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Decided on : 13-11-2019

Duration : 02-03-0003

**IN THE COURT OF 4TH ADDITIONAL SESSIONS
JUDGE, BANASKANTHA AT PALANPUR**

Sessions Case No.15/16

Exh. : ____

Complainant:- The State of Gujarat

Versus

Accused :- Hariram Virabhai Thakor
R/o Navapura,
Taluka : Suigam,
District : Banaskantha.

Charge :- As per Section 366,
380 and 114 of the Indian Penal
Code, 1860.

Appearance:-

Mr. N.M.Joshi, Ld.A.P.P for the State.

Mr. S.M.Chaudhary, Ld. Adv.for the Accused.

-:: J U D G M E N T ::-

(1) The charges against the accused person of this case are that on 11/5/2014 at about 18:30 in the 'sim' of village Jalotra kidnapped the wife of the complainant Amrabhai Ravtabhai Rabari and committed theft of five thousand rupees from the house by aiding and abetting each other thereby the accused person has committed an offence punishable U/ss. 366, 380 and 114 of the Indian Penal Code, 1860 (hereinafter referred as 'I.P.C').

(2) **Brief case of the Prosecution**

As per the complaint lodged by the Complainant Amrabhai Ravtabhai Rabari, before the P.S.O, Vadgam Pol.Stn on 31-05-14, the complainant is residing with his family at the address mentioned in the complaint and as occupation doing farming on shared basis in vicinity of village Jalotra from approximately 10 years and at the time of incident was doing farming on shared basis on

the agricultural land of Sureshbhai Mogjibhai Patel. On 11-05-2014, at around 6:30 in the evening, complainant was returning back on his shared agricultural land and going towards *Vadsol road, at that time he saw a Bolero GJ-10-AP-3335 coming from opposite side and saw Hariram Virabhai Thakor and Rameshbhai Ishwarbhai Thakor, both residing at Navapura Taluka-Suigam and along with them he saw his wife and Abdaben and Mavjibhai Babubhai Thakor of village Lakhvi. Therefore, he shouted by name of his wife but instead vehicle accelerated and fled away. Thereafter, he came to his house at agricultural land and found his daughter Pooja sleeping in the cradle and found that fifty thousand rupees from 'Petti' and ornaments of his wife also taken away and thereby the accused kidnapped his wife and committed theft of fifty thousand rupees and ornaments. Since, Mavjibhai Babubhai Thakor and Rameshbhai Ishwarbhai Thakor used to frequently visit village Jalotra and therefore complainant has seen them and he told about the incident to his friend Haribhai Ragabhai Rabari of Jalotra and Sujabhai Anabhai Rabari of

Dantivada. Thereafter, the complainant and his relatives searched for his wife and since they could not find her out the complainant launched the complaint. As per the complaint given by the Complainant, the P.S.O, Vadgam Pol.Stn registered the complaint of the complainant and also endorsed his signature on the complaint and thereafter, it was sent for registering the offence, which was registered vide I C.R.No. 42/2014.

- (3) During the course of investigation, the Panchnama of the scene of offence was done by P.S.I., Vadgam in presence of Panchas. On completion of the investigation, the charge sheet was filed before the Id.J.M.F.C., Vadgam, as per Sec. 173 of Cr.P. C, 1973, which was numbered as Criminal Case No.523/2015. Thereafter Id.J.M.F.C., Vadgam, by order dated 02-01-2016 committed the said case U/s 209 of Cr. P. C. to the District & Sessions Court, Palanpur, as the offences were traible by the Sessions Court. The Criminal Case No.523/2015 came to instituted as Sessions Case No. 15/16 and the copies of the police papers/charge-sheet against the

accused, are given to the accused free of costs. A question whether Free Legal Aid is required or not is called for to the accused, but accused have engaged personal lawyer for his defence.

(4) Thereafter, on 21-07-2017, charge was framed against the accused vide Exhibit-18 under section 228[1][B] of the Criminal Procedure Code, 1973, in connection with the offences punishable U/ss. 366, 380 and 114 of the Indian Penal Code, 1860, and the said charge at Exhibit-18 was read over to the accused u/s. 228 (2) and statement of the accused has been recorded vide Exhibit-19 and the accused denied the charge leveled against him and was put on trial

(5) The prosecution has produced the following Oral and Documentary evidence :

ORAL EVIDENCE

Prosecution Witness(PW)	Name of Witness	Remarks
PW-1, Ex.-20	Amrabhai Ravtaji Rabari	Witness
PW-2, Ex.-26	Haribhai Ragabhai Rabari	Witness

