr.No.75 of 2008 was registered under Sections 364-A read with 34 IPC. But on the point of jurisdiction, the case was transferred to I Town Police Station, Mahabubnagar where P.W.6 registered the case as Cr.No.39 of 2008 under Section 364-A IPC. Ex.P7 is the FIR in Cr.No.39 of 2008.

On 06.04.2008, P.W.6 visited the scene of offence, examined and recorded the statements of P.Ws.1 and 2. On 11.04.2008, P.W.6 and his staff arrested A2 to A4 near Clock Tower, Mahabubnagar and their confession was recorded in the presence of P.W.4 and another. Pursuant to the confession, the vehicle used was also seized under Ex.P4 panchanama. On 29.05.2008, A1 surrendered before the Court and police custody was granted wherein he is alleged to have confessed about the offence in the presence of P.W.3 and another. Pursuant to the confession, an amount of Rs.5,000/- was recovered from A1.

After examining all the witnesses, P.W.6 filed a charge sheet in the Court, which was taken on file as PRC.No.9 of 2010 on the file of

the Judicial Magistrate of First Class, Mahabubnagar. On appearance of the accused, copies of the documents were furnished as contemplated under Section 207 of the Criminal Procedure Code and thereafter, it was committed to the Court of Sessions under Section 209 Cr.P.C. On committal, the case came to be numbered as SC.No.658 of 2010 on the file of the Family Court cum Additional District and Sessions Judge, Mahabubnagar. On appearance of the accused, the charges referred to above came to be framed and explained to the accused, to which they pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined P.Ws.1 to 6 and got marked Exs.P1 to P7 and M.Os.1 and 2 were marked. After completion of the prosecution evidence, the incriminating circumstances against the accused were put to them in the evidence of witnesses, to which they denied. But, however, they did not examine any witnesses on their behalf. Believing the evidence of P.Ws.1 and 2, the learned Sessions Judge convicted A1. Assailing the same, the present appeal came to be filed.

3. Learned counsel for the appellant would submit that there is any amount of doubt with regard to the theory of abduction as stated by P.W.1 in his evidence. He took us through the evidence of P.W.1 to show that there was neither any threat nor was he forced to enter into the car. In the absence of any force or any deceitful means being adopted to abduct P.W.1, the ingredients constituting an offence under Section 364-A IPC are not at all attracted. Insofar as the evidence of P.W.2 is concerned, the learned counsel submits that the same does not corroborate the evidence of P.W.1 in material particulars. It is

urged that when P.W.1 could say that the accused demanded P.W.2 to pay a sum of Rs.2 lakhs, which was reduced to Rs.1,25,000/-, the alleged threat informed by A1 to P.W.2, that he would kill P.W.1, is not reflected in the evidence of P.W.1. Learned counsel, therefore, submits that the version of P.W.2 with regard to the threat given by A1 is an improvement to the evidence of P.W.1 and the same is done only to bring the case within the four corners of Section 364-A IPC.

4. On the other hand, the learned Public Prosecutor would contend that the evidence of P.Ws.1 and 2 corroborated with each other's version and as such, there is no reason to doubt their version. He further submits that recovery of Rs.5,000/- from A1 is sufficient to show that there was a demand for ransom and the said amount was paid to the accused.

5. In order to appreciate the rival arguments, it would be useful to refer to the evidence of P.Ws.1 and 2. P.W.1 gave evidence stating that on 28.03.2008 while himself along with his friends Kamil, Arshad and Sohail were proceeding near State Bank of Hyderabad, Main Branch road, Mahabubnagar, A1 came in an Indica Car bearing No.AP 9 AF 3536 and made all four of them to sit in the car. On the way, A1 released Kamil near Shadnagar and later on, Arshad was released at about 2 AM. His evidence also shows that A1 took cell phone number of P.W.2, from P.W.1, and made a call to him demanding ransom of Rs.2 lakhs for the release of P.W.1. However, the offer given by P.W.2 to pay Rs.1,25,000/- was accepted. His evidence also discloses that in the morning A1 brought him to Boyapalli gate, which is near the Court premises from where A1 made

a call to P.W.2 informing him that he would be sending one Sujahuddin for collecting money and accordingly, the said Sujahuddin went and collected the money from P.W.2. It is to be noted here that the evidence in chief of P.W.1 it nowhere speaks about any threat given by A1 and that abduction, if any, was done by inducement or force.

