

(2006) 03 RAJ CK 0075
In the Rajasthan High Court
Case No : Criminal Appeal No. 11 of 2005

Daya Singh Lahoriya @ Rajeev Sudan @ Vinay Kumar APPELLANT
Vs
State of Rajasthan RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Criminal Law (Amendment) Act, 1913 — Section 120A, 120B
Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 10, 27
Penal Code, 1860 (IPC) — Section 120B, 343, 346, 364A, 365

Citation : (2006) 3 RLW 1976 : (2006) 4 WLC 240

Hon'ble Judges : Shiv Kumar Sharma, J; R.S. Chauhan, J

Bench : Division Bench

Advocate : G.S. Fauzdar, B.S. Sandhu and Timan Singh, for the Appellant; R.P. Kuldeep, A.A.G., Mohd. Rafiq and Aslam Khan, for the Respondent

Judgement

Shiv Kumar Sharma, J.—The matrix of these three appeals is the judgment dated October 2, 2004 rendered by the learned Additional Sessions Judge (Fast Track) No. 1, Jaipur City (for short the "trial Court").

2. The trial Court found that accused Daya Singh (appellant in Cr. Appeal No. 11/2005) was guilty of offences punishable Under Sections 364A, 365, 343/120B and 346/120B of the Indian Penal Code and sentenced him as under:

Under Section 364 A IPC:

To suffer imprisonment for life and fine of Rs. 500/-, in default to further suffer simple imprisonment for six months.

Under Section 365 IPC:

To suffer imprisonment for seven years and fine of Rs. 500/-, in default to further suffer simple imprisonment for six months.

Under Section 343/120B IPC:

To suffer imprisonment for three years and fine of Rs. 500/- in default to further suffer six months imprisonment.

Under Section 346/120B IPC:

To suffer imprisonment for two years.

The substantive sentences were ordered to run concurrently.

3. The accused Summan Sood @ Kamaljeet Kaur (appellant in Cr. Appeal No. 1247/2004) was convicted and sentenced as under:

Under Section 365/120BIPC:

To suffer simple imprisonment for seven years and fine of Rs. 500/-, in default to further suffer simple imprisonment for six months.

Under Section 343/120B IPC:

To suffer simple imprisonment for three years and fine of Rs. 500/- in default to further suffer six months simple imprisonment.

Under Section 346/120B IPC:

To suffer simple imprisonment for two years.

The substantive sentences were ordered to run concurrently.

4. While accused Daya Singh and Suman Sood have questioned legality of the conviction and sentence imposed, the State of Rajasthan in Appeal No. 136/2006 has prayed to award maximum sentence to the accused persons and questioned the acquittal of accused Suman Sood u/s 364 IPC.

5. It is the prosecution case that on February 17, 1995 Rajendra Mirdha (herein after referred as "victim") was abducted by the accused persons to secure release of their fellow terrorist Devendra Pal Singh Bhuller (who was apprehended at the Indira Gandhi International Airport by the Police authorities on the night of January 18 & 19, 1995 on his return to India after the German authorities declined to grant him asylum) by using influence of his (Rajendra Mirdha) father Sh. Ram Nwas Mirdha who then was heading Joint Parliamentary Committee.

6. The police Station Ashok Nagar Jaipur on receiving telephonic message from Harendra Mirdha (brother of victim), registered a case and investigation commenced. The victim somehow got rescued from the illegal detention and the accused persons got arrested. On completion of investigation charge sheet was filed. In due course the case came up for trial before the trial court. Charges Under Sections 365, 364A, 343, 343/120B and 346/120B IPC were framed against the accused persons, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 61 witnesses. In the explanation u/s 313 Cr.P.C., the accused persons claimed innocence. No witness

was however examined in defence. Learned trial Court on hearing final submissions convicted and sentenced the accused persons as indicated herein above.

7. Learned Counsel for the accused made following submissions:

(i) The identity of the accused persons has not been established. The test Identification parade has no sanctity in the eye of law as the photographs of accused persons were shown to the witnesses prior to the identification parade.

(ii) It could not be established that car used for abduction of victim, belonged to the accused persons.

(iii) It could not be established the house in which the victim was kept, owned and possessed by the accused persons.

(iv) It could not be established that fax message sent from Rohtak was sent by the accused persons.

(v) It could not be proved that life of victim was in danger or victim was kidnapped for ransom or for murder.

