

(2014) 09 DEL CK 0407

In the Delhi High Court

Case No : Criminal Appeal No. 1011 of 2014

Sartaj

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 65B, 65B(2)(a), 65B(2)(d)
Penal Code, 1860 (IPC) — Section 363, 364, 364A, 364-A

Citation : (2014) 4 JCC 3027

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : Arundhati Katju, Advocates for the Appellant; Aashaa Tiwari, A.P.P, Advocates for the Respondent

Judgement

Mukta Gupta, J.—The appellant Sartaj @ Sonu is convicted for offence punishable under Sections 363/364A IPC for kidnapping a three year old minor child by the impugned judgment dated April 29, 2014 and sentenced to undergo imprisonment for life and a fine of Rs. 5000/- for offence punishable under Section 364A IPC and rigorous imprisonment for 7 years with fine of Rs. 1000/- for offence punishable under Section 363 IPC vide the order dated April 30, 2014. Learned counsel for the appellant assails the judgment on the ground that the version of Abida and Nazma cannot be relied upon as though the prosecution case is that the child was recovered from the residence of Abida. however neither Abida nor Na/ma have signed the recovery memo. Further the signatures of Sartaj on recovery memo do not tally with his signatures on the charge and his statement recorded under Section 313 Cr.P.C. The prosecution has not been able to prove that the victim child was recovered at the instance of Sartaj. Though Iktiyar says that 5 calls were received, however in only one call it is alleged that there was a demand for ransom. Even the demand for ransom does not bring the offence allegedly committed by Sartaj in the four corners of offence punishable under Section 364A IPC. The certificates under Section 65B exhibited as Ex.

PW-11/E and Ex. PW-12/C are not in conformity with Section 65B of the Indian Evidence Act.

2. Sartaj has led defence evidence by examining Shamim Bano and Rani his mother and sister respectively, both of whom have deposed that Abida was not having good relations with the family of Sartaj and has thus falsely implicated Sartaj. In his explanation under Section 313 Cr.P.C. Sartaj has claimed innocence, false implication and that he has been implicated at the instance of Ikhtiyar in connivance with his brother-in-law Sakoor who is a Police informer. According to Sartaj Ikhtiyar was having previous enmity with his sister Rani as they were distant relatives residing in the neighbourhood and did not have cordial relations.

3. The investigation was set into motion on a complaint lodged by Ikhtiyar on August 27, 2011 at 1.00 AM stating that his daughter Isha @ Noori aged 3 years, fair complexion, height 2 feet. flat nose, slightly fat with short hair wearing green colour top and barefooted is missing from outside the house since 6 O'clock and thus he suspected that some unknown person had kidnapped her. In the complaint he gave his mobile No. 9818629618.

4. Search was carried out for the missing child when on August 27, 2011 at around 4/4.15 PM Ikhtiyar received a call and the caller informed him that his daughter Isha was with him. He immediately reported the detail of the calls to the I.O. in the Police station. Again on the same day at 6.03 PM he received another call wherein the person stated that he was bringing his daughter to his house. This was followed by a third call at 8.00/8.15 PM wherein the caller informed that while he was coming to his house along with his daughter they have been caught by some other person and he has been given severe beatings. The caller further informed that those persons were demanding a sum of Rs. 1,25,000/-. Ikhtiyar expressed his inability to pay the said amount on which the caller stated that neighbour of Ikhtiyar was with him and he knew that Ikhtiyar had the capacity to pay the money. On the same day at about 10.02 PM Ikhtiyar received the fourth call wherein the caller demanded money on which Ikhtiyar stated that he was ready to pay Rs. 40,000/- to Rs. 50,000/-. The caller refused to accept the amount and stated that he would call the next day at about 2.00 PM. On August 28, 2011 when Ikhtiyar was in Police station for the investigation of this case he received a call at 1.00 PM from the caller demanding Rs. 1,25,000/- on which Ikhtiyar told him that the amount was ready and asked him the place of delivery. The caller asked Ikhtiyar to send his wife with the money and the place would be disclosed later. Thereafter no calls were received.

