

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 152 of 2011

{Arising out of judgment dated 9-5-2011 passed by the 2nd
Additional Sessions Judge, Bilaspur, in S.T.No.47 of 2010}

1. Anil Kumar Shrivastav, S/o Late Shri M.P. Shrivastava, Aged About 40 Years, R/o Near Primary School, Mangala, Bilaspur, PS Civil Lines, Bilaspur, Tahsil & District Bilaspur, CG.

---- Appellant

Versus

1. Shailendra Saxena @ Goldi, S/o Premnarayan Saxena, aged about 21 years, R/o Near Primary School, Mangala, Bilaspur, PS Civil Lines, Bilaspur, Tahsil & District Bilaspur, CG.
2. Ramesh Kumar Sahu, S/o Laxman Prasad Sahu, aged about 19 years, R/o Yamuna Nagar, Mangala, Bilaspur, PS Civil Lines, Bilaspur, Tahsil & District Bilaspur, CG.
3. Uttam Sahu, S/o Chandrika Prasad Sahu, aged about 21 years, R/o Mangala Road, Yamuna Nagar, Mangala, Bilaspur, PS Civil Lines, Bilaspur, Tahsil & District Bilaspur, CG.
4. Rakesh Devangan, S/o Mangal Prasad Devangan, aged about 27 years, R/o Kumharpara, Karbala, Bilaspur, PS City Kotwali, Bilaspur, Tahsil & District Bilaspur, CG.
5. Ashok Das, S/o Premdas Manikpuri, aged about 28 years, R/o Naya Sarkanda, Bangali Para Gali No.3, PS Sarkanda, Bilaspur, Tahsil & District Bilaspur, CG.
6. Ravi Kumar Gupta, S/o Sharughna Prasad Gupta, aged about 21 years, R/o Next to Mangala Naka Dhuripara, Mangala, Bilaspur, PS Civil Lines, Bilaspur, Tahsil & District Bilaspur, CG.
7. State of Chhattisgarh, through its District Magistrate, Bilaspur, CG.

---- Respondents

CRA No. 387 of 2011

1. Shailendra Saxena @ Goldy, S/o Premnarayan Saxena, aged about 21 years, R/o Near Mangla Primary School, Bilaspur, CG.

2. Rakesh Dewangan, S/o Mangal Prasad Dewangan, aged about 27 years, R/o Kumhar Para, Karbala, Thana City Kotwali, Bilaspur, CG.
3. Ravi Kumar Gupta, S/o Shatrughan Prasad Gupta, aged about 21 years, R/o Ahead of Mangala Naka Dhuripara, Thana Civil Lines, Bilaspur, CG.

---- Appellants

Versus

1. State of Chhattisgarh, through the District Magistrate, Bilaspur, CG.

---- Respondent

CRA No. 555 of 2011

1. Ramesh Kumar Sahu S/o Laxman Prasad Sahu, aged about 19 years, R/o Yamuna Nagar, Mangla, P.S. Civil Line, Distt. Bilaspur, C.G.

---- Appellant

Versus

1. State Of Chhattisgarh, through P.S. Civil Line, Dist. Bilaspur, CG.

---- Respondent

CRA No. 589 of 2011

1. Uttam Sahu, S/o Chandrika Prasad Sahu, aged about 21 years, R/o Mangla Road, Yamuna Nagar, PS Civil Lines, Dist. Bilaspur, CG.

---- Appellant

Versus

1. State Of Chhattisgarh, through Police Station Civil Lines, Dist. Bilaspur, CG.

---- Respondent

For Appellant
in ACQA No.152 of 2011

Shri Suresh Pandey, Advocate

For Appellant
in CRA No.387 of 2011

Shri Sandeep Shrivastava, Advocate

For Appellant
in CRA No.555 of 2011

Shri Ram Kumar Tiwari, Advocate

For Appellant
in CRA No.589 of 2011

Shri Basant Kaiwartya, Advocate

For State

Ms Fouzia Mirza, Addl. Adv. General

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

Judgment on Board

By

Prashant Kumar Mishra, J.