(vi) Judgment of the trial Court which is based on misreading of evidence, is required to be set aside.

8. In order to appreciate the contentions raised by the learned Counsel, the relevant evidence led by the prosecution is required to be considered. For the sake of convenience, we divide the evidence in following subheads:

(i) Evidence of abduction and demand;

(ii) Evidence regarding exclusive possession of the accused persons over the House B-117, Model Town in which the victim was detained;

(iii) Evidence of detention;

(iv) Recovery of weapons and other articles;

(v) Recovery of car used for the purpose of abduction;

(vi) Motive of detention;

(vii) Proof regarding extradition.

EVIDENCE OF ABDUCTION AND DEMAND:

9. To establish the fact of abduction and demand the prosecution examined victim himself as PW.9, who in his deposition gave details of his abduction by the accused persons. He has given the evidence on the demand of the accused persons for release of Devendra Pal Singh Bhuller, in exchange of victim's release by using influence of his father Sh. Ram Niwas Mirdha, who then was heading Joint Parliamentary Committee. The victim has admitted and proved two fax messages Ex. P. 19 and Ex. P. 20 having been written by him, which were

ultimately faxed to Sh. Ram Niwas Mirdha by accused Daya Singh from Rohtak. The victim identified accused Daya Singh and Suman Sood in the Identification Parade as also in the court. Smt. Udai Mirdha (PW. 5), wife of victim, deposed that her husband used to walk in the morning. On the fateful day, after her husband had gone for a walk, she heard suppressed human voice. Around 8.40 AM she received a phone call whereby a person informed her that her husband was in their custody and instructed her to write a message on a paper. The person on the other end wanted the release of one Bhuller, who was apprehended by the police at the Airport. Smt. Udai Mirdha was asked to speak to her father-in-law for release of Bhuller. She was warned not to inform the police about the episode. A written note made by her by pencil on a piece of paper at the time of phone call got exhibited as Ex. P. 2. Harendra Mirdha (PW. 29) proved the institution of FIR (Ex. P. 29) at his instance with the Police Station Ashok Nagar immediately after he received a message from his Bhabhi about the abduction of his elder brother. Sh. Ram Niwas Mirdha (PW. 50) has proved having received telephone call from the accused who threatened him that either he should ensure the release of Devendra Pal Singh Bhuller or would have to face serious consequences. The accused stated that if he wanted, he could get Bhuller released and he could even talk to Prime Minister about this. He received two fax messages in English written by his son Rajendra Mirdha wherein it was requested that there should be no encounter. Sh. Ram Niwas Mirdha proved the fax messages as Ex. P. 19 and Ex. P. 20. Kishore Singh (PW. 6) deposed that on the evening of February 16, 1995 he had seen a Maruti Car with tinted glasses in front of the house of Rajendra Mirdha. Rakesh Kumar (PW. 52), owner of shop at Rohtak, stated that two fax messages were sent to Sh. Ram Niwas Mirdha from his shop by accused Daya Singh. He also identified accused Daya Singh. Ram Chandra Meena, Police Inspector, CID Intelligence Jaipur (PW. 40) had seized the fax-register containing the entries with regard to the aforesaid fax which he proved as Ex. P. 43. The fax itself was got exhibited as Ex. P. 41. Rajeev Swaroop, Dy. Secretary Home (PW. 30) proved the order of permission by the Government for phone tapping of Rajendra Mirdha and has proved the same as Ex. P. 31. Hari Kishan (PW. 36), a family friend of Mirdhas, stated having attended the phone call received at about 5.30 PM on February 19, 1995 at the residence of Rajendra Mirdha. Kami Singh Shekhawat, Dy. S.P. (PW. 24) heard the telephonic conversation of the accused persons on the phone call received at the residence of Rajendra Mirdha around 5.28 PM on February 19, 1995, which was attended by Hari Kishan, He proved having heard the accused persons complaining to the wife of Rajendra Mirdha that whatever was happening in the City was not proper and that she might lose Rajendra Mirdha forever. Audio cassette was seized as Article 4 with recovery memo. Transcription of conversation was also available with the recovery memo Ex. P. 26. Ram Kumar (P.W. 23), the Police Constable was also on duty to supervise the recording of telephonic conversation on the phone of Rajendra Mirdha, Rajesh Malik, Inspector of Police CID (CB) Jaipur has proved having obtained copy of the fax register, the details about the fax messages sent to Sh. Ram Niwas Mirdha by the

accused Daya Singh.

