

**(2017) 01 MP CK 0079**

**MADHYA PRADESH HIGH COURT**

**Case No:** 50 of 2005

Jasram Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

**Date of Decision:** Jan. 10, 2017

**Acts Referred:**

- Indian Penal Code, 1860, Section 364A, Section 364A -
- Madhya Pradesh Daketi Avam Vyapharan Prabhavit Kshetra Adhiniyam, 1981, Section 13, Section 13

**Hon'ble Judges:** N. K. Gupta, Anand Pathak

**Bench:** Division Bench

**Advocate:** MK Kushrestha, Dr. Anjali Gyanai

**Final Decision:** Dismissed

**Judgement**

1. The appellant has preferred the present appeal being aggrieved with the judgment of conviction and sentence dated 27/11/2004, passed by Special Judge under Madhya Pradesh Dacoity Vyapaharan Prabhabit Kshetra Adhiniyam [in short "MPDVPK Act"], Morena (MP) in Special Case No.75/2002, whereby the appellant has been convicted of offence under Section 364-A of IPC and Section 13 of MPDVPK Act and sentenced to life imprisonment with fine of Rs.1,000/- and three years' rigorous imprisonment respectively.

(2) Facts of the case, in short, are that on 24/08/2002 the victim Anil Kumar Garg @ Tinku (PW2) who was son of Harish Chandra (PW4) took a scooter MP 06/G-3110 from one Rajesh Verma (PW7) on request that he would come back within two hours. However, thereafter Anil Garg did not come back. Raju Garg (PW1), brother of Anil tried to trace him. He rang up Rajendra Verma but he could not be traced. On 25/08/2002, Raju Garg (PW1), Rajendra Verma (PW7) Girraj Mangal (PW3) and Satendra went to village Kotwar with a jeep to know about the arrival of Anil Kumar to that village on the previous day. Thereafter, a missing report was lodged at Police

Station Kotwali, Morena which was written in Rojnamcha Ex.P/3. Sub-Inspector B.S.Yadav(PW9) started the missing inquiry and found that the appellant Jasram Singh abducted the victim Anil Kumar Garg @ Tinku and managed to hand him over to one gang of Pappu @ Ramsevak Gurjar. Hence, on the basis of enquiry report, a crime was registered with a document Ex.P/6 on 26/08/2002. On 14/10/2002, an encounter took place between the police party and the gang of Pappu @ Ramsevak Gurjar, in which the victim Anil Kumar came towards the side of the police party and introduced himself so he was recovered. But some of the persons like Lalla Gurjar, Veera Pandit, Suresh Gurjar and Ramvaran Gurjar who took him in a jungle, were killed in the encounter. It was informed by Anil Kumar that he was kept in the jungle for 50-51 days. He was beaten; various parts of his body were burnt so that he would be forced to demand note of Rs.25 lacs to his father and brothers. The investigating officer arrested the appellant and after due investigation, the charge-sheet was filed before the Special Court.

(3) The appellant abjured his guilt. However, no specific plea was taken by him and no defence evidence was adduced.

(4) According to the appellant, when he read the news of encounter he himself appeared before SHO Surendra Singh of Police Station Malanpur.

(5) After considering the prosecution evidence, the trial Court has convicted and sentenced the appellant, as mentioned above.

(6) We have heard the learned counsel for the parties.

(7) In the present case, it is alleged by Raju Garg (PW1), Anil Kumar (PW2), Girraj Kumar (PW3), Harish Chandra (PW4) and Rajesh Verma (PW7) and Ramesh Chandra (PW8) that the victim Anil Kumar went to Rajesh Verma and obtained his scooter so that he could visit the village Kotwar and bring some labourers for his work. It was the defence of the appellant that the victim Anil Kumar had hidden himself for 51-52 days due to family dispute and thereafter, upon reading the news of encounter, he appeared before the police and a false case was created against the appellant. However, looking to the evidence of Anil Kumar (PW2), Rajesh Verma (PW7) and Ramesh Chandra (PW8), it is clear that Anil Kumar took the scooter of Rajesh Verma and thereafter, he visited the office of Ramesh Chandra (PW8) and ultimately, he left the village Kotwar. There is no reason to disbelieve the testimony of witnesses Rajesh Verma and Ramesh Chandra. It would be clear from the statements of these witnesses that Anil Kumar took the scooter of Rajesh Verma to visit the village Kotwar.