PW-3,Ex.-27	Sujabhai Anabhai Rabari	Witness
PW-4,Ex.-28	Galbabhai Chelabhai Patel	Witness (Hostile)
PW-5,Ex.-29	Ratnabhai Naranbhai Rabari	Witness (Hostile)
PW-6,Ex.-32	Sohanji Takhaji Thakor (A.S.I)	Witness
PW-7,Ex.-43	Amitkumar Vitthalbhai Desai (P.S.I)	(I.O)
PW-8,Ex.-50	Arjunsinh Jawansinh Chauhan (P.S.I)	(I.O)

DOCUMENTARY EVIDENCE

Sr.No.	Exhibit	Particulars
1	Ex.-21	Complaint
2	Ex.-22	Complaint
3	Ex.-23	[Panchnama] Scene of Offence
4	Ex.-33	Suchipatra
5	Ex.-44	Call Detail Proforma
6	Ex.-45	Call Detail Proforma

(6) Learned A. P. P. appearing on behalf of the prosecution has filed purshis vide Ex.51, wherein, it has been stated and declared that prosecution does not want to give any further evidence.

(7) After recording the prosecution evidence is recorded U/s. 231 of the Cri.P.Code in presence and hearing of the accused and after completion of prosecution evidence, further statement of the accused has been recorded U/s. 313 of the Cri.P.Code, wherein, after denying the offence and evidence, he has not deposed on oath as well as no defence witnesses have been examined and further stated that he has been implicated in the false case.

(8) Thereafter, heard arguments of Ld.A.P.P. Mr.N.M.Joshi appearing on behalf of the prosecution as well as also heard the arguments advanced by the Ld.Adv. Mr.S.M.Chaudhary appearing on behalf of the accused.

(9) The following points arise for the determination of this Court in this Sessions Case:

P O I N T S	FINDINGS
(1.) Whether the prosecution proves beyond reasonable doubt that on 11/05/2014 at about 18:30 hours, the	IN NEGATIVE

accused kidnapped the wife of the complainant Amrabhai Ravtabhai Rabari in Bolero, registration no. GJ-10-AP-3335, along with other co-accused and thereby, committed an offence punishable U/s. 366 and 114 of the Indian Penal Code ?	
(2.) Whether the prosecution proves beyond reasonable doubt that on the aforesaid mentioned date and time and at the house of the complainant Amrabhai Ravtabhai Rabari in agricultural land of Sureshbhai Mogjibhai Patel committed theft of the fifty thousand rupees from 'Petti' and of ornaments of his wife along with the other co-accused and thereby, committed offence punishable U/s. 380 and 114 of the Indian Penal Code ?	IN NEGATIVE
(3.) What order ?	As per final order

R E A S O N S

(10) Since, aforementioned points are intrinsically interconnected with each other, for the sake of convenience and brevity, these points are discussed and decided concurrently.

(11) The prosecution has examined total 8 witnesses and also produced total 6 documentary evidence.

(12) It is the cardinal principles of Criminal Justice System that prosecution requires to prove its case beyond reasonable doubt as well as, the prosecution case cannot be ignored for having chances of having minor discrepancies and minor contradiction in their evidences. Keeping in mind such basic principles as well as law laid down by the Hon'ble Supreme Court and the Hon'ble High Courts, let us refer to arguments advanced by both the sides in nutshell thereafter embark on appreciation of the evidence produced by prosecution agency for proving the charges leveled against the accused.

(13) Ld. A.P.P. Mr.N.M.Joshi, appearing on behalf the State, has argued that the main accused have not been arrested and the Bolero jeep belongs to the present accused. The complainant has deposed the facts of the FIR and has thus supported the FIR. There is extrajudicial confession before the P.W.-2 and the call details are exhibited and corroborate the incident and involvement of the present accused. All the witnesses are natural witness. As against this, the Ld. Advocate Mr.S.M.Chaudhary has submitted that the prosecution has failed to prove the case beyond reasonable doubt. The Ld. Adv. has vehemently argued that the except the complainant all the witnesses are hear-say witnesses and they have been informend about the incident by the complainant and there is no other eye-witness of the incident. Question of identification remains and no evidence whatsoever comes forth to establish that the accused was in the Bolero. Consequently, even if the entire evidence is accepted as it is, the prosecution has failed to prove the case beyond reasonable

