

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 07th OF JULY, 2022

CRIMINAL APPEAL NO. 201 of 2012

Between:-

1. DEVA ALIAS SIRDAR, S/O FOUJA, AGED-23 YEARS, R/O- PARVATI BADODA, AT PRESENT R/O- GHADSANA, DISTRICT SHRIGANGANAGAR (RAJASTHAN).
2. FOUJA, S/O LALU, AGED-60 YEARS, R/O- PARVATI BADODA, AT PRESENT R/O- GHADSANA, DISTRICT SHRIGANGANAGAR (RAJASTHAN).

.....APPELLANTS

(BY SHRI SURESH AGRAWAL – ADVOCATE)

AND

STATE OF MADHYA PRADESH
THROUGH POLICE STATION
AGRA, DISTRICT SHEOPUR
MADHYA PRADESH.

.....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

 Reserved on : 30th June, 2022
 Delivered on : 07th of July, 2022

*This appeal coming on for final hearing this day, **Hon'ble Shri Justice G.S. Ahluwalia**, passed the following:*

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the Judgment and Sentence dated 02-12-2011 passed by Special Judge (MPDVPK Act), Sheopur in S.T. No. 02 of 2011 by which the Appellants have been convicted for the following offences :

Appellants	Conviction	Sentence
Both Appellants	Under Section 364-A of IPC and 11/13 of MPDVPK Act	Life Imprisonment and fine of Rs.5000/- in default 6 months R.I.

2. The necessary facts for disposal of the present appeal in short are that on 18-5-2010, the complainant Paramsukh, Munesh, Malkhe and Ashok had gone to forest for grazing their cattle. At about 10-11:00 A.M., they were having their meals near *Dho Ka Nala*. At that time, two unknown miscreants came there and enquired about their names. Both the miscreants, took out country made pistol. The complainant-Paramsukh was directed to go back to his house and the remaining three persons namely, Munesh, Ashok and Malkhe were taken inside the forest after tying their hands. One miscreant took out the mobile from the pocket of Ashok and made a demand of ransom of Rs.15 lacs by making a call in the village and a threat was also given that otherwise, they would be sacrificed in Kaladevi. It is also the case of the prosecution, that the miscreants also instructed the abductees to inform their family members

about the payment of ransom. Thereafter, all the three abductees were tied with a tree and were beaten. It is alleged that on the next day at about 9 A.M., the abductees were taken near a river and were made to sit by the side of the river. Thereafter, one miscreant went to have bath and one miscreant went to sleep. At that time, it is alleged that all the abductees ran away and came to Police Station Dhodhar and came to Police Station Agra through Police Station Vijaypur. The complainant Paramsukh had lodged the FIR in Police Station Agra. The appellants were arrested. Test Identification Parade was conducted. Another accused Ghanshyam was also arrested. After completing the investigation, police filed the charge sheet for offence under Sections 364-A of IPC read with Section 11/13 of MPDVPK Act.

3. The Trial Court by order dated 7-2-2012 framed charges under Sections 364-A of IPC and under Section 11/13 of MPDVPK Act.

4. The Appellants and Ghanshyam abjured their guilt and pleaded not guilty.

5. The prosecution examined Paramsukh (P.W.1), Ashok (P.W.2), Munesh (P.W.3), Malkhan @ Malkhe (P.W.4), Ram Singh (P.W.5), Mahavir Singh Chauhan (P.W.6), Dr. M.C. Vyas (P.W.7), and Avanit Sharma (P.W.8).

6. The Appellants did not examine any witness in their defence.

7. The Trial Court, by the impugned judgment, acquitted Ghanshyam and convicted the Appellants for the offences mentioned above.

8. A statement was made by the Counsel for the parties, that no appeal has been filed challenging the acquittal of Ghanshyam.

9. Challenging the judgment and sentence passed by the Court below,

it is submitted by the Counsel for the Appellants that the Appellants are in jail for the last more than 11 years. The Appellants do not wish to challenge the allegations of abduction, but in view of the evidence led by the prosecution, no offence under Section 364-A of IPC would be made out and at the most, an offence under Section 365 of IPC would be made out. It is further submitted that the maximum sentence for offence under Section 365 of IPC is seven years, whereas the Appellants are already in jail for more than 11 years. Therefore, they have already undergone the entire jail sentence provided for offence under Section 365 of IPC.

10. Per contra, the Counsel for the State has supported the findings recorded by the Trial Court.

11. Heard the learned Counsel for the parties.

12. Since, the allegations of abduction have not been challenged by the Counsel for the Appellants, therefore, the only question for consideration is that whether the offence under Section 364-A of IPC would be made out or offence under Section 365 of IPC would be made out.

13. Sections 364-A and 365 of IPC read as under :

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 organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.—Whoever kidnaps or abducts any person with intent to cause that person to be secretly and

wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

14. In order to establish the offence under Section 364-A of IPC, the prosecution must necessarily prove all the ingredients of Section 364-A of IPC, which can be summarized as under :

- (i) “Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”
- (ii) “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,
- (iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom”
- (iv) “shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

15. The Supreme Court in the case of **Sk. Ahmed v. State of Telangana**, reported in **(2021) 9 SCC 59** has held as under :

33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the abovenoted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
- (ii) 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;
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has

to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.