EVIDENCE REGARDING EXCLUSIVE POSSESSION OF THE ACCUSED PERSONS OVER THE HOUSE B-117, MODEL TOWN IN WHICH THE VICTIM WAS DETAINED:

10. In order to establish the fact that accused persons had been in exclusive over the house B-117, Model Town in which the victim was detained; the prosecution has examined Girdhari Lal Agrawal (PW. 15) admitted having sold the house B-117 to accused Daya Singh and received three demand drafts each of Rs. 45,000/-. He proved the agreement to sale (Ex. P. 10) and identified accused Daya Singh and Suman Sood. Ashu Lal Lalwani (PW. 13), Brahmanand Gupta (PW. 14), Chandra Kumar (PW. 21) were the brokers who mediated in the sale/purchase of the house identified accused Daya Singh and Suman Sood. Surendra Kumar (PW. 33), employee of Union Bank of India Delhi proved the application form for obtaining draft of Rs. 45000/- as Ex. P. 38. Ramesh Chandra Avasthi (PW. 34), employee of State Bank of India Delhi proved the application form for obtaining draft of Rs. 45,000/- as Ex. P. 39, Mehtab Singh (PW. 35), employee of Punjab National Bank proved the application form for obtaining draft of Rs. 45,000/- as Ex. P. 39A. S.P. Khadkawat (PW. 56) exhibited the FSL report dated July 30, 1997 (Ex. P. 279) proving the signature of the accused Daya Singh same as on other documents on which signature of accused Daya Singh were found including the agreement to sale Ex. P. 10. Devendra Singh (PW. 60) stated having obtained signatures of accused Daya Singh on Ex. P. 88 to 205 and Ex. P. 206 to 278, which were proved to be that of accused Daya Singh vide FSL report Ex. P. 1 to 99. Subodh Saxena (PW. 20) a neighbour of accused persons in Model Town and Secretary of the Society, stated having received water charges and given receipt to accused Daya Singh. He identified accused Daya Singh.

EVIDENCE OF DETENTION:

11. To prove the fact that victim was detained in House No. B-117, Model Town the prosecution examined Givind Detha, Dy. S.P. (PW.7), Banwari Lal Head Constable (PW. 18), Abdul Shakoore Head Constable (PW. 19) and Rameshwar Doi Head Constable (PW. 39) who got the victim Rajendra Mirdha rescued after encounter with the accused persons at the House No. B-117 Model Town. The victim Rajendra Mirdha (PW. 9) himself deposed that he was detained in the house from where he was ultimately rescued by the police after encounter. Rajendra Sharma (PW. 44) stated having lifted chance finger prints from the house B-117 Model Town where the victim was detained. Lakhan Lal (PW. 61) an official of Finger Print Cell of FSL stated having obtained the finger prints of victim Rajendra Mirdha. Iqbal Ahmed (PW. 58), Finger Print Expert in FSL, proved Ex. 1-308 to 312 all finger print reports wherein some of the chance finger prints lifted from B-117 Model Town matched with that of victim Rajendra Mirdha.

RECOVERY OF WEAPONS AND OTHER ARTICLES:

12. Mohan Singh, Additional S.P. (PW. 59) proved various items recovered from B-117 Model Town including the ladies garments/clothes/make-up items

recovered vide memo Ex. P. 314. He also proved recovery of agreement to sale Ex. P. 10 recovered from the said house and two AK-56 Rifles Articles 12 and 13 vide memo Ex. P. 320. Het Ram Bishnoi, Additional S.P. (PW. 42) proved recovery of AK-56 Rifle found with deceased Navneet Singh Kandia (Article 5) vide memo Ex. P. 23. Mujaffar Hussain (PW. 48) proved identification memo Ex. P. 82 of car recovered at the instance of accused Daya Singh as well as memos Ex. P. 84 and Ex. P. 83 of seizure of car and site plan.

