

RAJASTHAN HIGH COURT



सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

D.B. Criminal Appeal No. 127/2017

Shakeel @ Bakra S/o Shri Abdul Khalil, R/o House No. 17,  
Banjara Colony P.s. Kishorepura, Kota, Presently R/o Narain  
Panwale Ki Gali, Bajaj Khana, Kota Presently Confined In Central  
Jail Kota

----Appellant

Versus

State of Rajasthan Through PP

----Respondent

Connected With

D.B. Criminal Appeal No. 1447/2016

Shahid Son Of Mushtak Ali, R/o Near Tanki Wale Baba, Shivpura  
Police Station Dadabadi, Kota. At Present In Central Jail, Kota

----Appellant

Versus

The State of Rajasthan

----Respondent

D.B. Criminal Appeal No. 1538/2016

Praveen Kumar S/o Shri Krishna Murari, R/o Diyapur, Distt.  
Uraiya, U.p. At Present 3 R 45 Talwandi, P.s. Jawahar Nagar, Kota  
Accused Appellant In Kota Jail

----Appellant

Versus

State of Rajasthan Through PP

----Respondent

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|-------------------|---|-----------------------------------------------------------------------------------------------------------------------------|
| For Appellant(s)  | : | Mr. M. I. Beg<br>Mr. Rinesh Kumar Gupta with<br>Mr. Saurabh Pratap Singh<br>Mr. Sunil Kumar Tyagi with<br>Mr. Anirudh Tyagi |
| For Respondent(s) | : | Mr. Rishi Raj Singh Rathore, P.P.<br>Mr. Naresh Kumar Gupta, PP<br>Mr. Vinod Sharma<br>Ms. Neha Goyal                       |

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**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL**  
**HON'BLE MR. JUSTICE SAMEER JAIN**

**Judgment**

**18/02/2026**

All these three appeals are directed against the judgment dated 15.11.2016 passed by the learned Additional Sessions Judge No.6 Kota (for short, "the learned trial Court") in Sessions Case No. 232/2011, whereby the accused-appellants (for short, 'the appellants') have been convicted and sentenced as under:-

**1. Under Section 147 IPC:** Two years' simple imprisonment and fine of ₹5,000/- each; in default whereof, one month's simple imprisonment.

**2. Under Section 364-A or 364-A/149 IPC:** Life imprisonment and fine of ₹45,000/- each; in default whereof, three months' additional simple imprisonment.

Sentences to run concurrently.

The relevant facts, in brief, are that the complainant-Shri Vijay Mehra (PW-1) made a *parcha bayan* (Ex. P-1) on 10.09.2009 at about 2:25 am at Surgical Ward, MBS Hospital, Kota, stating therein that when he was going to his residence for lunch on 09.09.2009 at about 1:00 P.M., he was taken by Imran @ Parchi to the appellant- Shakeel @ Bakra, who along with Imran @ Parchi and six other co-accused took him on motorcycles to various places in Kota. It was alleged that his brother was threatened by Shakeel @ Bakra to cough up a sum of ₹1,00,000/- failing which the complainant was threatened of dire consequences. It was further alleged that upon receiving a telephonic message that his brother has lodged a report, he was beaten by the accused

persons including the appellants and only after extending an assurance by him not to take any action against them, he was permitted to go. Based thereupon, an FIR No. 173/2009 came to be registered at Police Station Kotwali Kota, District-Kota City, under Sections 147, 149, 351, 323, 342 and 364-A IPC and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The police after investigation charge-sheeted the appellants as also the co-accused Imran @ Parchi, Sunil Khatik, Haneef @ Rinku @ Biri and Nasir under Sections 147, 148, 149, 323, 341, 342 364(A) IPC and, the co-accused Imran @ Parchi, additionally, under Section 4/25 of Arms Act 1959. Charges under Sections 147, 341, 323/149, 342, 342/149, 364(A), 364(A)/149 IPC were framed against the appellants as also the co-accused Imran @ Parchi, Sunil Khatik, Haneef @ Rinku @ Biri and Nasir. An additional charge under Section 4/25 of Arms Act, 1959 was framed against the co-accused Imran @ Parchi. After trial, while, the co-accused Imran @ Parchi, Sunil Khatik, Haneef @ Rinku @ Biri were acquitted of the charges framed against them, the appellants have been convicted and sentenced, as stated hereinabove. It may also be pertinent to submit here that the co-accused Nasir son of Nanhe Khan has absconded during trial and it is revealed from the material available on record that his trial is pending.

