

(2009) 01 DEL CK 0172
In the Delhi High Court
Case No : Criminal Appeal No. 7 of 2008

Raj Kumar

APPELLANT

Vs

The State (G.N.C.T. of Delhi)

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 328, 34, 341, 343, 363

Citation : (2009) 01 DEL CK 0172

Hon'ble Judges : Pradeep Nandrajog, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Jitender Khanna, in Criminal Appeal No. 7/2008 and S.B. Dandpani, in Criminal Appeal No. 195/200, for the Appellant; Pawan Sharma, APP, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. The appellants were charged of having kidnapped Mohit and having demanded ransom for his release. According to the prosecution not only was Mohit wrongfully confined, but was fed with some liquid which was found to be a stupefying drug and additionally was intimidated.

3. The charge faced by the appellants was of having committed offences punishable under Sections 363/34 IPC; 506 Part II/34 IPC, 328/34 IPC, 341/34 IPC, 343/34 IPC and 364A/34 IPC.

4. The case put up by the prosecution was that on 27.6.2004, Mohit PW-1, aged about 8 years, had accompanied his parents for a wedding to a Dharamshala at Bhagwati Vihar, Uttam Nagar, Delhi and around 12 midnight, proceeded alone to spend the night with one Shama, his sister, who was residing near the Dharamshala. The appellants who were at the venue of the marriage followed Mohit and kidnapped him. After having kidnapped Mohit a ransom demand in

sum of Rs. 2 lacs for releasing Mohit was raised on his father. It was the case of the prosecution that Mohit was forced to drink a sour and bitter water containing drugs; he was kept in unlawful custody and was prevented from moving around. The prosecution claimed that on receipt of a secret information, the police team reached village Burari and saw appellant Raj Kumar with the child. The child was recovered and Raj Kumar was arrested at 2.30 PM on 30.6.2004. Soon thereafter appellant Chander Shekhar came to the spot and was arrested at 3.00 PM.

5. Mohit PW-1, the child who was stated to be kidnapped, his father Keshav Kumar PW-2, Pushpa PW-4 the maternal aunt of Mohit, are the star witnesses of the prosecution and deposed about Mohit attending the marriage and being found missing. PW-2 father of Mohit and PW-4 the maternal aunt of Mohit, deposed about ransom being demanded from the father of Mohit.

6. The factum of arrest and the manner in which the investigation was conducted was sought to be proved through the testimony of ASI Arjun Singh PW-10 and HC Devender PW-9.

7. With reference to the testimony of PW-1, PW-2 and PW-4, the learned trial judge has concluded that the charge of Mohit being kidnapped for ransom and illegally confined, as also intimidated has been successfully established by the prosecution.

8. In view of the testimony of Dr. Bhatia PW-6, who had examined Mohit on 30.6.2004 and had opined that nothing could be detected where from it could be gathered that the child had been given a stupefying substance, the charge punishable u/s 328 IPC has been held not having been established.

9. The principal grievance of the learned Counsels for the appellants urged at the hearing of the appeal today is that the learned trial judge, in a short and a cryptic decision penned in 10 pages, has referred to the deposition of the witnesses as made during examination-in-chief; the cross-examination of the witnesses has been ignored. It is urged that the inherent improbabilities in the versions given by the witnesses has been ignored and that the witnesses have contradicted themselves on material facts has been ignored. It is urged that tell-tale circumstances have been ignored. It is urged by the learned Counsels for the appellants that it is settled law that at a criminal trial, evidence has to be evaluated keeping in view the broad circumstances and the probabilities of the case.

10. The involvement of the police is to be traced to Ex. PW-7/A, when on a written complaint made by Keshav Kumar PW-2 before the duty constable at Police Post, East Uttam Nagar, on 28.6.2004, a DD entry was recorded to the effect that Keshav Kumar has reported at the police post that Keshav Kumar along with his family had attended a marriage at V-93, Sector A, Bhagwati Vihar, Uttam Nagar on 27.6.04 and that his son named Mohit aged 8 years was missing since 12 in the night. The DD entry was recorded and attempts were made to locate the where-about of Mohit. On 30.6.2004, statement Ex. PW-2/B, of

Keshav Kumar was recorded, in which, with reference to his earlier complaint, he stated that his child was missing and had not been found. He stated that he suspects the involvement of appellant Chander Shekhar son of Raja Ram, resident of A Block, Vijay Nagar, Ghaziabad, U.P. He gave the reason for his suspicion being that Chander Shekhar was found missing from the venue of the marriage soon after Mohit was found missing and had attended the marriage uninvited.