26-02-2020

1. Since the present batch of three criminal appeals and one acquittal appeal are arising out of the same judgment dated 9-5-2011 rendered by the 2nd Additional Sessions Judge, Bilaspur, in ST No.47 of 2010, they are being considered and disposed of by this common judgment.
2. By the present criminal appeals the accused persons namely; Shailendra Saxena @ Goldi (A1), Ramesh Kumar Sahu (A2), Uttam Sahu (A3), Rakesh Dewangan (A4) and Ravi Kumar Gupta (A6) have challenged their conviction and order of

sentence passed by the trial Court whereby they have been convicted under Sections 363 & 120-B Part I of the Indian Penal Code (IPC) and each of them has been sentenced to undergo RI for 5 years and RI for 2 years, respectively with usual default stipulations. Rakesh Dewangan (A4) has also been convicted under Section 25 (1) (1B) (b) of the Arms Act and sentenced him to undergo SI for 1 year and to pay a fine of Rs.500/- with default stipulation. By the same judgment learned trial Court has acquitted the accused namely; Ashok Das (A5) of all the charges.

3. ACQA No.152 of 2011 has been preferred by PW-5 Anil Kumar Shrivastav (for brevity 'the complainant'), father of PW-1 Ku. Muskan Shrivastav & PW-2 Raunak Shrivastav (for brevity 'the victim children'), for convicting all the accused, including the clean acquittal of accused Ashok Das (A5), under Sections 364-A & 120-B of the IPC and under Sections 25 & 27 of the Arms Act instead of Section 363 of the IPC.
4. As per the prosecution case the complainant Anil Kumar Shrivastav (PW-5) lodged a missing report at about 6.30 am on 4-11-2009 informing the police that his children Ku. Muskan Shrivastav (PW-1), aged about 10 years & Raunak

Shrivastav (PW-2), aged about 13 years, had gone to attend tuition class on their bicycle at about 5.00 am on 4-11-2009. When they did not reach the tuition class their teacher Seema Mishra (PW-5) phoned his wife Reeta Shrivastav (PW-9) to enquire as to why the children had not reached the tuition class. The complainant and other family members started searching them but they were not found. Their bicycle was found in front of Holy Cross School. During search by the police, the complainant received a phone call from mobile informing him that both the children are in their custody and they shall be released on payment of ransom amount. Thereafter, the police started searching the location of the mobile number from which the informant had received the call and the accused persons were arrested as suspects. A1 and other accused persons were found to have kidnapped the children and kept them in a house at Deendayal Colony. The children were recovered from the said place along with some other articles e.g. cushion & pillows. The vehicle, mobile sets and country made revolver were also recovered from the possession of the accused persons.

5. After recording diary statements of the witnesses; seeking call details of the mobile set from which calls were made to the complainant's mobile and completing other necessary

investigation charge sheet was filed against the accused persons for committing offence under Sections 364-A & 120-B of the IPC and under Sections 25 & 27 of the Arms Act.

6. In course of trial, the prosecution examined as many as 18 witnesses to bring home the charges. The accused persons abjured the guilt and pleaded false implication, however, they did not examine any defence witness. The trial Judge did not find proof of demand of ransom amount, therefore, the accused persons have been acquitted for committing offence under Section 364-A of the IPC and convicted them as stated *supra*.
7. Learned counsel appearing for the convicted accused would argue that there is no evidence that the convicted accused were involved in kidnapping the children of the complainant. According to them the prosecution case is full of material contradictions and omissions. Learned counsel would further argue that in absence of Test Identification Parade (TIP) being conducted, identification of the accused has not been established and on this count alone they deserve to be acquitted.

8. Learned counsel appearing for the complainant in ACQA No.152 of 2011 would argue that acquittal of all the accused for offence under Section 364-A of the IPC is based on perverse finding. Acquittal of some of the accused for offence under Section 25 (1) (1B) (b) of the Arms Act and acquittal of A5 is also suffers from grave illegality and perversity. According to learned counsel, there is sufficient evidence establishing the ingredients for offence under Section 364-A of the IPC, therefore, all the accused should have been convicted for this offence.
9. PW-1 Ku. Muskan Shrivastav & PW-2 Raunak Shrivastav, both victim children, have stated that when they were going to attend tuition class at 5.00 am on 4-11-2009 and reached near Holy Cross School one silver coloured Bolero vehicle stopped near their bicycle; caught them; gagged their mouth by inserting clothes; made them blind by tying their eyes with ribbon; and they were taken to a secluded house. Their father reached with the police team and recovered them.
10. While PW-1 Ku. Muskan Shrivastav states that A1 & A6 are known to them previously, PW-2 Raunak Shrivastav states that he identified A1 from his voice and some part of his face, as he used to visit their house.