Assailing the impugned judgment, learned counsels for the appellants submitted that the learned trial Court has erred in recording their conviction based on surmises and conjectures in absence of any legally admissible evidence available on record against them. They contended that the testimony of the

complainant-Shri Vijay Mehra (PW-1) is full of contradictions, improvements and embellishments on material aspects of the case. Inviting attention of this Court towards his *parcha bayan* (Ex. P-1), they would contend that while in it, it was alleged that he was taken to appellant-Shakeel @ Bakra by Imran @ Parchi; and thereafter, by all the accused persons to various places; but, in his deposition dated 17.02.2010, he has substituted Imran @ Parchi with "one another person". They further submitted that his examination-in-chief recorded on 17.02.2010 reflects as if he was subjected to the offence of kidnapping only by the appellant Shakeel @ Bakra without assistance of any other accused. Learned counsels submitted that the learned trial Court did not appreciate that all the material prosecution witnesses including the complainant such as, his mother Chandrakala (PW-2), his father Shri Chouthmal Mehra (PW-3) and his brother Shri Brijesh Mehra (PW-8) have turned hostile and have not supported the prosecution story. Referring to and relying upon testimony of Brijesh Mehra (PW-8), they contended that it reflects that, as a matter of fact, it was a case of some money dispute between the parties and to harass and victimise them, they have been implicated in this false and concocted case. Learned counsel for the appellant-Praveen Kumar would also submit that though, the complainant has admitted in his cross-examination that he did not know the appellant before the incident and reckon him as an accused only because he was so addressed by the co-accused persons during their conversation; but, no test identification parade was conducted by the prosecution to connect him with the offence, in absence whereof, his conviction is bad in law.

Learned counsels for the appellants, therefore, prayed that the appeal be allowed, the judgment impugned dated 15.11.2016 be quashed and set aside and they may be acquitted of the charges framed against them.

Per contra, learned Public Prosecutor, opposing the submissions and supporting the findings recorded by the learned trial Court, prayed for dismissal of the appeals.

Heard. Considered.

The genesis of the prosecution case is *parcha bayan* of the complainant- Shri Vijay Mehra (Ex. P-1) made at about 02:25 a.m. on 10.09.2009 in the hospital wherein, it was alleged that when he was going to his home to have lunch at about 1:00 p.m., in the market, he was taken by Imran @ Parchi to Shakeel @ Bakra who, along with Imran @ Parchi and six other accused person took him on motorcycles to various places in the city of Kota. It was further alleged that at one of such places, the complainant's brother-Brajesh was asked to pay ₹1,00,000/- failing which the complainant was threatened of dire consequences. It was also alleged that when the accused came to know that instead of paying ₹1,00,000/-, his brother has lodged a report, he was beaten by them. It also contained the allegation that he was threatened by Imran @ Parchi with a knife and by appellant-Shakeel @ Bakra with a revolver. It was stated that only on an assurance extended by him that the report lodged by his brother has been torn down and he would not disclose the incident to anybody, he was permitted to go. Thus, though, in his *parcha bayan*, he has alleged that in addition to Imran @ Parchi and Shakeel @ Bakra, six accused person subjected him to the

offence, whom he could recognize, however, in his Court deposition as PW-1, instead of naming Imran @ Parchi, he has alleged that he was taken by "one another person" to Shakeel @ Bakra. Rest of the allegations in his examination-in-chief were also directed against the appellant-Shakeel @ Bakra. Upon being declared hostile, he was cross-examined by the learned Additional Public Prosecutor wherein, he has categorically stated that he had wrongly mentioned the name of Imran @ Parchi in his *parcha bayan*. In his cross-examination by the defence on 24.06.2014, he has denied that he was subjected to any offence by Imran @ Parchi, Hanif @ Rinku @ Biri or Sunil Khateek. Qua the appellant Shahid, he admitted that his name was suggested by the police but, feigned ignorance when asked, which police personnel?