(8) Though a plea was taken by the appellant that the victim Anil Kumar had hidden himself for 50-51 days due to family dispute but it was not mentioned to any of the witnesses, like Raju Garg (PW1), Harish Chandra (PW4) or Anil Kumar (PW2) about the facts of the family dispute so that the victim- Anil Kumar would have hidden himself from his family members. On the other hand, it would be apparent from the

evidence given by Raju Garg (PW1), Girraj Kumar (PW3) and Harish Chandra (PW4) that Anil Kumar was searched on not returning. Even when these witnesses went to village Kotwar in a vehicle in search of victim Anil Kumar, they could not get any trace. Statement of Raju Garg (PW1) is confirmed by Rajesh Verma (PW7) that Raju Garg contacted him on telephone to know the whereabouts of victim- Anil Kumar. Under these circumstances, where no family dispute of Anil Kumar could be proved by appellant Jasram Singh testimony of these witnesses cannot be discarded that Anil Kumar who went to village Kotwar to fetch some labourers, was abducted.

(9) According to Anil Kumar (PW2), when he was going to village Kotwar, the appellant Jasram Singh met him near the over bridge in the city of Morena and since he was known to victim- Anil Kumar he took a lift on the scooter driven by Anil Kumar because he told that he had to visit the village Kushwah Ka Pura to recover some amount from someone. When Anil Kumar and the appellant went to village Kotwar, Anil Kumar could not get any labourer and, therefore, the appellant suggested him to visit village Kushwah Ka Pura so that the appellant would recover the loan amount and he would arrange for labourers so that Anil may be benefited. In village Kushwah Ka Pura the appellant stopped the scooter near a field and told the victim Anil Kumar to stay with three- four persons and he left for the village. After some time when the appellant did not come back then Anil Kumar asked those persons about the appellant Jasram Singh and they took him to the forest and thereafter, hands of the victim Anil Kumar were tied with a scarf. He was beaten and taken into the forest. According to the victim Anil Kumar, those four culprits were namely Lalla Gurjar, Veera Pandit, Suresh Gurjar and Ramvaran Gurjar. In the evening, Suresh Gurjar and Pappu Gurjar came with a mouser rifle and they kept Anil Kumar with them for 50-51 days. They burnt his back and nails of feet and hands. They were demanding a ransom of Rs.25 lacs and pressurizing him to send ransom note. He has accepted that pinna ears was penetrated and hole was made on the pinna. His hair was swabbed so that he could not be identified by any one. On 14/10/2002, an encounter took place between the culprits and the police party and thereafter, victim- Anil Kumar, who was hidden, went towards the police and told about his identity. Thereafter, he was taken by the police and a recovery memo Ex.P/1 was prepared.

(10) Constable Sarvesh Singh (PW6) who participated in the encounter has accepted that in encounter three - four culprits were killed and one person was lying at the spot who told his identity to be Pinku Garg @ Anil Kumar and, therefore, he was taken with the police party and a recovery memo Ex.P/1 was prepared by SHO Santosh Singh Bhadriya. On a detailed cross-examination nothing could be obtained. Testimony of constable Sarvesh Singh is corroborated the evidence given by abductee Anil Kumar Garg(PW2). In this connection, FIR Ex.P/6, was timely lodged and it is clear that the abductee Anil Kumar Garg remained absent from his house in the period between 24/08/2002 to 14/10/2002. Such a period of approximately more than one-and-a-half months where a timely missing report was lodged as Ex.P/3 on

25/08/2002. The defence taken by the appellant cannot be accepted that the abductee Anil Kumar Garg was not abducted or he had hidden himself due to some family reasons. Hence, the trial Court has rightly found that Anil Kumar Garg was abducted and he could be recovered after an encounter with some dacoits.

(11) Learned counsel for the appellant has submitted that there was no participation by the appellant. He immediately reached to the police station when he read the news of encounter that his brother was killed in the encounter. However, that act of the appellant does not show his fairness. He would have approached to the police due to guilty conscious. No enmity between the appellant and the abductee Anil Kumar Garg could be proved to show that Anil Kumar Garg could implicate the appellant falsely. When police had achieved the target of killing four-five culprits as dacoits then police would not have an interest to implicate the appellant just to increase gravity of the case. Similarly, if there was no role of the appellant in abduction of Anil Kumar Garg then there was no reason with Anil Kumar Garg to speak against the appellant. Under these circumstances, in absence of any enmity or other reason, testimony of Anil Kumar Garg against the appellant cannot be discarded. Anil Kumar Garg wanted to visit village Kotwar to get some labourers and thereafter, on insistence of the appellant he visited village Kushwah Ka Pura. The appellant directed the abductee Anil Kumar Garg to stay for four-five days and left him. Thereafter, those four-five persons did not release him. On the other hand, he was taken into the dense forest and abducted. It is also stated by Anil Kumar Garg that in the period of 51- 52 days of his confinement the appellant often visited to the place where he was hidden and pressurized him to write down a demand note for a sum of Rs.25 lacs. On the basis of his statement given by Anil Kumar Garg, it is proved beyond doubt that the appellant had participated in the crime of abduction and he abducted victim Anil Kumar Garg by giving him an assurance that he would get labourers at village Khushwah Ka Pura. It is clear from the statements of Raju Garg (PW1), Harish Chandra (PW4) and Girraj Kumar (PW3) that after disappearance of abductee Anil Kumar Garg his relatives visited village Kotwar in his search but since the appellant took the abductee Anil Kumar Garg to village Kushwah Ka Pura, therefore, no information could be received from village Kotwar and even the scooter could not be traced.

