

Popat and Others Vs. The State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Jul-31-2014

Judge : A.I.S. Cheema

Appeal No. : Criminal Appeal Nos. 48 of 2000 & 108 of 2000

Appellant : Popat and Others

Respondent : The State of Maharashtra

Judgement :

1. The Appeals arise out of Judgment of conviction passed against the Appellants-accused (hereafter referred as accused- with numbers as given to them in the trial Court and mentioned above in the cause title) by 4th Additional Sessions Judge, Beed, in Sessions Case No.76 of 1999, on 18th January 2000. The 13 accused were convicted for offence under Section 365 read with 34 of the Indian Penal Code, 1860 (for short I.P.C.). Additionally accused No.13 was convicted for offence under Section 368 of I.P.C. However, trial Court passed order of acquittal of accused Nos. 1 to 13 of offence punishable under Section 363, 364-A read with 34 of I.P.C. For offence under Section 365 of I.P.C. the sentence imposed was of simple imprisonment for three years and fine of Rs.1500/-, in default to suffer simple imprisonment for one year. For offence under Section 368 of I.P.C., sentence imposed was simple imprisonment for three years and a fine of Rs.1500/-, in default to suffer simple imprisonment for one year.

Appellant Nos.1 and 2 of Criminal Appeal No.48 of 2000 and Appellant No.2 of Criminal Appeal No.108 of 2000 expired and Appeals abated regarding them. Appellant No.10 Santosh is said to have already undergone the sentence during pendency of Appeal.

CASE OF PROSECUTION

2. The case of prosecution in brief, is as follows:-

(A) On 13th November, 1998 complainant Japan Rajaram Kale (PW-1) filed First Information Report (Exhibit-28) with Police Station, Ashti claiming that he is Pardhi and with family was residing at Ashti. On 9th November, 1998 along with wife Dropadabai and daughter Meena, they were going at about 12.30 in the afternoon, to hospital at Shirala and when reached on the road, from behind a blue coloured Jeep having built body in which there were 10-12 people armed with sword, iron rod, knife, pistol got down and told the complainant and family, abusing him that he had given false gold to Nivrutti Maid (accused No.13) and had taken Rs.25,000/- and cheated him. One of those persons called out the names, Popat (accused No.1), Manohar (accused No.2), Balu (accused No.5) to hold the complainant and others and to put them in Jeep. The 10-12 people from Jeep put complainant, his wife and daughter in Jeep, threatening that otherwise they will beat them. In the Jeep, Ranjit, aged 13 years, nephew of complainant was already there, who had been put and brought. When those persons forcibly put the complainant and his family in the Jeep, at that time Bhausahab Namdeo Aajbe, Dilip Devrao Khandagale, Devrao Khandagale, Balu @ Kondiba Khandagale, saw the incident. Later on accused persons took the complainant and others in the Jeep to Khadaka Phata, Nagzari, Tq-Newasa and confined them in a room. Those persons started beating them and were asking to give them Rs.25,000/- or they will be killed. Due to that, on 12th November 1998 at about 1.30 p.m., complainant told them that he will go and bring Rs.25,000/- for which they have to release him and they can keep his wife, daughter and nephew with them, whom they can release after they get money. Due to it, those persons released the complainant and told him that their names are: 1) Nivrutti Maid,

2) Popat Dahale,

- 3) Parvej Pathan,
- 4) Sattar Inamdar,
- 5) Balu Mhaske,
- 6) Manohar Tekawade,
- 7) Sameer Shaikh,
- 8) Dattu Jondhale,
- 9) Asif Patel,
- 10) Nabil Shaikh,

11) Sambhaji Mali (These are accused Nos.1 to 10 and 13). They told complainant that the money should be brought and given to them only and not to anybody else. Thus, he was released. On earlier day, in the night the complainant came to Waki by Truck and went to his residence and told the incident to his son Sunil, daughter in law Mangal and nephew Uddhav. Then he stayed at his house and on 13th November, 1998 had come to Police Station and was giving the First Information Report (Exhibit

28) (for short F.I.R.). Complainant claimed that he cannot read or write and so cannot tell the number of Jeep but it was a closed body Jeep of blue colour.