Further, his *parcha bayan* as also his deposition as PW1 reveals that he was taken from the Bhartendu market to Hiran Bazar via Rampura Bazar where they stayed for about 10-15 minutes, at 02:00 P.M., they went to Adharshila and returned back to Hiran Bazar at about 4:00 p.m. from where he was taken to Nadi Ghat and was beaten. Thereafter, he was taken to a factory towards DCM and lastly to an old workshop in the market. In his cross-examination, he has admitted that all these places were heavily crowded and they crossed at least three to four police stations while going from one place to another. Conspicuously, he did not raise alarm at any stage, although, he has tried to say that at one place he cried for help to small children; but, it does not inspire confidence. His this unnatural conduct raises a serious doubt as to veracity of prosecution case.

Moreover, indisputably, the prosecution case hinges mainly on complainant's sole testimony inasmuch as despite being kidnapped from a crowded market place; despite being taken to various crowded places in the city of Kota in broad day light and despite being threatened with knife and revolver and beaten also in the crowded place, no eye witness was examined by the prosecution to corroborate the allegations levelled by the complainant. We are conscious of the trite law that it is quality of the testimony which matters and not the quantity as also that testimony of the victim complainant alone is sufficient to record conviction but, it must be of sterling worth; however, in the instant case, we do not find it to be so. Furthermore, the complainant has stated, as PW1, that upon reaching home after the incident, he disclosed every information to his family members; but, his mother Smt. Chandrakala (PW-2) has categorically denied that he disclosed name of any accused. Moreover, she has been declared hostile and upon cross-examination by the learned Additional Public Prosecutor, she has denied her deposition made in the police statement (Ex. P-3).

In view thereof, we are not persuaded to uphold the findings of the learned trial Court regarding rioting and kidnapping.

Moreover, the allegation of demand on mobile phone has not been established by Investigating Agency by either seizure of the mobile phone/sim card or by producing the call details of the concerned mobile. We also find that it was the prosecution case that the complainant did not know the mobile number of his brother and after getting the same from his mother on a landline phone, it was made available to the appellant-Shakeel to converse

with the brother. When confronted on this aspect, the complainant stated that it was wrong that since his brother used to change his mobile number, he was unaware of it. However, his brother, as PW-8, has stated that the complainant has previously spoken to him on his this mobile number on numerous occasions. Further, he, though, denied that he used to change the number and stated that the mobile number which he was using on the date of incident, was with him for a long time; but, in his cross-examination, taking a contradictory stand, stated that he used to change his mobile number on account of regular threatening. He has further stated that he used to keep his mobile phone switched off as he was receiving threatening call from Shakeel @ Bakra. He has further stated that he was receiving such call from 5 to 6 day prior to the date of incident; however, this averment is absent in his court deposition dated 24.10.2011. Moreover, the prosecution did not explain as to why the appellant-Shakeel @ Bakra was threatening him for last about 5 to 6 days as also, who was threatening him regularly.

There is one more important aspect of the matter. Although, the learned trial Court has held the appellants guilty of offence, *inter alia*, under Section 364-A IPC; but, we are not convinced that the prosecution has been able to establish either the kidnapping or that it was for ransom. In the FIR, it is alleged that after talking to his brother-Shri Brijesh Mehra, Shakeel asked him that since his brother was not paying ₹1,00,000/-, what was to be done with him? It was not alleged specifically that this sum was demanded towards ransom. Thereafter, upon receiving a call on his mobile, Shakeel informed that instead of sending ₹1,00,000/-,

