

Ashok and Others Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Dec-19-2014

Judge : S.K. Gangele & Rohit Arya

Appeal No. : Criminal Appeal No. 34 of 2006 & Criminal Appeal Nos. 384 & 409 of 2005

Appellant : Ashok and Others

Respondent : State of Madhya Pradesh

Judgement :

S.K. Gangele, J.

(1) All these three appeals have been filed against the common judgment of conviction and sentence dated 13th May, 2005 passed by Second Additional Sessions Judge, Ashok Nagar, District Guna in Sessions Trial No.196/2003. The trial Court convicted four accused persons for commission of offence punishable under Section 364-A/34 of Indian Penal Code [in short "IPC"] and sentenced them to undergo life imprisonment with fine of Rs.1 lac each; in default of payment of fine, further undergo five years rigorous imprisonment each.

(2) Against this common judgment of conviction and sentence, appellant-accused Ashok S/o. Shri Ramnarayan Sharma preferred Criminal Appeal No.34/2006; appellants- accused Gopal S/o. Shri Babulal and Naval Singh S/o Shri Jagannath

Singh preferred Criminal Appeal No.384/2005 and appellant- accused Pradip Kumar S/o.Nannulal preferred Criminal Appeal No.409/2005.

(3) In Criminal Appeal No.34/2006, the Division Bench of this Court vide order dated 23/08/2006 suspended the execution of jail sentence of appellant- accused Ashok during pendency of appeal and granted bail. Remaining accused persons are in judicial custody.

(4) All the Criminal Appeals are heard together and are being disposed of by this common judgment.

(5) The allegation against the accused persons is that they abducted Vikas Jain, who was a student, for ransom. After search operations, police rescued abductee- Vikash Jain. Report of the incident was lodged at police station Ashok Nagar on 31-03-2003 vide Ex.P.1. In the FIR Ex.P.1, it is mentioned that accused-Pradip Kumar and three other unknown persons abducted Vikas Jain, son of complainant- Ashok Kumar Jain. On the basis of FIR, police registered Crime No.222/2003 for commission of offence under Section 364-A/34 of IPC against the accused persons. After completion of investigation and other formalities, police filed charge-sheet in the committal Court and the case was committed to the Sessions Court for trial. During trial, all the accused persons abjured their guilt and pleaded complete innocence. In order to bring home the charge, the prosecution, in support its case, examined as many as six witnesses and placed documents Ex.P-1 to Ex.P-11 and Ex.D-1 to Ex.D-3. On behalf of accused persons, in their defence, only one witness, namely, Rambharosa has been examined as DW1. The Court also examined two witnesses, namely, Prakash Singh as CW1 and Suresh Singh Sikarwar as CW2.

(6) After conclusion of trial, the trial Court after appreciating and marshalling the evidence of the prosecution, came to hold that charge under Section 364-A/34 of IPC is proved against the accused persons and eventually, convicted them and awarded sentence accordingly, as mentioned above.

(7) Learned counsel appearing on behalf of the appellant- accused Ashok S/o Ramnaryan Sharma in Criminal Appeal No.34/2006, submitted that there is no

evidence on record to hold the appellant- accused guilty for commission of offence. The appellant was not associated with commission of abduction of the abductee, neither he was identified by any of the witnesses. Hence, the judgment of conviction and sentence passed by the trial Court on the basis of dock identification, is illegal.

(8) Learned Public Prosecutor for the State, in support of impugned judgment of conviction and sentence, has contended that the evidence led by the prosecution is sufficient to hold the accused guilty for commission of offence under Section 364-A/34 of IPC. The prosecution has proved its case against the accused beyond reasonable doubt. The findings recorded by the trial Court are in accordance with law. Hence, the appeals are liable to be dismissed.