(B) As per the prosecution, the F.I.R. as above was registered at Crime No.173 of 1998 at 14.10 hours by Head Constable Laxman Sanap (PW8). The investigation was thereafter done by P.S.I. Dhole. P.S.I. Dhole took along with complainant and when they were proceeding from Shirala to Ashti, the said blue coloured Mahindra Commander Jeep came from opposite side and complainant identified the same and when the Jeep was stopped, Dropadabai, wife of the complainant was in the Jeep along with 10 persons, who, on asking, told their names (the names recorded are of accused Nos.1 to 10). When the Jeep was examined, one dagger, one sword, one knife, one toy pistol, one iron rod and other articles were seized, of which incident, Panchnama (Exhibit 32) was drawn.

(C) According to prosecution, the Police then carried out raid at the place at Khadaka Phata, Nagzari, where daughter and nephew of the complainant were found sleeping. In the same place, accused No.11 Raju and accused No.12 Santosh were also found sleeping. The daughter and nephew of complainant were rescued. A Bond (Exhibit 39) said to have been executed by the accused persons from the complainant and his family, was also seized. Spot Panchnama was drawn. Further investigation was completed. After the investigation, charge-sheet came to be filed.

3. As the offence was Sessions triable, the matter came to be committed to the Court of Sessions. The Sessions Judge framed charge against the accused persons under Sections 363, 364-A, 365, 368 read with 34 of I.P.C. The accused persons pleaded not guilty. Their defence is of denial. According to the accused, in an earlier incident dated 30th October 1998, the complainant had robbed accused No.1 Popat and accused No.13 Nivrutti and his brother-in-law on Aurangabad-Nagar road, regarding which report had been filed with Newasa Police and accused No.1 Popat had gone to the residence of complainant at Waki and asked him to return the amount robbed and in a meeting, complainant, his wife and daughter had executed stamp paper to return the amount of Rs.1,50,000/-. To avoid giving back the money, the present false case was filed by the complainant.

REASONINGS OF THE TRIAL COURT

4. The prosecution brought on record evidence of eight witnesses and closed the case. The accused did not lead defence evidence. The trial Court considered the material brought before it. The trial Court took note of the provisions of law. It was observed that, taking of PW-5 Ranjit from his house could not be said to be with an intention of taking him out of the lawful guardianship of his parents and considering the requirements of the definition of kidnapping and abduction and applying the same to the facts of the matter, it could be said that PW-5 Ranjit (who was 13 years old as per F.I.R.) was abducted and not kidnapped.(?) The trial Court also observed that Section 364-A of I.P.C. did not apply as in the present case the persons kidnapped were asked for the amount and demand was not to a third person, which, according to the trial Court, was the requirement under

Section 364-A of I.P.C. Yet at another place the trial Court observed that the charge of kidnapping PW-5 Ranjit and abduction for the purpose of ransom is not proved. Trial Court dealt with ground of delay raised in the trial Court and referring to the evidence of PW1 Japan in details, observed that in the F.I.R. there was not a single element brought in the cross-examination to indicate embellishment, addition of colour or exaggeration. The trial Court came to the conclusion that although the F.I.R. was filed after lapse of 12 hours, there was no embellishment or concocted version, looking to the cross-examination. It was held that delay in lodging F.I.R. did not impeach the credibility of the complainant or prosecution case. In the trial Court, non examining of P.S.I. was a ground taken, which has also been discarded by the trial Court, holding that there was no prejudice. The trial Court analyzed the evidence on record and came to a conclusion that the offence was established under Section 365 read with 34 of I.P.C. against all the accused and additionally under Section 368 of I.P.C. against accused No.13.

ARGUMENTS IN APPEAL

5. I have heard learned counsel for Appellants-accused in both the Appeals. The Appeals raise various grounds and it is argued for the Appellants-accused, that the Judgment of the trial Court is not at all maintainable. There was clearly delay in filing of F.I.R. The incident is said to be of 9th November 1998 and there is evidence that on next day of incident the complainant was allowed to go to bring money, but still the F.I.R. came to be filed only on 13th November 1998. The complainant, who claimed to be illiterate and could not remember the number of the vehicle, gave detailed names of the kidnappers. Although there were no names given of the accused Nos.11 and 12 in the F.I.R., and although no link was established, all the accused came to be convicted on the basis of vague evidence without analyzing the facts in a proper perspective. As per the F.I.R., there were people who saw the kidnapping take place, but neither those persons, who were named in the F.I.R. reported the matter to anybody, nor they were examined. Although PW5 Ranjit claimed to have injured, no medical certificate is forthcoming. No T.I. Parade was held. The Investigating Officer, who it is alleged rescued family of the complainant, was not examined. Due to non-examination of Investigating Officer, the accused persons suffered serious prejudice. The accused deserve to

be acquitted.

