

(2007) 08 DEL CK 0266
In the Delhi High Court
Case No : Criminal Appeal No. 913 of 2002

Surender Singh

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 120B, 363, 364A, 368

Citation : (2007) 97 DRJ 350

Hon'ble Judges : R.S. Sodhi, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : Anu Narula, Purnima Sethi, in Criminal Appeal No. 76 of 2003, Y.N. Singh Sengar, in Criminal Appeal No. 799 of 2002 and Salman Khursheed and Imtiaz Ahmed, in Criminal Appeal No. 819 of 200, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Sodhi, J.—Criminal Appeal Nos. 913 of 2002, 76 of 2003, 799 of 2002 and 819 of 2002 seek to challenge common judgment and order of the Additional Sessions Judge, New Delhi in Sessions Case No. 141 of 2000, arising out of F.I.R. No. 59 of 2000, registered at Police Station Sangam Vihar, whereby learned judge vide his judgment dated 9.9.2002 has held the appellants, Surender Singh, Rakesh and Arvind, guilty for offence under Sections 120B IPC, 363/120B IPC and under Sections 364A/120B IPC and has held appellant Parmod Kumari guilty for offence u/s 368 IPC. Further vide his separate order dated 19.9.2002, he has sentenced the appellants Surender Singh, Rakesh and Arvind to undergo imprisonment for seven years each and further and fine of Rs. 3,000/- each and in default of payment of fine, simple imprisonment for four months each u/s 120B IPC. Further the said appellants were sentenced to undergo imprisonment for seven years each and further simple imprisonment for three months each under Sections 363/120B IPC. Further they were sentenced to undergo imprisonment for life each with fine of Rs. 3,000/- each and in default further

simple imprisonment for four months each u/s 364A IPC. Appellant Parmod Kumari was sentenced to undergo imprisonment for three years with fine of Rs. 2,000/- and in default further simple imprisonment for three months u/s 368 IPC. The appellants were awarded benefit u/s 428 of Code of Criminal Procedure.

2. Brief facts of the case as have been noted by the learned Additional Sessions Judge in his judgment under challenge are as follows:

...police of PS Sangam Vihar arrested and challaned 5 accused, namely, 1. Rakesh, 2. Amit, 3. Surinder, 4. Smt. Parmod Kumari and 5. Arvind, for committing criminal conspiracy to kidnap minor 7 years child Vinay Kumar of complainant Ram Singh and kidnapped him and demanded ransom for the release and who later on was recovered from their possession. On the ground that father of the child is a rich man and sufficient ransom can be taken from him and can be distributed among them, as that one of one accused Arvind is his sala, i.e., brother-in-law of Babloo/nephew of the complainant Ram Singh. A criminal conspiracy among all the 5 accused was hatched on or before 15th February, 2000 at Delhi and they all agree to kidnap for demanding ransom of 7 years boy Vinay Kumar from the legal guardianship of his father and virtually they kidnapped and had taken to Uttar Pradesh from where UP police had recovered the child from their custody and thereafter, after investigation of this case finding sufficient evidence against all accused to challan them for filing the charge sheet, filed the challan.

3. The prosecution in order to substantiate its case examined as many as eight witnesses. PW-1, Ram Singh, is the complainant and father of the victim child. PW-2 is Constable Lekh Raj, who remained associated with the investigation and who arrested appellant Arvind. PW-3, A.S.I. Shanti, on receipt of rukka sent by S.I. Rakesh, registered the case. PW-4, S.I. J.S. Joon, who partly investigated the case and brought the child from Uttar Pradesh. PW-5, S.I. Ranbir Singh of the U.P. Police while supporting the deposition of PW-4, S.I. J.S. Joon, deposes to the fact that on 23.2.2000, he along with S.I. Gokaran Singh and S.I. B.N. Mishra were on patrol duty and on their reaching village Ramtal, received secret information that in village Keshav Pur, four or five persons in a house were holding a child for ransom. They went to village Keshav Pur and reached the said house. On opening the door, they found three persons and a female sitting in the courtyard. On seeing the police, they got nervous. The accused persons, namely, Surender, Rakesh, Amit and lady Parmod Kumari were taken into custody. From them, a boy named Vinay was recovered. They learnt that Vinay had been confined by these people and that Vinay had been kidnapped from Delhi. On inquiry, it was revealed that the house belonged to Surender. The accused were brought to the police station where F.I.R. No. 65 of 2000 u/s 364A IPC, Exhibit PW 5/C was registered. The father of the boy as also the concerned police station was informed. The investigation was marked to S.I. Raghunath Singh. PW-6, Constable Ramphal, Delhi Police, remained associated in the investigation. PW-6, S.I. Raghunath Singh of U.P. Police, also investigated this case. PW-7, S.I.