(9) PW1- Ashok Kukmar Jain, is father of abductee-Vikash Jain. He lodged FIR Ex.P-1 at police station Ashok Nagar. He deposed that on 31st March, 2003 his son Vikas Jain aged about 15-16 years, was a student of Class VIII. At around 8:00 O'clock in the morning, his son had gone to Vardhmaan School for appearing in the examination of Sanskrit paper. When his son did not return back to the house upto 12:00 O'clock, then he enquired from the teachers of the School. The teachers informed that his son Vikash Jain had not come to the school to attend the examination. The teachers of the school told him that his son had gone to the house of Pradip Kumar. Then, he went to the house of Pradip Kumar. It was told by neighbour that Pradip had gone to some other place with a suitcase. Thereafter, when he was going to the police station, at that time, on the way, owner of tempo trax No. UP 94-7170 namely, Amit Jain and his driver Prakash Singh met him. They informed that Pradip had hired a vehicle tempo trax No.UP 94-7170 for the purpose of attending a marriage party at Shivpuri. The driver of vehicle Prakash told the complainant that accused Pradip had taken the vehicle and parked at the school where one boy of 14-15 years and another person had boarded in the vehicle. Thereafter, two other persons had also boarded the vehicle. On the midway, one accused person slapped the boy and when driver Prakash Singh objected about the act of accused, they had thrown the driver out of the vehicle and had taken the vehicle to some unknown destination. Thereafter, report Ex.P-1 was lodged. The witness further deposed that on 1st April, 2003 he

alongwith police party had gone forests at Gopalpur and Kanchanpur villages and on 2nd April, 2003 behind the bushes, he found his son Vikash Jain with three accused persons namely Pradip Kumar, Gopal and Naval Singh. When accused persons noticed the police, they tried to run away from the spot. However, police party captured the accused persons and his son was recovered from the possession of accused persons. A Panchnama was prepared vide Ex.P-2. Thereafter, his son Vikash Jain was given to him on Supurdgi.

(10) Abductee-Vikash Jain (PW2), in his evidence, deposed that he had known accused Pradip Kumar because he had been doing the work of driver at his home. He had also known accused Gopal and Naval from the date of abduction. On 31-03-2003, he had gone to Vardhmaan School for appearing in the examination of Sanskrit paper. Near the school, accused Pradip met with him and told him that he would return amount of Rs.1,000/- to his tau (elder brother of his father Ashok Kumar Jain) upto 3rd April, 2003. Near the school, a tempo trax No.UP 94-7176 was parked. Accused Pradip further offered him a cigarette because he used to smoke, but he refused to smoke cigarette. Then, accused Pradip forced him for smoking together by sitting in the tempo trax. In the tempo trax, accused Naval Singh, Gopal and driver Prakash Singh were present. Accused Pradip was sitting on the front seat near the driver of the vehicle. Accused Naval and Gopal were sitting alongwith him on the back seat of the vehicle. Thereafter, when tempo trax moved some distance accused Ashok Sharma had also boarded the vehicle and he was sitting on the front seat. The driver of the vehicle Prakash told accused Pradip that he (abductee) had to attend the examination, hence, he be permitted to go to school. In between, accused Naval slapped him and covered under a blanket. Driver Prakash resisted about the action of accused and told that he would not drive the vehicle. Thereafter, he left the vehicle. Accused Pradip pushed driver Prakash out of the vehicle and thereafter accused Pradip started driving the vehicle. Accused Naval instructed him (abductee) to keep quite failing which he would kill him. Due to fear, he was sitting quietly. Accused Pradip alongwith other accused persons took him in the temp trax to a jungle where, accused Pradip left him alongwith accused Naval and Gopal and went in temp trax to some other place. He was kept behind the bushes of the jungle. On the next day, in the morning accused Pradip came there and told that Ashok Sharma had gone to

Agra and from there he would make a phone call to his "papaji" Ashok Jain in regard to demand of Rs.50 lacs for his release. In the morning, at about 8:00 am accused Pradip told accused Gopal and Naval to take meal. Accused Gopal had gone to nearby village for taking meal and returned at about 5:00 pm without meal. Accused Gopal left the jungle at about 6:00 pm for taking meal. In the whole night accused Pradip and Naval were alongwith the abductee. On the next day at about 5:00 in the morning accused Pradip told for change the place because someone may watch them. Thereafter, when they tried to change the place, accused Pradip told that police had been coming and ran away. Then police surrounded and caught hold accused Naval and Pradip and thereafter arrested them. Accused Gopal was with the police. He went towards the police and met his "papaji" Ashok Jain. The witness in his evidence said that Ashok Jain is the elder brother of his father.

He used to call him "papaji". Thereafter, he came to the police station. There were some investigations and he signed the document Ex.P/2. The witness further deposed that the accused persons had abducted him for ransom of Rs.50 lacs.