6. Per contra, the learned A.P.P. submitted that the family of the complainant had been kidnapped and if he took time to file F.I.R., the delay could not be said to be fatal. The F.I.R. cannot be said to be after thought. The names of the accused persons were given in the F.I.R. and so T.I. Parade was not necessary. Accused Nos.1 to 10 were caught redhanded when they came in the Jeep with wife of the complainant and so T.I. Parade was not necessary and they had also been named in the F.I.R. It was not necessary to state specific roles of the accused in the incident. Even if investigating officer could not be examined inspite of summons, the evidence of PW's 1, 4 and 5 (the complainant, his wife and nephew respectively) is sufficient. The accused did not bring on record any document of alleged report filed of earlier dacoity by complainant, as stated in the defence.

THE KIDNAPPING/ABDUCTION

7. It is now necessary to analyze the evidence which is on record. PW-1 is complainant Japan Kale, who is supported by his wife PW-4 Dropadabai and nephew PW-5 Ranjit. If evidence of these witnesses is considered, PW-5 Ranjit deposed that on the day of incident at about 1.00 p.m. he was in his house at Waki and a blue coloured vehicle came to his house. The accused persons got down from a vehicle and beat him and took him in Jeep to Shirala. Cross-examination of PW-5 Ranjit shows that when he was taken away in a Jeep from his house, not only young children were there, namely, Vaishali and Avinash but also wife of his uncle's son Sunil (daughter-in-law of complainant), namely Mangal was in the house.

Then there is evidence of PW-1 Japan Kale and his wife PW-4 Dropadabai, claiming that they were proceeding on foot to village Shirala along-with daughter Meena and when came near school building, a Jeep came there and all the accused got down from the Jeep, apprehended them and took them in Jeep to Newasa, Dist-Ahmednagar. PW-1 Japan deposed that accused were carrying swords and daggers. PW-4 Dropadabai claimed that the accused were carrying swords, knives and even a gun (see Marathi version). According to PW1 Japan, accused were saying that they had cheated them and demanded back Rs.25,000/-

from the complainant. The accused threatened to kill them. The accused took them to the house of accused No.13 Nivrutti. At that time PW-5 Ranjit was also in the Jeep and had been brought by the accused persons. The complaint filed on 13th November, 1998 referred to the presence of Bhausahab Namdeo Aajbe, Dilip Devrao Khandagale, Devrao Khandagale, Balu @ Kondiba Khandagale, as persons who saw the incident when the complainant and his family members were forcibly abducted.

NONE WHO ALLEGEDLY SAW COMPLAINED

However, no such witnesses, who saw the incident taking place at Shirala on road (which cross-examination shows to be busy road), were examined. Such persons did not even inform about incident to anybody or police. The daughter in law of complainant, namely Mangal, who was said to be at home when PW-5 was forcibly taken from his house, also does not appear to have raised any shouts or with help of husband Sunil reported the matter, when the incident took place on 9th November, 1998.

VAGUE EVIDENCE

8. The evidence on record regarding alleged kidnapping of PW-5 who was reported to be of 13 years of age in the F.I.R., and the abduction of complainant and his family is also vague. The three witnesses (PW's 1, 4 and 5) in vague and generalized manner referred to acts of accused. What was deposed is that all the accused got down from Jeep and apprehended them; the accused were carrying swords, daggers etc.; the accused said that they had been cheated and threatened to kill etc. PW-4 Dropadabai, in her examination-in-chief stated that all the accused present before the Court got down from the Jeep and apprehended them. The tenor of the F.I.R. Exhibit 28 is that 1012 persons got down from the Jeep and abused complainant that he had given false gold to Nivrutti Narayan Maid (accused No.13) and abducted and took them to the house of accused No.13 Nivrutti. The tenor of F.I.R. indicates that it was not claimed that accused No.13 was also present at the time of abduction. In evidence, however, the complainant and his wife deposed that all the accused got down from the Jeep and apprehended them.