Rakesh, is the Investigating Officer and PW-8, Vinay Kumar, is the child victim.

4. The trial court, on the basis of the material available on record, held Parmod Kumari guilty of offence punishable u/s 368 IPC and held the other three appellants, namely, Surrender, Rakesh and Arvind guilty of offence u/s 120B IPC, Section 363/120B and 364A/120B IPC.

5. Learned senior counsel Mr. Salman Khursheed, Advocate, appearing on behalf of appellant, Arvind in Criminal Appeal No. 819 of 2002, contends that the role attributed to Arvind is that of taking the victim from his house to the road from where Amit takes over and thereafter there is no role ascribed to this accused. He also contends that at the time of commission of offence, Arvind was below 16 years which fact has been established in this Court by way of School Leaving Certificate and also by the Ossification Test. He contends that although Arvind is entitled to acquittal but since he is a minor, even if the conviction is sustained, no order on sentence can be passed against him.

6. Learned Counsel for appellant Parmod Kumari in Criminal Appeal No. 799 of 2002 states that she was a housewife, under the influence of her husband, Surrender, and had no choice other than to take care of the child victim. He also contends that Parmod Kumari cannot be said to be a part of the conspiracy of kidnapping for ransom.

7. Learned Counsel for appellant, Surrender in Criminal Appeal No. 913 of 2002, submits that there is no evidence on record to establish the demand of ransom and that the so-called letter recovered from his person can, at the highest, be an intended demand which remained uncommunicated. Therefore, according to counsel, the offence u/s 364A IPC is not made out against this appellant. Learned Counsel for appellant, Rakesh in Criminal Appeal No. 76 of 2003, adopts the arguments of appellant Surrender.

8. With the assistance of counsel, we have carefully examined the record of the case. It appears to us that the case got moving on a complaint made by PW-1, Ram Singh, to the effect that his son Vinay, aged 7 years, studying in IInd standard is missing since 7 p.m. from his house. In spite of extensive search, they could not find the child. A telephone call received at his office at around 10'' O Clock in the night from a person identifying himself to be Mam Chand from Ghaziabad claimed that Vinay was with him. The complaint goes on to state that Mam Chand was Ram Singh's driver whose services had been terminated and that he was suspected in this case. In his deposition in court, Ram Singh states that he received a telephone call from his daughter regarding the missing of his son and that he had given a statement to the police regarding the same while expressing suspicion on Mam Chand, who was working as a driver and was removed from service, after a telephone call was received in his office by Kasim, an electrician, demanding payment. Exhibit PW 1/A is the statement given by this witness to the police. The witness goes on to say that on 13.2.2000, he received a telephone call but the caller did not disclose his name. He continued

to search for his son Vinay along with police. He went to Haryana, Alwar, Etawah, U.P., Farukhabad. There was no trace of his child. On 15.2.2000, a telephone call was received at midnight and another one received 15 minutes thereafter calling upon him to give Rs. 7 lacs as ransom. The following day, another telephone call was received requiring him to reach Shiv Mandir near Karnal with Rs. 10 lacs. The witness conveyed his inability to arrange for this sum and claimed to have tape recorded the conversation. On 16/17.2.2000 at about 2:30 a.m., another telephone call was received conveying a threat that if money was not arranged, the child would be killed. The witness requested three days' time from the caller. The following day, he received a call from Etawah to the effect that his child had been recovered and was at police station Civil Lines, Etawah. The police of Sangam Vihar was informed and witness along with his brother Jabar Singh and Puarpal Singh and police personnel went to Etawah. There, at Civil Lines Police Station, he met his son. Accused Rakesh, Surender Singh, Amit Kumar and one lady were there. At the Police Station, Vinay narrated the incident how he came from the house towards shop in the gali where three persons, Surender, Amit and Arvind told him that his father was calling him at Hamdard and took him in a three wheeler. Thereafter, Vinay gave details of the place where he was kept by the accused persons. In cross-examination, the witness states that he had conveyed to the police the demand of ransom made from him for release of Vinay but when confronted with his earlier statements, no amount of ransom demand was found mentioned.