(11) PW3 - Amit Jain is owner of the vehicle tempo trax No. UP94-7170. In his evidence, he deposed that on 31st March, 2003 accused Pradip Jain had come to his house and requested him that he would like to take his vehicle on rent because he wants to go to Shivpuri to attend a marriage party. He had given the vehicle to him alongwith driver Prakash Rajpoot. On that day, after one and half hour driver Prakash returned back. He told him that in the vehicle accused-Pradip alongwith three other accused persons had gone to a jungle and one boy was also there. He also deposed that accused Pradip thrown driver Prakash out of the vehicle and himself drove the vehicle.

(12) PW4- OP Arya, who was working at the relevant time as Naib Tahsildar at Tahsil Ashok Nagar, deposed that on 26-03-2003 he received a letter from police station Ashok Nagar. In the aforesaid letter, a request was made to conduct Test Identification Parade of some persons. Thereafter, Test Identification Parade was conducted by him on 27-06-2003 at around 7:00 O'clock in the evening. He signed the identification memo at the place "A-A". CW1-Prakash Singh also signed on the

identification memo Ex.P-4 at the place "B-B", identifying accused Pradip and Gopal in the Test Identification Parade.

(13) Evidence of PW5 Vineet is not of much relevance. PW6 G.S. Jadon was posted as Sub-Inspector of Police at police station Ashok Nagar on 31-03-2003. In his evidence, he deposed that on the basis of report of complainant Ashok Kumar Jain, he registered FIR as Ex.P-1 and conducted investigation. He further deposed that he prepared spot map vide Ex.P-5 and signed the same. He recorded the statements of complainant Ashok Kumar Jain, abductee Vikash Jain and witness Prakash Singh under Section 161 of Cr PC. He further stated that he recorded the statements of Town Inspector Bharat Singh, Sanjay Chaturvedi and ASI Jagdish on 02/04/2003. On 04/06/2003 he prepared absconding Panchnama of accused Ashok Sharma vide Ex. P-11.

(14) CW1-Prakash Singh, in his evidence, deposed that he knew accused Pradip. From two-years of the incident, Amit Jain had come to him and told him that his vehicle was booked for Shivpuri by accused Pradip. He deposed that he was driver of the vehicle temp trax No. UP 94-7170. Thereafter, accused Pradip had taken the vehicle to near Vardhmaan School. Accused Pradip told him to take the party at the school. Thereafter, he went to a hotel for taking tea and after returning back, he found that two accused persons were sitting in the vehicle. Near the school, a boy also boarded the vehicle alongwith accused Pradip and went to Chilawag. The boy requested the accused persons to let him go because he had to attend the examination. However, accused Pradip refused to accept the request of the boy. Near Toriya, one accused person also boarded the vehicle. Thereafter, the boy again requested accused Pradip to leave him because he had to attend the examination. Then accused Pradip slapped the boy due to which he cried. The witness deposed that when he requested not to beat the boy and refused to drive the vehicle, accused Pradip and other accused persons forced him to leave the vehicle. Accused Pradip had taken the vehicle towards some unknown place. The witness further deposed that he returned back by a motorcycle which was going towards Bhora and he reached at a market. Thereafter, he narrated the incident to Amit Jain, who is the owner of the vehicle.

(15) Sureshsingh Sikarwar (CW2) in his evidence, deposed that on 31-03-2003 he was posted as in-charge of Police Station Ashok Nagar. He conducted investigation of Crime No.222/2003. During investigation, search of boy (abductee) was made. On searching in the jungle of Gopalpur- Kanchanpur villages, he recovered the abductee from the possession of accused Pradip, Naval and Gopal.

A panchnama was prepared by him to this effect vide Ex.P-2 and he signed the Panchnama. He had also taken signature of complainant Ashok Kumar, witness Prakash and abductee Vikash Jain. He had arrested accused Pradip, Naval and Gopal on the spot and abductee Vikash Jain was handed over on Supurdgi to Ashok and a Panchnama was prepared by him vide Ex.P-3. He prepared arrest memos of accused Pradip, Gopal and Naval vide Ex.P-6 to Ex. P-8. On 01/4/2003 the vehicle tempo trax No. UP94-7170 was also seized by him vide seizure memo Ex.P-9. The witness further deposed that at the time of recovery of the abductee, the police party only fired gunshots in air.