17 PERSONS IN ONE CLOSE BODY JEEP?

There were 13 persons arrayed as accused before the trial Court. According to the case of prosecution, PW-5 Ranjit was already brought in the vehicle. Thus, there were 14 persons. With those 14 persons, the complainant, his wife and daughter are said to have been added and taken in the Jeep. Now, how all these 17 persons got into the Jeep, which is said to have been closed body built up Jeep, along with the swords, knives, gun, is not clear. The F.I.R. named only accused Nos.1 to 10 plus accused No.13 as the persons who told the complainant their names so that he remembers the names and brings money to them. The F.I.R. did not refer to accused Nos.11 and 12, but in the oral evidence PW's 1, 4 and 5 vaguely deposed that all the accused present before the Court came in the Jeep, got down from the Jeep and kidnapped or abducted them.

DELAY

9. The complainant deposed that after they were abducted, taken to the house of accused No.13 Nivrutti and the accused were demanding back the amount from him, he assured the accused about paying the amount and to release him and accordingly he was allowed to go on the next day. In oral evidence he claimed that after he was allowed to go, he directly went to Ashti Police Station and informed the incident vide F.I.R. Exhibit 28. F.I.R. Exhibit 28, however, claims that he was released on 12th November, 1998 in the afternoon at 1.30 p.m. and then he went to his Vasti or place of residence at Waki and stayed there and on next day went to file the F.I.R. The evidence of complainant that he, after he assured the accused of paying the amount, was allowed to go on next day, is vague in the sense that there are no details as to how-many days after the alleged abduction i.e. 9th November, 1998 he had given the assurance. Still evidence of PW-4 Dropadabai is some what clear on this point. PW-4 Dropadabai deposed that she and her family was abducted, as mentioned earlier, and they were taken to the house of accused No.13 Nivrutti and they were tied and beaten and accused told them to get Rs.25,000/- or else they would not let them live. She deposed that on the next day morning the accused allowed her husband to go to get the amount but since her husband did not return, the accused started saying that he had fled

and asked her to accompany to trace out the complainant. Thus, if the evidence of PW-4 Dropadabai is considered, after the incident dated 9th November, 1998 complainant was made free to get the money on 10th November, 1998. Thus, there are different versions between the evidence of PW1 and PW4 read with F.I.R. Exhibit 28, regarding when the complainant was released by the abductors and his movements thereafter. A person whose family has been kidnapped or abducted, may be in two minds whether or not to go to Police. However, that is not the evidence of prosecution that complainant was in any dilemma. While oral evidence of the complainant is that once released, he directly went to the Police, his F.I.R. says that after he was released, he went home, talked to his family and stayed there that night of 12th November, 1998 and next day went to the Police Station. Clearly, there was deliberation and there is delay in filing complaint.

The trial Court did not give weight to the delay strenuously reasoning out from the evidence that there was no embellishment or concocted version in the report Exhibit-28 and so the lapse of 12 hours which occurred for lodging of the complaint was not material. However, a simple question does not appear to have been asked as to how the complainant, who used thumb impression and in his own F.I.R. stated that he cannot read and write and so cannot tell the number of the Jeep, was able to tell 11 names in his F.I.R. which were of the accused Nos.1 to 10 and 13. In evidence he plainly told he does not know names of accused. If the motive was to get back money of Accused No.13, it is quite artificial in the F.I.R. That the accused while releasing the complainant to go and get the money, told their names in details as mentioned in Para 2 Supra on the plea that the money should be brought and given to them. It is as if the the abductors wanted the complainant to remember their names as well as surnames. I am not convinced that the F.I.R. was not a piece of deliberations or exaggeration. The trial Court adopted faulty reasonings to brush aside the delay. In Para 23 of the Judgment, the trial Court observed that the accused had admitted that they had taken the complainant and others to Newasa on that afternoon and the trial Court referred to Para 7 of the cross-examination of the complainant. Going through Para 7 of the cross-examination of the complainant, I do not think that the accused admitted as such that they had taken the complainant and others to Newasa. Asking for particulars to question delay cannot be equated with admitting the

incident, when there are suggestions of denial of the incident.