11. The Police claims, as per the testimony of the Investigating Officer, ASI Arjun Singh PW-10, that on a secret information received the police party went to Burari, accompanied by father of Mohit and saw Mohit with Raj Kumar. The child was recovered and Raj Kumar was arrested and after 15 minutes accused Chander Shekhar was also noticed in the area and was apprehended.

12. In his testimony, Mohit PW-1, the child kidnapped, deposed that on 27.6.2004 he had come to Delhi from Ghaziabad with his parents to attend a marriage in a Dharamshala and the same night he left for the house of his Didi, Shama, who lived nearby and that just outside the house of his Didi, the accused caught him and pressed his mouth; telling him that they would leave him at the house of his "Badi Mummy". He deposed that he was forcibly removed in a vehicle and was threatened to keep shut. He was made to drink a sour and bitter water. He was fed half roti a day. He deposed that after four days when both the accused were roaming by holding his finger at an unknown place, his father along with the police reached, and he was rescued.

13. Being relevant, we may note that Mohit has categorically deposed that the accused persons had been feeding him and that both accused persons had jointly, in concert, kept him under an illegal confinement. He has not stated of any other person being present at the place where he was illegally confined. On cross-examination, he categorically stated: "I remained with accused persons for four days".

14. Keshav Kumar PW-2, deposed about having attended a marriage in Uttam Nagar. He affirmed having made the statement Ex. PW-2/B to the police pursuant where to the FIR was registered. He deposed that accused Chander Shekhar and Raj Kumar were his neighbours. He deposed that since his son could not be traced, he made the statement Ex. PW-2/B which bore his signatures at point B in which he disclosed his apprehension of Chander Shekhar being the suspect inasmuch as he i.e. Chander Shekhar had attended the marriage without being invited as a guest and had gone missing since the time his son had gone missing. He went on to depose that on 1.6.2004, at about 5.00 AM, while they were tracing his son and were present at Sant Nagar Burari, he saw accused Raj Kumar with his son and soon thereafter accused Chander Shekhar reached there. He deposed that his son was recovered in his presence. He further deposed that at 12 midnight, accused Chander Shekhar had demanded a ransom of Rs. 2 lacs from him. On being cross-examined, Keshav Kumar stated that he had searched for his son on 28.6.2004, firstly at Uttam Nagar and then at Ghaziabad on

28.6.2004. He stated that they came back from Ghaziabad on 29.6.2004. He categorically stated: "Both the accused persons were with me when I was returning from Ghaziabad on 29.6.04".

15. We may note that the date 1.6.2004 appears to be a typographic mistake and consistent with his deposition, he appears to have disclosed the date as 30.6.2004. But the same is irrelevant.

16. Pushpa PW4, the maternal aunt of Mohit, deposed that Mohit was found missing on 27.6.2004 and an attempt was made to trace him. She deposed that accused Chander Shekhar was present at the marriage without being invited. She categorically deposed that: "The accused had accompanied us to trace my son and thereafter he had gone to Ghaziabad and disappeared thereafter". On being cross-examined she stated that: "On the third day of the marriage the accused denied his involvement in this case and requested us not to doubt him. Accused was made to live with us and was required to sleep with us but he told us that he is feeling suffocated and he is allowed to go to his home. During night accused confessed that the child is in the custody of a gang and in case Rs. 2 lacs and one Maruti car is given he can get the child released. Thereafter accused was handed over to the police at about 2 a.m. in the night."

17. H.C. Devender PW-9 deposed that the child was recovered from the custody of Raj Kumar at about 2.45 PM. The date referred by him is 23.6.2004.

18. ASI Arjun Singh PW-10 deposed that on receiving a secret information that the kidnapped child was seen at Burari, he along with HC Devender, Const. Virender and father of Mohit went to the village Burari and saw the child in custody of accused Raj Kumar who was apprehended and soon thereafter Chander Shekhar, who visited the spot was also arrested.

19. We note that as per the arrest memo of Raj Kumar, he has been shown to be arrested at 2.30 PM and Chander Shekhar has been shown to be arrested at 3.00 PM. The two arrest memos are Ex. PW-2/D and Ex. PW-2/E respectively.