(16) From the evidence of PW1 Ashok Kumar Jain, it is clear that Vikash Jain was a student of Class-VIII and was abducted by accused Pradip and other three accused persons. The abductee Vikash Jain (PW2) in his statement deposed that accused Pradip Kumar had taken him in a vehicle tempo trax and offered him a cigarette. At that time, two accused persons were also there. After travelling some distance, another accused boarded the vehicle. Thereafter, they had taken the abductee to a jungle where he was kept under detention. After two days of the incident, the police party identified the abductee and recovered from him from the possession of accused persons. Accused Pradip, Gopal and Naval were arrested on the spot. They tried to escape from the place of occurrence. Arrest memos were prepared by the police vide Ex.P-6 to Ex.P8 which were signed on 02/04/2003. In the identification parade conducted by Naib Tahsildar OP Arya (PW4) accused Pradip and Gopal were identified. Although CW1 Prakash Singh in his evidence deposed that he had identified only accused Pradip but in the identification memo and evidence of Naib Tahsildar the fact came that this witness identified accused Pradip and Gopal. The witness Prakash Singh was a driver worked for some time in the house of elder brother of father of abductee Ashok Kumar Jain (PW1) and abductee Vikash Jain saw him so many times. Hence, the

evidence in regard to identification of Pradip by abductee Vikash Jain is natural and reliable. Prakash also identified another accused Naval who was arrested on the spot by the police. Accused Pradip has been identified by the abductee Vikash Jain. His involvement was through out. In such circumstances, in our opinion, the findings recorded by the trial Court that three accused persons Pradip, Gopal and Naval abducted Vikash Jain, are in accordance with law and, therefore, we uphold the same.

(17) The next question is as to whether the findings recorded by the trial Court in regard to accused Ashok S/o. Ramanarayan Sharma about his involvement in commission of offence is proper or not ?

(18) In our opinion, the findings recorded by the trial Court against accused Ashok Sharma is not proper and the evidence produced by the prosecution against accused Ashok is not sufficient to establish him guilty for commission of aforesaid offence beyond reasonable doubt. Name of the accused Ashok has not been mentioned in the FIR, nor name of accused Ashok was told by driver Prakash Singh (CW1). He had also not identified, nor any identification parade was conducted by the prosecution for his identification. PW2 Vikash Jain, abductee in his evidence deposed that initially he had been in the vehicle alongwith two other accused persons. Accused Ashok had left out the place when he alongwith other accused persons abducted the abductee and reached the jungle. In his evidence, the abductee further deposed that Pradip told that Ashok Sharma had gone to Agra and from there he would make a phone call to his father Ashok Jain in regard to demand of Rs.50 lacs for his release. Complainant Ashok Kumar Jain (PW1) in his evidence did not depose that accused Ashok Sharma had made a phone call to him and he had received any phone call from accused Ashok Sharma for ransom. Accused Ashok Sharma was present with the accused persons for a brief period as per case of the prosecution. He has been identified by abductee-Vikash Jain (PW2) by way of dock identification before the Court. The incident had happened on 31/03/2003 and statement of abductee-Vikash Jain (PW2) was recorded on 22/04/2003 before the Court, after a period of near about one year. Hence, only on the basis of aforesaid this evidence, in our opinion, it would not be just and proper to hold that the prosecution has produced sufficient evidence to

hold the appellant- accused Ashok Kumar guilty for commission of offence beyond reasonable doubt. Consequently, we hold that the prosecution has failed to prove appellant- accused Ashok Kumar guilty beyond reasonable doubt. Criminal Appeal No.34/2006 preferred by appellant accused Ashok Kumar deserves to be allowed.

(19) The next question is as to whether there is sufficient evidence to hold the other three accused persons- appellants guilty for commission of offence under Section 364-A/34 of IPC.

(20) A bare reading of Section 364-A of IPC which is reproduced as under, indicates that kidnapping for ransom would be attracted when the kidnapper makes a demand to pay a ransom.

"364-A. Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international, inter-governmental organization or any other person] to do or abstain from doing any act to lay a ransom, shall be punishable with death or imprisonment for life and shall also be liable to fine."

(21) Therefore, the question for consideration is what does the words " to pay a ransom" stand for? Does it mean that kidnapping or abduction with the intention to demand ransom is sufficient to cover the prosecution case under Section 364-A of IPC or such a demand has to be translated into action by communicating the demand either by post or by contract. To attract the provisions of Section 364-A of IPC, prosecution has to prove that the accused kidnapped or abducted the boy, kept him under detention after such kidnapping and that the kidnapping was for ransom.