I.O. CUM WITNESS P. S.I. DHOLE WHO ALLEGEDLY RESCUED NOT EXAMINED.

10. The Investigating Officer P.S.I. Dhole was not examined in the trial Court. The observations of the trial Court show that inspite of Summons the witness did not come and the prosecution gave up. It does not appear that in the trial Court either the prosecution or the Trial Judge insisted for the presence of the Investigating Officer by sending any warrant to the witness or by moving the superiors. P.S.I. Dhole was not merely an Investigating Officer but he must be said to be even a witness as regards part of the incident of rescue of the wife, daughter and nephew of the complainant. The Trial Court discussed even this aspect strenuously reasoning out that there is no prejudice. However, I find that Investigating Officer was the material witness as far as facts of the present matter are concerned and his non examination takes away major part of the incident relating to the rescue. When a person is rescued from a place, to whom the place belonged, who all were present, how the raid was executed are material facts. Here it is claimed that P.S.I. Dhole caught accused Nos.1 to 10 in the Jeep along with the wife of the complainant and rescued her. The rescue of wife of complainant seizure Panchnama Exhibit-32 was exhibited in the evidence of Panch PW-2 Babasaheb Sasane. This Babasaheb Sasane turned hostile, as well as PW-3 Jaiwanta Khavle, who was the other Panch, also turned hostile. With both these Panchas turning hostile, non examination of the Investigating Officer, must be said to be fatal for the prosecution. Panchnama Exhibit-32 purported that the Police went along with complainant and the Jeep was spotted and stopped, in which accused Nos.1 to 10 were there along with wife of the complainant. Seizure of various instruments of assault from the Jeep is claimed. Exhibit-32 claims that when the Mahindra Jeep was seen coming from the opposite side, the complainant said that it was the same vehicle by which they had been abducted and even identified the accused Nos. 1 to 10. In oral evidence, the complainant Japan Kale simply stated that after filing the F.I.R., the P.S.I. had gone and brought his wife, daughter and nephew. He did not claim to have gone along. Even PW-4 Dropadabai deposed that when the Police vehicle came and stopped the Jeep, her husband was with

the Police. Thus, while the husband does not say anything, the Panchnama Exhibit-32 and PW-4 make contradictory claims that the husband was also with the police to rescue wife and the position does not become clear as Investigating Officer is not examined. The trial Court, however, observed that there was no prejudice.

PREJUDICE TO ACCUSED

11. There is yet another reason why the reasonings adopted by the trial Court are wrong for ignoring non examination of the Investigating Officer. Trial Court observed (in Para 29) that there were no material omissions amounting to contradictions brought on record which were necessary to be proved by examining the Investigating Officer and so there was no prejudice. The same trial Court in Para 33 of its Judgment, in second sub-Para, referred to the improvements in the evidence of PW-4 Dropadabai. The trial Court asked itself if the improvements were of such a nature and character so as to impeach the credibility and version of the witness. Resorting to Rulings, it ignored the improvements. The reasoning is demonstrably erroneous.

PW-4 Dropadabai in her evidence deposed that after she was rescued by the Police, Police took her to the house of accused No.13 Nivrutti and when they reached there, accused No.4 Parvej, accused No.9 Asif, accused No.11 Raju and accused No.12 Santosh were sleeping near her daughter, at the house of accused No.13 Nivrutti. Now the F.I.R. nowhere referred to any role of accused Nos.11 Raju and 12 Santosh. Here this witness was referring to role of Accused Nos.11 and 12 in the incident. In the cross-examination Para 9, PW-4 Dropadabai was asked and she stated that she had told the Police that when she with the Police went to the house of accused No.13, they had seen accused Nos. 4, 9, 11 and 12 sleeping near her daughter. She could not assign any reason as to why these facts were not appearing in her statement. The Investigating Officer who recorded the statement, was not examined and naturally this material omission could not be proved. Omission which implicated Accused Nos.11 and 12 could not be said to be not material. It is surprising that the trial Court ignored all this and accepted the evidence ignoring non examination of the Investigating Officer. I find that if the

omission was to be proved, the evidence of PW4 would have to be rejected regarding alleged role of accused Nos.11 Raju and 12 Santosh. Non-examining Investigating Officer Caused prejudice to accused.