5. In the meantime the Police personnel contacted the PCO booth from where the call at 10.02 PM on August 27, 2011 was received. Deepak PW-2 the PCO attendant at the booth identified the caller and disclosed his name as Sartaj @ Sonu. Appellant was apprehended and he revealed that Isha @ Noori was hidden in the basement of a gali near TVS showroom. Sartaj led them to the said place where Isha was found present in a room along with one lady Abida PW-5. Nazma

PW-6 was the landlady of the said house where the girl was kept. Iktiyar appeared as PW-1 in the witness box and deposed as noted above.

6. Abida and Nazma appeared in the witness box and deposed about the presence of Isha at the house of Abida. Abida PW-5 deposed that 4-5 months ago Sartaj @ Sonu brought a girl child aged about 3 years to her house and stated that she was the daughter of the Sali of his brother and requested her to keep the girl for 2 days. On the third day Police came and recovered the child from her house when Sartaj @ Sonu was in Police Custody. She admitted that relations between her and mother of Sartaj were not cordial.

7. Version of Abida is corroborated by Nazma PW-6 who is the landlady of the premises. Nazma deposed that she had given one room in her house on rent to Abida. Last year in the month of Ramzan she saw a female child aged about 3 years in the hall of her house. When she asked about the whereabouts of the said female child, Abida told her that she was the daughter of sister-in-law of her nephew. Abida also told her that the mother and mausi of child have been lost in the market near Jama Masjid. Nazma further stated that at about 5.30 PM 4-5 Police officials visited their house in the room of Abida. Nephew of Abida was also present and recovered the child.

8. Thus from the version of Abida and Nazma it stands proved that Sartaj had kept Isha @ Noori at the house of Abida and at the instance of Sartaj she was recovered from there. As noticed testimony of Abida and Nazma is challenged on the ground that they did not sign the recovery memo of the girl Isha. Merely because Abida and Nazma did not sign the recovery memo of the child as witnesses which was duly signed by Iktiyar the father of Isha @ Noori and has deposed about the same their version cannot be discarded.

9. Further we also find no merit in the contention of learned counsel for the appellant that since signatures on the recovery memo were different than the one on the charge and the statement under Section 313 Cr.P.C. the recovery memo cannot be relied upon. Sartaj is also known by the name of Sonu and having signed as Sonu on the recovery memo would not create any defect in the recovery memo particularly when the same is signed by the witnesses, who have deposed about the same and Abida and Nazma have deposed about the recovery of child from the house of Abida.

10. In view of the fact that soon after Isha @ Noori went missing she was kept by Sartaj at the house of Abida, the offence of kidnapping of Isha @ Noori by Sartaj @ Sonu is proved beyond reasonable doubt.

11. The main issue that arises is whether Sartaj has committed offence punishable under Section 364A IPC. To prove the said offence prosecution has examined Iktiyar who has deposed about the phone calls received by him on his mobile phone. Version of Iktiyar is corroborated by the evidence of R.K. Singh PW-11 Nodal Officer, Bharti Airtel who brought the called details of mobile no. 9818629618 along with photocopy of customer application form and ID proof of

Iktiyar and exhibited the same vide Ex. PW-11/A to PW-11/C. He also exhibited the certificate under Section 65B of the Indian Evidence Act vide Ex. PW-11/E. As per the call details of phone number 9818629618 which was in the name of Iktiyar a call was received at 22.02.26 hours on August 27, 2011 from phone number 011-69507682. M.N. Vijayan PW-12, Nodal Officer, Tata Teleservices Ltd. exhibited the call details of Land Line PCO phone number 011-69507682 from August 27, 2011 to August 28, 2011 vide Ex. PW-12/A along with the original customer application form and ID of the customer. He also exhibited the certificate under Section 65B of the Indian Evidence Act as Ex. PW-12/C. Again as per the call detail records of PCO Land Line of Tata Teleservices Ltd. phone number 011-69507682 a call was made from this number to the mobile number of Iktiyar 9818629618 at 22.02.30 hours on August 27, 2011.