(22) The Supreme Court in the case of Malleshi Vs. State of Karnataka 2004 (8) SCC 95, has held as under in regard to commission of offence under Section 364-A of IPC:-

"12. To attract the provisions of Section 364- A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in Netra Pal V. The State (NCT of Delhi) (2001 Cr. L. J. 1669) to contend that since the ransom demand was not conveyed to the father of PW2 the intention to demand was not fulfilled.

13. To pay a ransom as per Black's Law Dictionary means "to pay price or demand for ransom". The word "demand" means to claim as one's due; "to require", "to ask relief"; "to summon"; "to call in Court" "An imperative request preferred by one person to another requiring the latter to do or yield something or to abstain from some act.". An asking with authority, claiming". The definition as pointed out above would show that the demand has to be communicated."

(23) The Supreme Court further in the case of Akram Khan Vs. State of West Bengal AIR 2012 SC 308 has held as under in regard to ingredients which have to be proved by the prosecution to hold the accused guilty for commission of offence under Section 364-A of IPC.

" To attract the provisions of Section 364-A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom...."

To pay a ransom, as stated in the above referred Section, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated."

(24) From the aforesaid judgments of Supreme Court and after perusal of ingredients of Section 364-A of IPC, it is clear that to attract the provisions of Section 364-A of IPC, it is required for the prosecution to prove that the accused kidnapped or abducted the body (ii) kept him under detention and (iii) kidnapping or abduction was for ransom. In the present case, the first two ingredients that the accused abducted and kept the abductee under detention have been proved by

the prosecution. In regard to third ingredient that the kidnapping or abduction was for ransom, there is only evidence of abductee PW2 Vikash Jain who deposed that on second day of the incident he saw that accused came there and told that another accused Ashok Sharma had gone to Agra and from there he would make a phone call to his papaji Ashok Jain in regard to demand of Rs.50 lacs for his release. The abductee in his evidence nowhere deposed against accused persons regarding demand of ransom for his release, not he deposed that the accused persons forced him to inform his relatives or his father for ransom. "Papaji" means elder brother of father of abductee- Ashok Kumar Jain (PW1). In his evidence, he has also not deposed that accused persons had made any demand for ransom and he received any communication from the accused persons for ransom. The other witnesses also did not dispose the fact that any demand of ransom was made from the family members of the abductee by the accused persons. In the absence of such evidence, only on the basis of evidence of abductee PW2 Vikash Jain that he had heard from accused Pradip that another accused Ashok Sharma had gone to Agra and would make a phone call to his papaji (tau) Ashok Jain and would demand Rs. 50 lacs for his release, is not sufficient to hold the accused persons guilty for commission of offence under Section 364-A of IPC. The findings recorded by trial Court in this regard are contrary to law.

(25) On the basis of aforesaid discussion, Criminal Appeal No.34/2006 filed by Ashok Kumar is hereby allowed. He is acquitted from the offence punishable under Section 364-A/34 of IPC and sentence awarded by trial Court is hereby set aside. He is on bail, his bail bond and surety bond shall stand discharged.

(26) Conviction of appellant- accused Pradip Kumar, Gopal and Naval Singh under Section 364-A/34 of IPC is hereby set aside. However, they are convicted for commission of offence under Section 365/34 of IPC. Consequently, Criminal Appeal No.384/2005 and 409/2005 filed by them, are partly allowed. Their sentence is also modified to extent five years RI for commission of offence under Section 365-A/34 of IPC in place of undergoing the jail sentence imposed by the trial Court. The trial Court also imposed fine of Rs.1 lacs each on the accused persons. The appellants are in jail from the date of pronouncement of judgment i.e. 13th May, 2005, it means that they have already completed the jail sentence of

more than nine years. Looking to the aforesaid facts of the case, in our opinion, since the accused persons have already undergone near about nine years jail sentence, hence, the sentence of fine imposed by the trial Court could not be sustained in these two appeals. Hence, the sentence of fine imposed by the trial Court, is hereby set aside. Since the appellants have already undergone near about nine years jail sentence, they shall be released forthwith if not wanted in any other criminal case.

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