20. It is trite that a charge of kidnapping for ransom succeeds if demand of ransom is proved. In this case the demand of ransom is sought to be proved through the testimony of PW-2 and PW-4.

21. It is interesting to note that as per PW-2, the demand of ransom was raised on him by accused Chander Shekhar at 12 midnight on 29.6.2004. Had it been so, in his statement to the Police Ex. PW-2/B made by him on 30.6.2004, he would have certainly disclosed the said fact. The omission to disclose to the police, in the statement that the previous night a demand for ransom in sum of Rs. 2 lacs was raised, casts a doubt on the testimony of PW-2. We note that in the statement Ex. PW-2/B, PW-2 has stated that he suspects the involvement of accused Chander Shekhar for the reason that he had not seen Chander Shekhar since the time his child was missing and that Chander Shekhar was a gate crasher at the wedding. It is interesting to note that this version of PW-2 stands

belied by his testimony in Court when during examination-in-chief he stated that the accused had demanded ransom from him at 12 midnight on 29.6.2004. Obviously, Chander Shekhar had met the witness on 29.6.2004, as per the deposition of the witness. But, what is of greater significance is the fact that on being cross-examined, PW-2 stated that when they found their son missing at the night of 27.6.2004 they searched for the child at Uttam Nagar on 28.6.2004 and then at Ghaziabad at 28.6.2004; they returned from Ghaziabad on 29.6.2004. He categorically stated: "Both the accused persons were with me when I was returning from Ghaziabad on 29.6.04". Obviously, the appellants were helping out PW-2 in the search of his son. They were accompanying PW- 2 when he went to Ghaziabad on 28.6.2004 and returned with him on 29.6.2004.

22. This also means that both the accused persons could not be illegally confining Mohit on 28.6.2004 and 29.6.2004. If they had indeed kidnapped the child, they would, per-force, have had to hand over the custody of the child to some other person because they were supposed to be with PW-2 and helping him in searching his son.

23. It is important to note that Mohit has nowhere stated that any other person was present when he was kept in illegal confinement. On the contrary he has categorically deposed that during his entire period of illegal detention the accused persons were present around him. In this connection we may also note that on further cross-examination, PW-2 stated that the suspicion on accused Chander Shekhar was roused in his mind when Chander Shekhar indicated demand of money during the night of 28.6.2004. This makes the case of the prosecution even more puzzling, for the reason, if this was true PW-2 would naturally have rushed to the police and disclosed said information and get Chander Shekhar apprehended at the spot.

24. The infirmities in the case of the prosecution get compounded from the testimony of Pushpa PW-4 who has contradicted the father and the son i.e. Keshav Kumar and Mohit. According to her, accused Chander Shekhar was required to sleep with the family and on the third day of the marriage, during the night confessed that the child is in the custody of a gang and stated that if ransom in sum of Rs. 2 lacs and one Maruti Car was given, the child would be released. She categorically stated that the accused was handed over to the police at about 2.00 AM in the night.

25. Now, the admitted case of the prosecution is that the marriage took place on 27.6.2004. Three days after the marriage would be 30.6.2004. Thus, as per Pushpa PW-4, the accused Chander Shekhar was handed over to the Police at about 2.00 AM i.e. the intervening night of 30.6.2004 and 1.7.2004.

26. It is unfortunate that the learned trial judge has failed to note the afore-noted inconsistencies in the deposition of the witnesses of the prosecution; which needless to state, are material contradictions.

27. The circumstance of ransom being demanded in the night of 28.6.2004 or in

the night of 29.6.2004 is rendered extremely improbable because the statement Ex.PW-2/B made by PW-2 to the police on 30.6.2004 does not refer to any such demand for ransom being made.

28. We note that in their statements recorded u/s 313 Cr.P.C. both appellants have stated that they have been falsely implicated due to enmity. We note that accused Raj Kumar has stated that he had to pay money to PW-2 and that he was falsely apprehended when he went to the house of PW-2 to seek some further time to repay the loan.

29. The possibility of the appellants being falsely implicated by PW-2 to extract the return of his loan cannot be ruled out.

30. The appeals are allowed. Impugned judgment and order dated 10.8.2007 convicting the appellants is set aside. The appellants are acquitted of all the charges framed against them. The order of sentence dated 17.8.2007 is quashed.

31. If not required in any other case, the appellants are directed to be set free forthwith.

32. Copy of the order be sent to the Superintendent, Tihar Jail, through special messenger.