9. PW-8 is Vinay Kumar, the victim child. While deposing, this witness was eight years of age and the court found him capable of giving rational answers. He narrates that about two years ago, he was kidnapped from his house by the accused present in court, whom he correctly identified. According to this witness, Arvind was also there. He states that when he went to the road, they told him that his father was calling him near Hamdard for stitching cloth. Thereafter, they took him to the Hamdard but his father was not there. They then took him to bus stop from where they took him to a place, name of which he does not know. He clarified that it was Arvind who came to his house to take him to Hamdard and at the road Amit met them and thereafter they kept him at the house of Surender. Surender's wife and two children were also there in the house. Amit and Rakesh were also present at the house. Arvind was not in that house.

10. On analyzing the material on record, we find that the prosecution has been able to establish its case to the effect that Vinay was kidnapped from Delhi and kept in the house of Surender in U.P. It also stands established that Vinay was recovered from the house of Surender and that Surender as also the other accused, namely, Rakesh, Amit and Parmod Kumari were taken into custody at the time of recovery of the child from the house of Surender. However, the only evidence pressed into service by the prosecution to establish that kidnapping was for ransom is the statement of PW-1, Ram Singh, who states that he received telephone calls demanding ransom for release of his child but strangely he did not share this information with any body. Even in his previous statements, he is

vague about the demand of ransom and Kasim, who was stated to have received the phone call at the office is not examined. There is, Therefore, no evidence on record to prove that the accused demanded any amount on account of ransom for release of his son Vinay. The recovery of letter from the person of Surrender, at the highest, is an intended demand which has not been communicated in which case there is no evidence of demand of ransom being made by or on behalf of the accused persons. The accused, Therefore, cannot be held guilty u/s 364A IPC. However, there is evidence aplenty that the accused persons, namely, Rakesh, Surrender, Amit and Arvind, conspired to kidnap Vinay and in the execution of that conspiracy Arvind called Vinay from his house, handed him over to Amit and then confined him in the house of Surrender where Parmod Kumari was present. Therefore, none of the accused persons, namely, Rakesh, Surrender, Amit and Arvind, can escape their liability of having committed an offence u/s 120B/363 IPC.

11. As regards appellant, Parmod Kumari, the trial court has acquitted her of the offence u/s 120B/364-A IPC but has held her guilty for an offence u/s 368 IPC. The State has not filed an appeal against this finding. Consequently, we maintain the conviction and sentence in the case of Parmod Kumari.

12. Coming to the case of appellant, Arvind, we may point out that he was a juvenile at the time of commission of offence. Although, we find him guilty for offence u/s 120B/363 IPC but set aside the order on sentence awarded to him by the trial court and in view of the settled position of law as regards awarding of sentence in case of a minor following the judgments of Supreme Court in Bhoop Ram Vs. State of U.P., ; Sri Krishan alias Pandit Vs. State of Uttar Pradesh, , Umesh Singh and Another Vs. State of Bihar, , Umesh Singh and Anr. v. State of Bihar, no sentence is awarded to him.

13. In the case of appellants, Rakesh and Surrender, who have been held guilty for an offence u/s 120B/363 IPC, we award the sentence of seven years" Rigorous Imprisonment to each of them together with fine of Rs. 2,000/- (rupees two thousand) each and in default of payment of fine, further Rigorous Imprisonment for one year.

14. In view thereof, Criminal Appeal Nos. 913 of 2002, 76 of 2003, 799 of 2002 and 819 of 2002 stand disposed of accordingly.