doubt and the accused deserves to be acquitted

(14) After hearing the Ld. Advocates appearing on behalf of both the sides, in the present case out of the witnesses examined only the complainant is the eye-witness of the incident. On perusal of the deposition of the complainant at Exhibit-20, he has deposed that the incident had taken place three years ago. At around 6:30 in the evening he was coming back after filling of milk in the dairy at village Jalotra at that time a vehicle came from the opposite side, which was a Bolero and since he is illiterate he does the vehicle registration number. In this vehicle his wife Anduben was there and there were four-five other persons, who belonged to koli community and he does not know the name of these persons. Afterwards, he went to his agricultural field and his daughter, aged six, was crying. Afterwards his brother Gokadabhai, Sujabhai, Ganeshbhai and other 6-7 persons of the village searched his wife but could not find her. The complainant does not know where she has gone. Since, after

search he could not find his wife a complaint was launched with the Vadgam Police Station. He has identified his thumb impression on the photocopy of a certified copy and an application which he had given to the police before the launch of the complaint. The Ld.Adv. for accused has no objection in Exhibiting the application.

In cross-examination, the complainant has said that he does not remember the fact that in Janva Jog which he had given at time it was not mentioned in it that he had seen his wife in the vehicle. He has admitted the fact that he and his brother had gone to give the complaint and he does not know what was written in the FIR and since he was told to make a thumb impression, he did so. He also admits the fact that all were together at the time of giving complaint.

On perusal of the oral evidence this witness is the only eye-witness of the incident. The statement of the wife of the complainant is not recorded nor is she examined by the prosecution. In his oral evidence the complainant is not identifying anyone and says that he does not know any one and the

persons in the Bolero were of Koli community. On the contrary he named the accused in the FIR and now in the oral evidence before the Court he is not coming up the name of any one. Thus, there remains the doubt of the identification of the persons in the Boloero. Further, the complainant is not deposing different version of seeing her daughter crying wherea in the complainant he says of his daughter sleeping. In his deposition he says nothing of the theft of the five thousand rupees and ornaments. Further in the cross-examination he says that he does not know the content of the FIR and since he was told to put the thumb impression he did so. This witeness is thus unreliable and creates suspicion with respect to the incident and also creates serious doubts with respect to the identification of the accused. The I.O has also not done any TIP. The complainant says that he knew the accused as they used to visit Village Jalotra but these facts are deposed in his deposition before the Court. Thus reliance cannot be place on this witness who is resiling from the facts of complinant by omission which are material in the case.

(15) The witnesses PW-2 and PW-5 are all hearsay witnesses and out of which PW-3 and PW-5 have turned hostile. As far as, PW-2 and PW-3 are concerned the complainant does not say in his oral-evidence that he had narrated the incident to these witnesses. Further, PW-2 and PW-3, were not present at the time of incident and after they were informed they have taken part in the search. Therefore, nothing substantial comes out of the evidence of this witnesses.

(16) Rest of the witnesses are police-witnesses i.e. A.S.I, who registered complaint and prepared 'Suchipatra' and the I.O.'s, who have deposed as per the investigation done by them. Only credible information comes forth is of the call details. On perusal of these call details , it is of mobile no.9998057242, and is in the name of Hamirbhai Ganeshbhai Chaudhary. No evidence as to present accused has called from this mobile number or any other independent mobile number of the accused is placed on record. Thus nothing incriminating

in coming out against the accused with respect to the call details.

(17) Thus, having gone through the entire evidence of these witnesses it does not inspire confidence regarding involvement of the accused person with the alleged offence and charge. The prosecution has failed to testified the wife of the complainant, an eye witness of the incident and she was an important witness to the entire incident. Therefore, as per aforesaid disscussion the point no.1 and 2 are decided in negative and final order is passed as below.

O R D E R

1.) Under Section 235(1) of the Criminal Procedure Code, accused **Hariram Virabhai Thakor**, R/o. Navapura, Taluka : Suigam, District : Banaskantha. is hereby given benefit of doubt and acquitted from the charges leveled against him for the offence punishable U/ss. 366, 380 and 114 of the Indian Penal Code, 1860.

2.) Bail bond stands cancelled for the offence punishable U/ss. 366, 380 and 114 of the Indian Penal Code, 1860.

3.) Muddamal be disposed off as per the rules and as per the Lower Court order.

4.) As per Section 437 (A) of Criminal Procedure Code (newly amended), accused person shall furnish fresh bail bonds with sureties of Rs. 15,000/- for six months.

Pronounced and signed in the open Court today on this 13th day of November, 2019.

Palanpur

Date: 13/11/19

Rajkumar Ramsinh Chaudhary

4th Additional Sessions Judge

B.K. District at Palanpur

(UIC : GJ01512)