In the cross-examination, P.W.1 admits that himself, Kamil, Arshad did not raise any cries nor they asked anybody to help them. He further admits that he did not try to get down at Shadnagar when the car was stopped for releasing Kamil. He further admits that he did not inform either Kamil or Arshad to inform his parents about the incident. He further admits that near the Court premises and near Boyapalli gate, from where A1 telephoned to P.W.2, the police were present but he did not make any effort to inform them nor raised any cries about alleged abduction. His evidence in cross-examination shows that though he has cell phone, he did not make any effort to talk with any third persons including his parents. It would be useful to extract the relevant portion in the cross-examination of P.W.1, which is as under:

“... Myself, Kamil, and Arshad did not raise any cries nor were asked anybody to help us by saying that A1 is taken them forcibly. I did not try to get down at Shadnagar when said car was stopped at Shadnagar for releasing Kamil. I also did not inform to Kamil to inform that A1 kidnapped me. I did not inform even Arshad to go and inform to my family members about kidnapping incident. I did not inform to police about the incident of kidnapping when we were taking near court premises Boyapalligate and near court premises. After my release I did not try to inform to Mahabubnagar police about incident of kidnapping. I got my cell phone. I did not try to talk on my cell phone with third persons including with my parents,

stating that I am in the custody of A1. I have no enmity with A1, I have no transaction with A1, I have no land dispute with A1 ...”

6. From the above, it is clear that there was ample opportunity for P.W.1 to inform others about abduction and forceful confinement as alleged by the prosecution. No explanation is forthcoming from P.W.1 as to why he did not inform others when he had enough opportunities to disclose the same. Therefore, his evidence creates some doubt as to whether really there was any abduction. Even assuming for the sake of assumption that it was abduction or kidnap, we are of the opinion that the same does not satisfy the requirement of Section 364-A IPC, since his evidence is silent as to the threat to his life in the hands of A1.

7. The learned Public Prosecutor tried to rely on the evidence of P.W.2 to show that there was a threat to the life of P.W.1. He refers to his evidence in chief of P.W.2 wherein it was stated that “... *demanded me to pay Rs.2.0 lakhs and in the event amount is not paid he will kill my brother*”. But P.W.1 in his evidence never stated that there was any threat given by the accused nor does he speak about A1 informing P.W.2 that he would kill P.W.1, if the amount was not paid. As contended by the counsel for the appellant, the version of P.W.2 appears to be an improvement made only to bring the case within the four corners of Sections 364-A IPC. In view of the said discrepancies, the evidence of P.W.2 cannot be believed to accept the plea of the Public Prosecutor that P.W.1 was threatened.

8. Hence, the case on hand does not fall within the meaning of abduction, as defined under Section 362 IPC. Apart from that, no explanation is forthcoming from the prosecution as to why they did not examine the other two persons, who were stated to have been abducted along with P.W.1. Had they been examined, their evidence would have thrown some light as to whether there was any abduction and if so, whether it was forceful. Having regard to the circumstances stated above, we feel that the prosecution failed to bring home the guilt of the accused for the offence punishable under Section 364-A IPC.

In the result, the criminal appeal is allowed. The conviction recorded against the appellant – accused in S.C.No.658 of 2010 on the file of Family Court-cum-Additional District and Sessions Judge at Mahabubnagar, is set aside. The appellant/accused is acquitted of the offence under Sections 364-A and 341 IPC and he shall be set at liberty forthwith, if he is not required in any other case.

C. PRAVEEN KUMAR, J

T. RAJANI, J

June 19, 2018
DSK