12. Further Deepak PW-2 who was running the PCO Booth deposed that he was having a STD/Ration shop at his house at Chand Bagh. On August 27, 2011 at about 10.00 PM Sartaj came to his shop and made a telephone call to someone from the STD Booth. He rebuked someone on the telephone and after completing the talk he ran away from the shop without paying him. On the next day when the Police came and made enquiries, he informed about the description of the boy. He identified Sartaj as the person who made the call from his booth on August 27, 2011 at 10.00 PM when he was brought by the Police on August 28, 2011 at 5.00 PM.

13. The evidence of call details is assailed on the ground that compliance of Section 65B of the Indian Evidence Act has not been made. As noted above, both the witness have exhibited the certificates under Section 65B of the Indian Evidence Act vide Ex. PW-11/E and Ex. PW-12/C respectively. The certificate Ex. PW-11/E by R.K. Singh certifies that the information pertaining to mobile no. 9818629618 enclosed with form of copy was a true extract of the relevant data created in the usual and ordinary course of business and stored on the designated hard disk of the computer/system of the company. It also certified that the access to the computer system and the data stored thereon is controlled by defined authorized roles exercised through unique user-id and the associated passwords and that only the concerned user knows the password, the use of ID with password establishes his identity and accountability. Ex. PW-12/C is a certificate under Section 65B of the Indian Evidence Act relating to call detail records of mobile number 011-69507682 for the period from August 27, 2011 to August 28, 2011 and certifies that the call detail records have been produced from computer system using printer and its contents are true reproduction of the original to the best of the knowledge and belief of the person issuing certificate. It is further certified that the condition as laid down in Section 65B(2)(a) to 65B(2)(d) of Evidence Act 1872 regarding the admissibility of computer output in relation to the information and the computer in question are fully satisfied on all aspects.

14. Thus, from the evidence of Iktiyar PW-1, Deepak PW-2, R.K. Singh PW-11

and M.N. Vijayan PW-12, the prosecution has been able to prove the call made from the PCO Land Line No. 011-69507682 to mobile No. 9818629618 of Iktiyar at 22.02.26 hours on August 27, 2011.

15. Iktiyar has deposed that when he received the call at 10.02 PM from the same person he again asked him to pay the same amount on which he stated that he was ready to pay the amount of Rs. 40,000/- to Rs. 50,000/- at any time, however the person refused to accept the said amount and stated that he would call him again on the next day at about 2.00 PM. This part of conversation has not been shattered by the defence in the cross-examination of Iktiyar.

16. However, the most important ingredient that this ransom demand was accompanied by a threat to cause death or hurt or caused an apprehension to cause death or hurt is not made out. Section 364A IPC provides as under:

"364A. Kidnapping for ransom, etc.--Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international intergovernmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

17. In the present case the third ingredient of the offence that is kidnapping or abduction with demand of money was coupled with the threat of death or to cause hurt or any conduct which would give rise to a reasonable apprehension that such person may be put to death or hurt is not made out. In *Anil @ Raju Namdev Patil Vs. Administration of Daman and Diu, Daman and Another*, the Hon"ble Supreme Court held:

"55. The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom."

18. Consequently, the appellant is liable to be acquitted for the charge for offence under Section 364A IPC. Ordered accordingly. The conviction of appellant for offence punishable under Section 363 IPC is upheld. Sartaj has been awarded sentence of rigorous imprisonment for a period of 7 years by the learned Trial Court. The same is reduced to rigorous imprisonment for a period of 5 years and

to pay a fine of Rs. 1000/- and in default of payment of fine to undergo further simple imprisonment for a period of one month.

19. Appeal is accordingly disposed of.

20. T.C.R. be returned. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.