SERIOUS DESCREPENCIES

12. If the Panchnama Exhibit 32 is perused, it claims that when the Police went with the complainant, they intercepted the Jeep from which accused Nos.1 to 10 got down along with wife of the complainant. The Panchnama gives names of all these accused also. Thus, it includes accused No.4 Parvej, as well as accused No.9 Asif. But then PW4 in her evidence claimed that after rescuing her when she went with the Police to the house of accused No.13 Nivrutti, accused No.4 Parvej and accused No.9 Asif were there sleeping with accused Nos.11 Raju and 12 Santosh, near her daughter. Thus, what PW4 Dropadabai deposed, does not match with the Panchnama Exhibit-32. Even PW-5 Ranjit deposed that when his aunt (PW4) went with the accused, accused Nos. 11 Raju and 12 Santosh remained back and does not refer to presence of accused Nos.4 and 9. What can be said is that the oral evidence and the documentary evidence Exhibit-32 do not match with material particulars regarding presence or absence of certain accused at alleged place of confinement.

CONFUSION IN CRIME NUMBER

13. Head Constable Laxman Sanap (PW8) wrote the F.I.R. and registered the offence at Crime No.173 of 1998. He was confronted with station diary entry proved at Exhibit 45, which showed that the offence was registered at Crime No.175 of 1998. When confronted, PW-8 Laxman deposed that there might be some mistake in mentioning the crime number of the present case in the case diary or in the F.I.R. as there were 45 cases registered on that day. I do not find that such excuse can be accepted. If the offences are being registered seriatim, there can be no question of such confusion. In fact even the subsequent investigation was done treating the offence as at Crime No.175 of 1998. It can be seen from the Seizure Panchnama Exhibit 32 that it claims the investigation related to Crime No.175 of 1998. The original F.I.R. in the record shows overwriting at the place where crime number is written. 175/98 was overwritten

subsequently to read as 173/98. The F.I.R. under Section 154 of the Code of Criminal Procedure in proforma available in record of trial Court, shows that it was sent to the J.M.F.C. only on 16th November, 1998. There are no explanations coming forth as to why F.I.R. registered in the afternoon of 13th November, 1998 was not sent to the J.M.F.C. forthwith and why there was delay. The Investigating Officer is not examined and in the circumstances it is doubtful as to the manner in which the offences were being registered in the station diary. In the facts of the present matter, such delay in sending the copy of F.I.R. to the Magistrate creates further doubt. Defence of the accused is that the Investigating Officer and the complainant colluded to bring upon a false case.

14. The trial Court referred to the PW's 4 and 5 identifying the weapons in the Court, although seizure itself was not duly established. The trial Court also referred to the seizure of stamp paper Article A, although Panch PW-6 Ganpat Potphade and PW-7 Avinash Ranvade turned hostile and Panchnama Exhibit-39, in that regard, also was not duly proved and the Investigating Officer had not been examined. I find that Trial Judge was confused at places and the reasonings adopted by the trial Court for appreciation of the evidence cannot be confirmed and need to be discarded.

15. At the time of arguments, learned counsel for the Appellants-accused argued that if the trial Court was acquitting all the accused of the offence under Section 363 of I.P.C., it could not have convicted accused persons for offence under Section 365 of I.P.C. I am not entering into the legal aspects on this count, as on merits itself I am finding that the Judgment of the trial Court cannot be maintained, looking to the evidence available on record. The prosecution witnesses Nos.1, 4 and 5 were not at all reliable and their testimony, not corroborated by any independent witness, could not be accepted. The accused are entitled to benefit of doubts appearing from record. Although the charge was framed by the trial Court against all the accused under Sections 363, 364-A, 365, 368/34 of I.P.C., no specific direction in the final order was given with reference to offence under Section 368 of I.P.C. as regards accused Nos.1 to 12.

16. For reasons discussed above, I pass the following order:-

ORDER

(A) Both the Appeals i.e. Criminal Appeal No.48 of 2000 and Criminal Appeal No.108 of 2000, are allowed.

(B) The conviction and sentence imposed by the trial Court is set aside.

(C) All the accused are acquitted of the offence with which they were charged. Their Bail Bonds shall stand discharged. Fine if paid, be returned to them.

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