RECOVERY OF CAR USED FOR THE PURPOSE OF ABDUCTION:

13. Rajan Dhingra (PW. 28), a Car Broker, stated having arranged for purchase of Maruti Car RJ 14 1C 2005 by accused Daya Singh. He identified accused Daya Singh. Ashulal Lalwani (PW. 13) stated that accused persons used to come in a white Maruti Car bearing 2005 registration number. Kishore Singh (PW. 6) neighbour of victim Rajendra Mirdha, stated having seen white Maruti Car with tinted glasses around 8 PM a day before the incident i.e. on February 16, 1995 in front of house of Rajendra Mirdha. S.P. Khadgawat, Additional S.P. (PW. 56) proved Ex. P. 154, the memo on which information given by accused Daya Singh u/s 27 Evidence Act for recovery of car was recorded. Satnam Singh (PW. 47), an employee in a Tourist Company, proved seizure of car vide memo Ex. P. 84.

MOTIVE OF DETENTION:

14. The prosecution has established that the motive of accused persons behind the abduction of victim was to secure release of their fellow terrorist Devendra Pal Singh Bhuller. This fact is not in dispute that Devendra Pal Singh Bhuller was apprehended at Indira Gandhi International Airport by the police in the intervening night of January 18 & 19, 1995 on his return to India after the German Authorities declined to grant him asylum. Ghanshyam Dutta (PW. 49) stated having met and interrogated Bhuller in Tihar Jail New Delhi and proved interrogation note of Bhuller Ex. P. 98.

PROOF REGARDING EXTRADITION:

15. In order to establish extradition of accused persons Daya Singh and Suman Sood the prosecution examined S.P. Khadgawat (PW. 56) who has proved copy of judgment of the Court of USA (Ex. P. 49) and Extradition Order (Ex. P. 150).

CONCLUSION:

16. Having analysed the material on record and considered the submissions raised by learned Counsel for the accused persons and learned Additional Advocate General we find that number of prosecution witnesses have identified the accused Daya Singh and Suman Sood in the trial court as also in Identification Parade. It is well settled that court may accept the identification in court even without insisting on test identification parade, object of which is merely to provide corroboration to the sworn testimony of the witnesses in court. (Vide Malkhan Singh v. State of M.P. 2003 (5) SCC 646 : 2003(4) RLW SC 465. We find no merit in the submission of learned Counsel for the accused persons.

The infirmities shown in the test identification parade, in our opinion have no effect on the identification of the accused persons in the trial Court. Testimony of witnesses who have identified the accused persons in the trial Court could not be shattered even after searching cross examination and we hold that identification of the accused persons in the trial Court was perfectly legal and justified. Ratio indicated in N.J. Surey v. State 2004 (1) SCC 345 is not applicable to the facts and circumstances of the instant case.

17. That takes us to the rival contentions made in the appeal preferred by the State of Rajasthan. Evidently learned trial Court found accused Suman Sood guilty of offences Under Sections 343/120B, 346/120B and 365/120B IPC in each of which she has been held to be a Conspirator with the aid of Section 120B IPC but she has not been convicted u/s 364A/120B IPC even though she was held guilty for the wrongful confinement and abduction of Rajendra Mirdha for whose confinement and abduction accused Daya Singh was convicted and sentenced u/s 364A IPC. To prove the continued association and involvement of accused Suman Sood as a co-conspirator with accused Daya Singh, we have before us the evidence of Rajendra Mirdha (PW. 9), Himmat Singh (PW. 8), Narendra (PW. 10), Som Dutt (PW. 11), Hari Narain (PW. 12), Govind Detha (PW. 7), Ashulal Lalwani (PW. 13) and Hanuman Singh (PW. 55).

18. Victim Rajendra Mirdha (PW. 9) proved the presence and association of accused Suman Sood with accused Daya Singh throughout in the House B-117 Model Town. He stated that he was forcibly confined in a Box below the Bed over which Suman Sood made her son to sleep and on enquiry by the police officers she informed that the child was her son and not keeping well. He further stated that in the evening of February 25, 1995 when the police party came to raid the house B-117 Model Town, it was Suman Sood who raised alarm and exhorted all the accused to run away and also asked the victim to run.

19. Himmat Singh (PW. 8) proved the presence of Suman Sood at the house B-117 Model Town. When he made sudden check of the house on February 23, 1995, it was Suman Sood who informed that her child being unwell was sleeping on the bed. Testimony of Himmat Singh gets corroboration from the evidence of Narendra (PW. 10), Somdutt (PW. 11) and Hari Narain (PW. 12).