11. PW-3 Seema Mishra is the tuition teacher in whose house the victim children used to attend morning tuition classes. This witness had informed the parents of the victim children that the children have not reached the tuition class.
12. PW-9 Reeta Shrivastav is the mother of the victim children. She also speaks about receiving mobile call from PW-3 Seema Mishra and reaching to her house on a motorcycle with her husband. She states that when they were returning from Civil Line Police Station her husband received mobile call from an unknown person threatening that if they have any desire to see their children alive they should arrange ransom amount and remove police protection.
13. PW-5 Anil Kumar Shrivastav (complainant) is the father of victim children. He has lodged the missing report and received mobile call from an unknown person demanding ransom and threatening to kill the children if the ransom is not paid and the police is informed. He had gone to Deen Dayal Colony House No.517-B at Mangla with the police team and recovered his victim children. PW-6 Rakesh Kumar Shrivastav, PW-10 Ashok Tiwari & PW-15 Murari Prasad Shrivastav have supported the statement of this witness. Five

convicted accused persons were present on the spot at the time the police raided the house at Deen Dayal Colony, Mangla. PW-4 Balram Prasad Kaushik has deposed that he had rented his house from which the victim children have been recovered to A1.

14. From the above statements of the witnesses and particularly for the reason that all the convicted persons were present at the spot where the victim children were held in captivity and two of them namely; A1 & A6 have been identified by the victim children on the basis that they were previously acquainted with them, the involvement of the convicted accused in kidnapping the victim children is fully established.
15. In so far as kidnapping for ransom punishable under Section 364-A of the IPC is concerned, it is to be seen that the call details have been proved by PW-14 Prabhakar Tiwari, who is the Assistant Sub Inspector and not a Nodal Officer of the concerned Telecom Service provider. Such manner of proof is not permissible in law under Section 65B of the Evidence Act. Moreover, the unknown caller, who demanded ransom amount, has not been identified, neither there is evidence as to what exact amount was demanded as ransom. Thus, the

ingredients attracting offence under Section 364-A of the IPC
is not established by the prosecution.

16. Based on the memorandum statement (Ex.P/12) of A4, country made revolver has been recovered from his possession vide Ex.P/10. These two documents have been proved by PW-6 Rakesh Kumar Shrivastav & PW-15 Murari Prasad Shrivastav. They have fully supported the prosecution case.
17. Necessary sanction for prosecution for committing offence under Sections 25, 27 of the Arms Act has been obtained from the District Magistrate, Bilaspur, vide Ex.P/25, which has been proved by PW-16 Jagdish Shrivastav, who is a ministerial staff of the District Collectorate and has worked under the sanctioning authority. PW-17 Jugal Kishor is the Armorer, who has found the recovered country made revolver in a working condition. A report to this effect has been issued by him vide Ex.P/26. Thus, it is fully established that the country made revolver was recovered from A4 for which he had no licence and thus, the offence under Section 25 (1) (1B) (b) of the Arms Act has been fully established by the prosecution.

18. A5 was not present either at the time of kidnapping or at the place where the victim children were held in captivity. At this place only the convicted accused persons were present. A5 appears to be the owner of Bolero vehicle as the same has been recovered from his possession vide Ex.P/9. Trial Court has rightly found that A5 was not involved in committing the offence.
19. From the above facts, it is established that the five convicted accused persons (A1 to A4 & A6) kidnapped the victim children at about 5.00 am on 4-11-2009 and held them in captivity at Deen Dayal Colony, Mangala. The convicted accused persons being present at the place of captivity, their involvement in kidnapping the victim children is fully established, however, demand of ransom amount has not been proved, therefore, their conviction under Section 363 of the IPC is fully justified on the basis of evidence on record. Similarly, A4 was found to be in possession of illicit arm, which was found to be in a working condition, therefore, his conviction under Section 25 (1) (1B) (b) of the Arms Act is fully borne out from the evidence on record. A5 being not involved in kidnapping the victim children he has rightly been acquitted.

20. It is reported that all the accused persons have already suffered the entire jail sentence awarded to them, as they were never released on bail.

21. As a sequel, all criminal appeals i.e. CRA Nos.387, 555 and 589 of 2011 and acquittal appeal i.e. ACQA No.152 of 2011, *sans substratum*, are liable to be and are hereby dismissed.

Sd/-

Sd/-

(Prashant Kumar Mishra)
Judge

(Gautam Chourdiya)
Judge

Gowri