his brother has lodged a report against him. The FIR further contains the averments that thereafter, he was beaten and threatened to get the report withdrawn and only after being satisfied that the report lodged against him has been torn down, he was permitted to go. As, we would discuss at appropriate place, from the testimony of the complainant and his brother Shri Brijesh Mehra (PW-8), it is reflected that there was some money dispute in between them and the accused party and the appellant Praveen has lodged an FIR No.272/2012 against Shri Brijesh Mehra with the Police Station Jawahar Nagar for not refunding the money and playing fraud. As already held, brother of the complainant namely, Brijesh Mehra has specifically stated that he used to keep his mobile phone switched off as he was receiving threatening call from Shakeel @ Bakra for last 5 to 6 days but, the prosecution did not explain as to why the appellant was making such threats. Even otherwise, it is beyond human comprehension as to why the complainant, a para medical staff in a private clinic, was chosen to be kidnapped from a crowded market place in broad day light by as many as 8 accused which, were later on joined by two more accused, for a meager ransom of ₹1,00,000/- and why, he was let go without payment of any ransom. Under these circumstances, we are not persuaded to hold with certainty that the sum of ₹1,00,000/- demanded was towards ransom and not towards the money allegedly due against brother of the complainant.

In view of aforesaid evidence, we are not convinced that the prosecution has been able to establish that the complainant was subjected to any offence, by the appellants, as alleged. However,

now, we proceed to examine individual case of each appellant before us.

So far as allegation against appellant-Praveen is concerned, although, the complainant has admitted during his cross-examination that he did not know Praveen before the date of incident and has made accusation against him only because other accused persons were taking this name during their conversation; but, conspicuously, no test identification parade was conducted to connect the appellant Praveen with the offence. Furthermore, from the testimony of Shri Brijesh Mehra (PW-8), it is apparent that both the brothers knew him prior to the alleged incident. In his cross examination, Shri Brijesh has admitted that Praveen has lodged an FIR No.278/12 against him. He has further admitted that in the Police Station Jawahar Nagar, a case was registered against him for not refunding the money and playing fraud qua Praveen and other persons. The complainant although, feigned ignorance when asked during his cross-examination that Praveen has lodged a report against Shri Brijesh at Police Station Jawahar Nagar with allegation of fraud; but, admitted in the same breath that his name and address came to his knowledge before registration of the case.

So far as appellant-Shakeel@ Bakra is concerned, beside the observations already made by us doubting the veracity and reliability of the prosecution case, it is relevant to note here that, upon cross-examination by his learned counsel on 07.11.2014, the complainant has admitted that he did not know the boys who committed offence against him and had named them in his discretion. He has further admitted that he learnt their name the

way the accused were addressing each other. Again, the appellant was not subjected to test identification parade to demonstrate that he was the same person against whom allegations were levelled by the complainant.

So far as appellant-Shahid is concerned, he was not named in the FIR and the complainant has admitted, in his cross examination, that his name was suggested by the police. Further, as already observed by us, in the FIR, it was alleged that in addition to Imran @ Parchi and Shakeel @ Bakra, six other accused were involved whom he could recognize but, no test identification parade of the appellant-Shahid was conducted.

From the conspectus of aforesaid analysis based on evidence available on record, we are not convinced that the prosecution has been able to bring home, beyond a shadow of doubt, the charges that the complainant Shri Vijay Mehra was subjected to offence of either rioting or, kidnapping for ransom and the appeals deserve to be allowed.

Resultantly, the appeals are allowed. The judgment dated 15.11.2016 passed by the learned Additional Sessions Judge No. 6, Kota in Sessions Case No. 232/2011 is quashed and set aside and the appellants are acquitted of the charges framed against them.

The appellant **Shakeel @ Bakra S/o Shri Abdul Khalil** shall be set at liberty forthwith if not detained in any other case. Since, the appellants-**Shahid Son of Mushtak Ali and Praveen Kumar S/o Shri Krishna Murari** are on bail, their bail bonds are discharged.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), the appellants namely **Shakeel @ Bakra S/o Shri Abdul Khalil, Shahid S/o Mushtak Ali** and **Praveen Kumar S/o Shri Krishna Murari** are directed to furnish a personal bond each in the sum of Rs.25,000/- and a surety in the like amount each within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in that event of special leave petition being filed against the judgment or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(SAMEER JAIN),J

(MAHENDAR KUMAR GOYAL),J