16. Therefore, the evidence led by the prosecution shall be considered accordingly:

17. Paramsukh (P.W.1), the complainant has not stated anything about threat to cause death or hurt in order to do or abstain from doing any act or to pay a ransom.

18. Ashok (P.W.2) has stated that both the miscreants had forced him to call his family members from his mobile and to inform that a ransom of Rs.15 lac be paid for their release. However, the prosecution has not examined any family member of Ashok (P.W.2) who can say that he had received any mobile call from Ashok (P.W.2) regarding his abduction or demand of ransom. Even the CDR of the mobile phone of Ashok (P.W.2) was not collected. Further, there is no allegation that any threat to cause death or hurt to this witness was ever given.

19. Munesh (P.W.3) has stated that the miscreants were demanding money, but the abductees had told them, that they do not have money. There is no allegation of making mobile call to the family members of Ashok. There is no allegation that any threat to cause death or hurt to the abductees was given. Even no allegation was made that they were ever beaten by the Appellants.

20. Malkhan @ Malkhe (P.W.4) has stated that Rs.5 lacs each were demanded from each of the abductee and a threat was also given that otherwise they would be killed. This witness also does not speak about any mobile call made by Ashok (P.W.2). Furthermore, there is a material

variance in the evidence of Ashok (P.W.2), Munesh (P.W.3) and Malkhan @ Malkhe (P.W.4).

21. According to the prosecution, all the abductees were tied by a single chain. Thus, it is clear that the abductees were together all the time. Therefore, the moot question for consideration is that whether the allegations made by each of the abductee are similar or there are material variances?

22. Ashok (P.W.2) has stated that he was forced to inform his family members about the ransom, but as already pointed out, neither any CDR of mobile phone of Ashok (P.W.2) was collected, nor any family member of Ashok (P.W.2) was examined. There is nothing on record to show that what action was taken by the family members of Ashok (P.W.2) after receiving the information regarding ransom. No FIR was lodged by the family members of Ashok (P.W.2). Even the name of family member of Ashok (P.W.2) who had allegedly received the mobile call has not been disclosed. Even Ashok (P.W.2) has not alleged that any threat was given by the miscreants. The FIR, Ex. P.1 was lodged by Paramsukh at 23:55 on 18-5-2010. Thus, it is clear that the family members of Ashok (P.W.2) must have received the mobile call by that time. But neither that fact is mentioned in the FIR nor any information with regard to ransom call was given to Police. There is nothing on record, that any attempt was made by the family members of Ashok (P.W.2) to inform any other villager or family members of other abductees. Nothing is there on record to substantiate that any attempt was made to make arrangement for payment of ransom amount. Even no other abductee has stated that Ashok (P.W.2) had ever made any phone call to any of his family member. Thus, the

allegation made by Ashok (P.W.2) that a phone call was made to the family member is not acceptable.

23. Munesh (P.W.3) has stated that the miscreants had made a demand, but the abductees had informed that they have no money. This allegation is not supported by the evidence of any other abductee. Even otherwise, this witness is completely silent as to whether any threat was given by the miscreants or they were ever beaten by them.

24. Malkhan @ Malkhe (P.W.4) has stated that miscreants had demanded Rs.5 lacs from each of the abductee and had threatened that otherwise, they would be killed. However, none of other abductees has stated that demand of Rs.5 lacs was made from each of the abductee individually otherwise, a threat to their life was given.

25. Thus, there are material variances in the evidence of the abductees, and thus, it is held that the prosecution has failed to prove ingredients no.2 or 3 along with ingredient no.1. Thus, the prosecution has failed to prove that the Appellants had committed offence under Section 364-A of IPC.

26. Since, the abduction of the abductees was not challenged by the Appellants, therefore, it is clear that offence under Section 365 of IPC would be made out.

27. Accordingly, the conviction of the Appellants for offence under Section 364-A of IPC is hereby set aside and they are convicted for offence under Section 365 of IPC read with Section 11/13 of MPDVPK Act.

28. So far as the question of sentence is concerned, the maximum sentence for offence under Section 365 of IPC is seven years. Similarly,

the maximum sentence for offence under Section 11 of MPDVPK Act is ten years. Minimum sentence for offence under Section 13 of MPDVPK Act is 3 years. The Appellant no.1-Deva was arrested on 14-11-2010 and appellant no.2-Fouja was arrested on 19-11-2010 and were not granted bail during trial. They were never granted bail during the pendency of this Appeal. Thus, it is clear that they have remained in jail for a period of 11 years and 8 months. Thus, they have already undergone the maximum sentence provided for offence under Section 365 of IPC and under Section 11/13 of MPDVPK Act. Accordingly, they are sentenced to the period already undergone by them.

29. **With aforesaid modification**, the judgment and sentence dated 02-12-2011 passed by Special Judge (MPDVPK Act), Sheopur in S.T. No. 02 of 2011 is hereby **affirmed**.

30. The Appellants are in jail. They be released immediately, if not required in any other offence.

31. Let a copy of this judgment be immediately provided to the Appellants, free of cost.

32. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance.

33. The Appeal **succeeds in part** and is hereby **Allowed partially**.

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE