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**(2009) 02 DEL CK 0111**  
**In the Delhi High Court**  
**Case No : Criminal Appeal 685 of 2006**

Sri Om

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

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**Date of Decision :** 26-02-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 120B, 363, 364A, 365

**Citation :** (2009) 02 DEL CK 0111

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

**Bench :** Division Bench

**Advocate :** Sumeet Verma, for the Appellant; Pawan Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—Written submissions have been filed by learned Counsel for the appellants. After narrating the facts of the case, the legal submissions made have been penned in paras 6 to 17 of the written submissions. We reproduce the same. They read as under:

6. It is respectfully submitted that the alleged demand of ransom has not been satisfactorily proven by the prosecution in this case and in the absence of the ransom demand (or any direction to do or abstain from doing any act, which is not the case here) the alleged offence would come out of the rigors of Section 364A IPC and would be punishable u/s 365/363 IPC for which the maximum prescribed sentence is 7 years.

7. Admittedly, there is no Ransom Note in this case. No ransom was demanded from the father either on phone or even when he had gone to the Kanth Bus stand. Admittedly the father of the child (PW-1) did not even take the allegedly demanded sum of Rs. 50,000/- to recover his child from the kidnappers.

8. The prosecution has not led any evidence whatsoever that there was no telephone connection or mobile phone in the residence of PW-1 or that it was out

of order at the relevant time.

9. That PW-2, who was residing in a different gali near the house of PW-1, admittedly did not identify the voice of the caller to be of any accused persons. The prosecution has miserably failed to link the accused persons with the alleged telephone call since neither the telephone number nor the place from where the alleged call was made has been established by the prosecution. Reliance is placed upon the judgment in *Netra Pal v. The State* (NCT of Delhi) 2001 (2) JCC (Del) 27 wherein in paras 10 and 11 this hon"ble court followed the Division Bench of Bombay High Court in *Mohammad Rashid Ansari v. State II* (1998) CCR 608 (DB) as follows:

11. In that case the minor boy was kidnapped and it was alleged by the prosecution that a telephone call came from an anonymous person at the place of business of the uncle of the kidnapped boy. It was disclosed through telephone conversation that the kidnapped boy Gururaj was taken to Agra and that a ransom amount of Rs. 2,50,000/- was demanded on telephone from the uncle of the kidnapped boy. Court after going through the record concluded that the ransom theory and that of telephone call were not established. There was no corroborative piece of evidence to establish that there was an anonymous call and that ransom demanded. It was in this background the Court observed that:

16. What we are therefore left with is the mere possibility amounting almost to certainty as to there being some motive for the entire exercise. However, what may be there cannot be raised to level of "must", unless there is material warranting the conclusion.

10. It is respectfully submitted that in the *Mohammad Rashid Ansari's* case supra, the alleged telephonic ransom demand was not only traced but the same was tape-recorded as well with the aid of Telephone department. However, the said evidence was considered not worth reliance since the voice of the person who allegedly talked at the other end of the telephone when the conversation came to be taped, was not before the court and therefore, it was held that the necessary proof to link the voice recorded and the person whose voice it was supposed to be was missing.

11. It is most humbly and respectfully submitted that in the present case but for a bald statement of PW-2 who happened to reside near the house of PW-1, there is no evidence worth its name that any telephonic demand was made and from which telephone or which place it was made. Needless to mention again that admittedly PW-2 did not even allege the voice of the caller to be of any of the accused persons.

It is submitted that in the absence of any evidence whatsoever, it is virtually impossible to link the appellants with the alleged telephonic demand at the residence of PW-2 and the law laid down in the two judgments mentioned above is squarely applicable to the facts of this case.

12. That it may not be out of place to mention the dictum in Netra Pal's case holds good till date and the very fact that the hon'ble Apex Court in Malleshi Vs. State of Karnataka, has distinguished the same on facts, means that the law laid down therein was acceptable to the hon'ble Apex Court.

13. That the learned trial court erroneously held in para 33 of the impugned judgment (Page 69 of the paper book at 4th line from the bottom) that A-1 in his statement u/s 313 Cr.P.C. did not deny the recovery of the child from the custody of A-2 in pursuance of his disclosure statement, which is factually incorrect as is born out from appellant's answers to Questions 15 to 20 at page 44 to 46 of the paper book.

14. That as regards the Role alleged against accused Sri Om, the prosecution case is that the kidnapped child was recovered from the roof of his house at village Bhitya Poki when he was sleeping with the child at around 3 a.m. in the midnight of 4th and 5th May, 2002.

15. Admittedly, no independent witness was associated with the alleged recovery of the child. According to the deposition of the I.O. PW-8 (at page 26 of the paper book) the villagers had already collected at the spot when accused Sri Om was arrested, however none was associated with either the arrest or the recovery of the child. The I.O. PW-8 as well as PW-1 Anand Prakash Mishra admitted that they had not taken the local police before reaching at the village of the accused and that they did not contact the any village pradhan and sarpanch of the village there. Both the I.O. as well as PW-1 have deposed that they were not aware of the name of Sri Om while leaving from Delhi.

16. That appellant Sri Om has taken an unequivocal stand in his statement u/s 313 Cr.P.C. wherein in answers to questions 21 and 29 he has categorically stated that he had not made any disclosure statement to the police and that he was lifted from his house in the morning hours and that no child was recovered from his house or at his instance. He stated that his villagers and pradhan also protested before the police about his false implication and that he had no concern or nexus with the kidnapping of the said child in any manner.

17. That appellant Sri Om did not fall short only asserting his stand in his statement u/s 313 Cr.P.C. and went to the extent of proving the same through leading evidence of his neighbours DW-1 and DW-2 in his defence. Both DW-1 and DW-2 have categorically deposed that accused Sri Om was lifted from his house by the police and that no child was recovered from his house.

2. The appellants have been convicted for the offence punishable u/s 364A IPC. They have also been convicted for the offence punishable u/s 120-B IPC. Sentences imposed is to undergo imprisonment for life and pay a fine of Rs. 5,000/-. The sentences awarded for the two offences have been directed to run concurrently.

3. Briefly stated, case of the prosecution is that the appellants entered into a

conspiracy to kidnap Master Abhishek, aged about 3 years, as appellant Kalim Ahmed who was an ex- employee of Abhishek's father knew that Abhishek was the only son of his parents and could fetch a price. In furtherance of the conspiracy, they kidnapped Master Abhishek and demanded ransom in sum of Rs. 50,000/- to release him. At the designated time and place where ransom amount had to be paid, appellant Kalim Ahmed was apprehended from the place pre-designated where he came to collect the ransom. On interrogation he made a disclosure statement that Master Abhishek was in the house of the co-accused Sri Om. He led the police party to the house of Sri Om where Master Abhishek was recovered.

4. Indeed, from the arguments advanced evidenced from the written submissions filed, contents whereof have been noted hereinabove, main thrust of learned Counsel for the appellants was to urge that the demand for ransom has not been proved and hence the appellants cannot be convicted for the offence punishable u/s 364-A IPC. The plea pertaining to the role of Sri Om as per paras 14 to 16 of the written submissions would be dealt with by us after discussing the evidence led by the prosecution.

5. Briefly noted the prosecution stated in the charge sheet that Master Abhishek aged 3 years was found missing from his house at around noon on 3.5.2002. He could not be found and at around noon 3:30 PM his father had lodged a complaint that his son was missing. The child could not be traced and at 9:30 PM his father went back to the police station and made a statement, Ex.PW-1/A, informing:

I reside at the aforesaid address along with my family and do plastic work. Today my son Abhishek aged 3 1/2 years of fair complexion, wearing white vest and under-wear had gone missing since 11.00 AM and I had lodged a missing-report about him vide DD No. 21 A. Now I have come to know that my servant Kalim Akhtar alias Bablu s/o Nisar Ahmed r/o Mohalla Madan Pura, P.S. Bhalura, Distt. Banaras, U.P., who was working with me about a year back and has not been working with me at present, has taken away my son by way of enticing him. Legal action may be taken against him.

6. Based thereon a FIR was registered. The same night at around 12:15 midnight, Laxmi Shankar Dwivedi, foster brother of Anand Kumar Mishra the father of the kidnapped child, who resides nearby the residence of Anand Kumar Mishra received a telephone call from an unknown person who informed that Master Abhishek was with him and if his family wanted his safe custody, Rs. 50,000/- should be paid in cash and that the kidnapper would receive the money at Kanth Bus Stand, District Shahjahanpur U.P. at 7:00 PM on 4.5.2002. Accordingly, a raiding party which inter-alia consisted of Const. Jai Karan PW-3 and SI K.P. Sah PW-8, left immediately for Shahjahanpur by hiring a private vehicle (Tata Sumo) owned by Pradeep Kumar Aggarwal PW-7. They reached village Kanth by around 4:30 PM. Anand Prakash Mishra stood at the bus stop and the police personnel hid themselves. At 7:30 PM, Kalim Ahmed came and on

Anand Prakash Mishra giving the pre-determined signal the police personnel apprehended him. He was interrogated and disclosed to the police that Master Abhishek was in the house of Sri Om at village Bethia Poki. They left for the said village and reached there at about 2:00 in the night where Master Abhishek was recovered from the possession of Sri Om.

7. To prove the charge, PW-1 Anand Prakash Mishra father of Abhishek deposed that his son was found missing at 12:00 noon on 3.5.2002. He lodged the complaint mark "X" with the police. His son could not be found till night and he suspected Kalim Ahmed's involvement who had worked with him a year ago. Accordingly, he went back to the police station and made the statement Ex.PW-1/A. That at 12:20 in the night, his foster brother Dr. Laxmi Shankar Dwivedi, came to his house and informed him of having received a telephone call and the caller demanding Rs. 50,000/- for safe return of his son. He deposed that the caller had informed his foster brother that if they had to save the life of his son the sum demanded should be paid at the bus stop at village Kanth, District Shahjahanpur by 7:00 PM. That he and his foster brother went to the police station where the police recorded the statement of his foster brother and arranged a vehicle so that they could immediately reach village Kanth. That they reached village Kanth at 4:30 PM. He stood near the bus stop. At about 7:30 PM, Kalim Ahmed came. He gave a signal to the police who apprehended Kalim Ahmed. That Kalim Ahmed tried to run away but was over powered. He was interrogated and informed the police that the child was with Sri Om who was residing in village Bethia Poki. They went to the said village where his child was recovered from the house of Sri Om.

8. On being cross examined he stated that no conversation took place between him and Kalim Ahmed when Kalim Ahmed reached the bus stand. He admitted that Kalim Ahmed did not enquire from him whether he had brought the money; but stated that when he saw Kalim Ahmed who was about 20-25 yards away, he gave a signal to the police who immediately pounced upon Kalim Ahmed and arrested him.

9. Laxmi Shankar Dwivedi PW-2, the foster brother of PW-1 deposed that around 12:15 midnight on the intervening night of 3/4.5.2002 he received a telephone call at his residence and the caller told him to inform PW-1 that if he i.e. PW-1 wanted the safe return of his son he should reach Kanth bus stop, District Shahjahanpur and pay Rs. 50,000/- to the caller. He deposed that he informed said fact to PW-1 and that the police was immediately informed.

10. On being cross examined he stated that he did not enquire the name of the caller nor could he identify the voice of the caller.

11. PW-3 Const. Jai Karan, deposed that on the intervening night of 3/4.5.2002 he along with SI K.P. Sah, Const. Billu Singh, Const. Jai Inder Singh and Const. Davinder along with PW-1 left the police station for District Shahjahanpur at around 1:00 AM. Pradeep PW-7 was the driver of the vehicle. They reached

Kanth at about 4:30 PM. The police team organized a "nakabandi". At 7:30 PM, SI K.P. Sah signalled the police personnel to chase a man who was over powered and disclosed his name as Kalim. He identified Kalim (accused) present in Court; and went to depose that on interrogation, Kalim disclosed that the kidnapped child was in the custody of his friend Sri Om and informed the police that Sri Om resides in village Bethia Poki. They left for village Bethia Poki and reached there at about 3:30 AM and that the child was recovered from the house of Sri Om who was present in his house and was immediately arrested.

12. Pradeep Kumar Aggarwal PW-7 deposed that in the night of 3rd and 4th May 2002, his vehicle, a Tata Sumo, was requisitioned by the police to go to Shahjahanpur U.P. He drove the vehicle and reached village Kanth at 4:00 PM. He remained in the vehicle. The police left. They returned at around 9:00 PM with accused Kalim. That thereafter they went to village Bethia Poki. Police brought another accused Sri Om and a child with them. He deposed that there after everybody returned to Delhi.

13. SI K.P. Sah PW-8 deposed in harmony with the deposition of Const. Jai Karan. He proved the arrest memo of the appellants as also their disclosure statements.

14. Appellant Sri Om produced two defence witnesses, Krishan Pal Singh DW-1 and Raj Kumar DW-3 who deposed that Sri Om was lifted by the police from his house on 3.5.2002 at 6:00 AM.

15. No discrepancy being pointed out in the testimonies of the witnesses of the prosecution and holding that the evidence on record proves the recovery of the child from the house of Sri Om and that the whereabouts of the child and the house of Sri Om were provided to the police as per the disclosure statement of Kalim Ahmed, the learned Trial Judge has held that the charge against the appellants stood established.

16. From the written submissions noted hereinabove it is apparent that even in the appeal no serious effort was made to contradict or point out any infirmity in the evidence led by the prosecution, save and except pertaining to the accused Sri Om. Even in relation thereto, no inherent weaknesses in the evidence led has been urged. The pleas urged are that no independent person being associated with the recovery of the child discredits the version of the prosecution; further, local police not being involved also is a circumstance to be kept in mind. Lastly it was urged that there was no reason to disbelieve the defence witnesses.

17. That the witnesses of the prosecution have stood by each other and have corroborated each other in material aspects stands established on a perusal of the deposition of the witnesses of the prosecution. Indeed, the evidence establishes that Kalim was apprehended at around 7:00 PM at Kanth bus stop. It is true that he was apprehended before he could ask whether PW-1 had brought the ransom amount but the reason thereof is that PW-1 gave the signal to the police when Kalim Ahmed was seen by him about 20-25 yards away from the bus

stop.

18. A question may arise as to how could police identify Kalim as the person to be apprehended because presumably there would be many people at the bus stop. PW-1 could have identified Kalim Ahmed who was his ex-employee, but not the police.

19. The answer is to be found in the cross examination of PW-8 who on being questioned answered that Kanth bus stop was not a big bus stop; meaning thereby there were not many people at the stop. It would not be out of place to note that PW- 1 deposed that when he signalled the police Kalim Ahmed started running. This act of Kalim Ahmed would have attracted the attention of the police to him.

20. In any case, it is too trivial a circumstance to discredit the version of the prosecution.

21. That no independent witness was associated when Sri Om was apprehended after his house was raided is understandable for the reason, the police reached his house at around 3:00 AM; a fairly unearthly hour to find public persons in the street.

22. Pertaining to the apprehension of Sri Om and his arrest, we note that the arrest memo shows, vide column No. 8, that the police had informed Babloo S/o Ram Rattan R/o Village Bethia Poki PS Kanth Shahjahanpur about arrest of Sri Om and obtained his signatures thereon.

23. It is but evident that Sri Om was apprehended at his house and his relation/co-villager Babloo was duly informed about said fact.

24. Babloo was the best witness of Sri Om to have deposed about the arrest of Sri Om. The arrest memo shows Sri Om being arrested on 5.5.2002; it belies the deposition of the defence witnesses that Sri Om was arrested by the police on 3.5.2002 at 6:00 AM.

25. Pertaining to the decisions cited by the learned Counsel for the appellants as per para 9 of the written submissions, suffice would it be to state that in Netrapal's case the demand was sought to be established with reference to a letter Ex.P-1 recovered from the possession of the accused. It was held that since the letter was not posted, a demand as per law could not be imputed.

26. The decision in Mohammad Rashid Ansari's case is also distinguishable for the reason in said case there was evidence that the accused was a creditor of the complainant and the Division Bench of the Bombay High Court opined that the possibility of the accused kidnapping the child of the complainant to pressurize the complainant to liquidate the debt could not be ruled out and in said circumstances disbelieved the evidence of the complainant that a ransom call was made.

27. In the instant case it has to be noted that PW-2 has categorically deposed

that at 12:15 midnight of the intervening night of 3/4.5.2002 he had received a telephone call and the caller had told him to convey to Anand Prasad PW-1 that if he wanted the safe return of his child he should pay Rs. 50,000/- to the caller at Kanth bus stop, District Shahjahanpur.

28. There is no law that a ransom call has to be made to the parents of the kidnapped child. The demand for ransom can be conveyed through any medium. As long as the caller intends that the same should be conveyed to the person concerned and as long it is proved that it was conveyed to the person concerned, it would be sufficient to attract Section 364-A IPC.

29. We find no merits in the two appeals.