(12) Learned counsel for the appellant has submitted that the prosecution did not prove that any demand of ransom was made by the appellant or other culprits and, therefore, this kidnapping was not done for purpose of demanding of ransom. However, looking to the facts and circumstances of the case, such contention cannot be accepted. Family of the abductee Anil Kumar Garg was a rich family. There was no enmity between the abductee Anil Kumar Garg and the appellant. In stay of 50-51 days the culprits did not kill the abductee Anil Kumar Garg and, therefore, the victim Anil Kumar Garg was not abducted due to any enmity or any other reason. Since Anil Kumar Garg was a rich person, the appellant Jasram Singh handed over him to the culprits and he was kept for 50-51 days by the culprits. Therefore, looking

to the conduct of the appellant a presumption may be drawn that the abductee Anil Kumar Garg was abducted only for demand of ransom.

(13) In this connection, the judgment passed by the Apex Court in the case of "Malleshi Vs. State of Karnataka" [ AIR 2004 SC 4865] in which it is laid that there are mainly three ingredients to prove the prosecution's case for offence under Section 364-A of IPC. First is that the accused must have kidnapped, abducted or detained by any person. Secondly, he must have kept by such person in custody or detention and third, kidnapping, abduction or detention must have been for ransom. To pay ransom in the manner since means to pay the price or demand for ransom this would show that the demand has to be communicated. However, it is not laid by the Apex Court that if object of abduction is otherwise proved then demand should be proved specifically. Also in the case of "" Akram Khan vs. State of West Bengal " [AIR 2012 SC 308] it is laid that if it is established that the offender after kidnapping a person keeps the said person in detention or threatens to cause death or hurt in order to pay ransom, undoubtedly Section 364-A of IPC is attracted.

(14) In the present case, it is established beyond doubt that there was no purpose of abduction except to receive ransom. The abductee Anil Kumar Garg was kept for 51-52 days so that ransom may be demanded. Anil Kumar Garg has stated that his back was burnt and other torturous activities were done with him. He would not have written a demand note to his father. It would be apparent that the appellant was known to the abductee Anil Kumar Garg and his family and, therefore, if he would have taken that demand note, then he could be located as a culprit but since he was not a declared dacoit and he was enjoying a life of blamed civilian. Therefore, he did not give any demand note to the family of Anil Kumar Garg. If he was not guilty conscious then there was no necessity for the appellant to visit the police station soon after the encounter in which his brother was killed and the abductee Anil Kumar Garg was rescued. Under these circumstances, abduction of victim Anil Kumar Garg was done for demanding the ransom. It is possible that ransom was demanded and since Harish Chandra (PW4) and Raju Garg (PW1) were in contact with the police the culprits who kept the abductee Anil Kumar Garg were encountered by the police on the information given by the family members of Anil Kumar Garg and, therefore, it is possible that family of Anil Kumar Garg and police may not have disclosed about the fact of getting a demand note. However, it is proved beyond doubt that the appellant abductee/victim Anil Kumar Garg and handed him over to the known dacoits for demand of ransom and, therefore, his purpose for abduction was to get ransom from the family members of Anil Kumar Garg. The trial Court has rightly convicted the appellant for offence under Section 364-A of IPC.

(15) When offence under Section 364-A of IPC is proved then having similar ingredients of offence under Section 13 of MPDVPK Act is also proved and it was committed by the appellant. So far as the sentence is concerned, the minimum

sentence is recorded by the trial Court for offence under Section 364-A of IPC whereas the minimum sentence was prescribed for offence under Section 13 of MPDVPK Act. The appellant has already undergone the sentence of offence under Section 13 of the MPDVPK Act and, therefore, there is no need to modify such sentence. Hence, there is no need to interfere in the order of sentence passed by the trial Court.

(16) On the basis of aforesaid discussion, the appeal filed by appellant Jasram Singh has no substance and, therefore, it cannot be accepted. Consequently, the same is hereby dismissed.