20. Govind Detha (PW. 7) proved the presence of Suman Sood in the house on February 25, 1995 when the raid was conducted and she exhorted the accused to run from the house. Ashulal Lalwani (PW. 13) proved continued presence of Suman Sood with accused Daya Singh in the said house. Hanuman Singh (PW. 55), Booking clerk of RSRTC proved "Ticket Chart" wherein the seat 31 & 32 of bus No. 2815 were booked in the name of Suman Sood on February 25, 2005.

21. Learned Additional Advocate General prayed for maximum sentence because of the gravity of the offence and far and wide effect of it on the society as the accused committed the offence to secure the release of co-terrorist. Reliance is placed on State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, , Esher Singh

Vs. State of Andhra Pradesh, , Nazir Khan and Others Vs. State of Delhi, , Devender Pal Singh Vs. State National Capital Territory of Delhi and Another, , State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., , Ajay Agarwal Vs. Union of India and others, Mohammad Usman Mohammad Hussain Maniyar and Others Vs. State of Maharashtra, and Yash Pal Mittal Vs. State of Punjab,

22. Coming to the offence of "Criminal Conspiracy" we notice that Section 120A and 120B were introduced by Criminal Law Amendment Act 1913. Section 120A defines criminal conspiracy thus:

Section 120A. Definition of criminal conspiracy:-When two or more persons agree to do, or cause to be done-

(1) and illegal act, or (2) and act, which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120B reads as under:

120B. Punishment of criminal conspiracy.-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

23. In *Ajay Agarwal v. UOI* (supra) the Apex Court indicated the conspiracy is having conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is effected; and (3) a criminal object, which may be either the ultimate aim of the" agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy.

24. In *Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra* (supra) it was held that for an offence u/s 120B IPC, the prosecution need not necessarily prove that the conspirator expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication.

25. In R.K. Dalmia Vs. Delhi Administration, the Supreme Court emphasized that it is not necessary that each member of a conspiracy must know all the details of conspiracy.

26. In the instant case it is true that there is no evidence of any express agreement between Daya Singh and Suman Sood to do or cause to be done the illegal act, but for offence u/s 120B IPC the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. In Nazir Khan v. State of Delhi (supra) the Supreme Court propounded that offence of criminal conspiracy is made under the illustration appended to Section 10 of the Indian Evidence Act, 1872 and even if all the conspirators are ignorant of all the decisions and are strangers, that is really of no consequence. In the present case the object and purpose of the conspiracy was clear and the manner of organizing the activities to achieve the ultimate objective has been amply established. Accused Suman Sood was the participant in a big game planned, she cannot take advantage of being ignorant about the finer details of conspiracy. She took active part in forcibly confined the victim in a box over which she made her son to sleep and on enquiry by the police officials she informed that child was her son and he was not keeping well. Further at the time of encounter by the police she raised alarm and exhorted accused Daya Singh to run away. On the date of raid by the police in the house B-117 Model Town, seats No. 31 and 32 of Bus No. 2815 were booked in the name of Suman Sood. In view of this factual background, and charge u/s 364A read with 120B IPC is established beyond reasonable doubt. Learned trial court in our opinion committed illegality in acquitting accused Suman Sood of the charge u/s 364A/120B IPC.

27. We however do not find it a fit case to impose the death sentence but considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and would have flown in respect of the life sentence, incarceration for a period of 20 years would be appropriate. The accused persons would not be entitled to any remission from the aforesaid period of 20 years. As observed by the Supreme Court in Ashok Kumar alias Golu Vs. Union of India and others, and Sat Pal alias Sadhu Vs. State of Haryana and Another,

28. For these reasons we dispose of the instant appeals in the following terms:

(i) we dismiss the appeals of accused Daya Singh and Suman Sood and confirm the conviction and sentence awarded to them by the trial Court.

(ii) We partly allow the appeal of State and convict accused Suman Sood u/s 364A/120B IPC and sentence her to suffer imprisonment for life and fine of Rs. 500/- in default to further suffer six months simple imprisonment. Accused Suman Sood who is on bail shall be taken in custody forthwith and her bail bonds stand cancelled.

(iii) We, looking to the gravity of the offence and the dastardly nature of acts and

consequences direct that accused Daya Singh and Suman Sood shall not be released From the prison unless they have served out at least 20 (twenty) years of imprisonment including the period already undergone by them. The accused persons shall not get the benefit of any remission either granted by the State or by the Government of India on any auspicious occasion.

(iv) Impugned judgment of trial Court stands modified as indicated above.