
(2014) 10 DEL CK 0164
In the Delhi High Court
Case No : Criminal Appeal 777 and 699/2011

Tobir Ahmed

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 34, 364A

Citation : (2014) 4 JCC 2992

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

Bench : Division Bench

Advocate : Siddharth Aggarwal, Faraz Maqbool and Saahila Lamba, Advocate for the Appellant; Lovkesh Sawhney, APP, Manoj Komal and Amrit Lal, PS and Nabi Karim, Advocate for the Respondent

Judgement

Mukta Gupta, J.—Tobir Ahmed and Mohd. Azam are convicted for the offence punishable under Section 364A/ 34 IPC by the impugned judgment dated March 03, 2011 for kidnapping for ransom one Mohd. Bakhtawar Ali son of Mohd. Shabir PW-2 and directed to undergo imprisonment for life and to pay a fine of Rs. 2000/- each and in default thereof to undergo R.I. for two months each.

2. Learned counsel for the appellant Tobir contends that the circumstances in which the child was taken, the child was kept and was found sleeping is not incriminating against the appellant Tobir. There is no evidence to the effect that Tobir shared common intention with Mohd. Azam. As regards the apprehension of Tobir at the spot there is material contradiction between the testimony of the complainant and the two public witnesses. The gravamen of charge is with the aid of Section 34 IPC and not 120B IPC and there is no overt act attributed to the appellant. There is delay in registration of FIR. Learned counsel for Mohd. Azam contends that though the case of complainant is that he received the ransom call with threat at 6.45 PM, however there is no corresponding call at 6.45 PM in his mobile phone call records. All the Police officers stated that they apprehended Azam which is not possible.

3. No defence evidence has been led by the appellants. The explanation of Tobir and Azam in their statements under Section 313 Cr.P.C. are that they are innocent and Azam was employed with Zafir brother of Mohd. Shabir. There was a dispute between Zafir and Azam regarding payment of salary due to which Azam was implicated and Tobir was arrested from his house and falsely implicated being friend of Azam.

4. The process of law was set into motion on the complaint of Mohd. Shabir Ex.PW-2/A recorded on December 12, 2008 at 9.00 PM wherein he stated that he was staying at A-730, Prem Nagar, Nabi Karim, Delhi and was a permanent resident of District Madhubani Bihar. He was doing the work of making bags. He had four children, the youngest son being Mohd. Bakhtawar Ali aged four years. Bakhtawar Ali was playing outside the house on December 11, 2008 at about 5.30 PM, however when his other son searched him after 15-20 minutes he was not traceable. He made lot of efforts to trace Bakhtawar Ali at his end, however could not succeed. On the said date at about 10.45 AM he received a phone call on his mobile No. 9958462309 informing that the child was with the caller. He received around 4-5 calls in the day and in the evening at about 6.45 PM a sum of Rs. 5 lakhs was demanded on his mobile phone. On the demand Mohd. Shabir asked the caller about the place. The caller called him at Shashi Garden Park, Mayur Vihar, Phase-1 with Rs. 5 lakhs and in case the same was not brought then his son would be killed.

5. On this complaint of Mohd. Shabir FIR No. 161/2008 was registered under Section 364A IPC, a team was constituted, a briefcase containing 3 bundles of paper in place of currency notes was prepared and Shabir along with Ali Raza and Khursheed Alam and the Police officials reached Shashi Garden. At about 11.00 PM Shabir had received the last call from the kidnappers informing him that one person with red handkerchief tied would come to him and he should make the payment. When the raiding party reached Shashi Garden one person with a red handkerchief tied on his hand reached there and gave a signal by his hand. Shabir handed over that briefcase to that person who was identified as Azam. Thereafter Azam handed over the briefcase to Tobir. When the briefcase was handed over to Tobir by Azam, Police team which was hiding around reached there and apprehended Tobir and Azam. On interrogation the appellants revealed their names and that the child namely Bakhtawar Ali was kept at 1st Floor of E-69, Shashi Garden, Phase-I, Mayur Vihar. The Police along with Shabir and the appellants reached the place where the child was recovered. Bakhtawar Ali was found sleeping at the flat and was identified by Shabir. The child was recovered and a memo in this regard Ex.PW-2/B was prepared. Red handkerchief and the briefcase of cream colour were also seized vide memo Ex.PW-2/C and PW-2/D respectively. In the Court, Mohd. Shabir appeared as PW-2 and deposed in sync with his statement on the basis of which FIR was registered and about the subsequent proceedings conducted. In his cross-examination he denied having any knowledge that Azam had worked in the factory of his brother for a month.

6. The version of Mohd. Shabir is corroborated by Ali Raza PW-3 and Khursheed Alam PW-6. In cross-examination nothing material could be elicited from these witnesses.

7. The version of these three witnesses is further corroborated by Raja Hussain PW-7 the landlord of Premises of first floor, E-69, Shashi Garden, Phase-I, Mayur Vihar. Raja Hussain testified that 3-4 months prior to December 11, 2008 Tobir Ahmed who was present in Court was living as his tenant on first floor in the said house. On December 12, 2008 Tobir Ahmed brought a child aged 4 years to his house. When he asked Tobir about the child he told him that the child was the son of his friend. On December 12, 2008 at about 11/11.30 PM, 5 - 6 Police officials in civil dress and 3 - 4 public persons raided his house. He went along with the Police to the first floor and then he came to know that the child had been kidnapped. The child was recovered from the room of Tobir Ahmed in his presence.

8. The contention of learned counsel for Tobir that there is contradiction between the manner of apprehension in the testimony of the complainant and the two witnesses is untenable. Mohd. Shabir has stated that he handed over the briefcase to the person who had tied red handkerchief and had made a signal with his hand. That person handed over the briefcase to his companion and when the briefcase was handed over to Tobir by Azam, the police team which was hiding around, reached them and apprehended the two of them. Even Khursheed Alam has stated that when they reached the spot a person came there with his face covered with red handkerchief and by making a gesture called Mohd. Shabir. Shabir handed over the briefcase to him and another boy also came whose face was also covered with red handkerchief and the first boy handed over the briefcase to the other boy. At that time both the boys were apprehended thus corroborating the version of the complainant. Only PW-3 stated that as the bag was handed over by Shabir to that person i.e. Azam he was apprehended by the Police i.e. Constable Narender and the other person was also apprehended. This minor variation in the sequence of narration by PW-3 would not discredit the otherwise creditable testimony of the complainant and the two independent witnesses because the entire sequence took place immediately one after another.

9. To prove an offence under Section 364A IPC the prosecution has to prove beyond reasonable doubt that not only was the victim kidnapped and there was a demand of ransom but that the demand of ransom was coupled with a threat of death or hurt to the kidnapped child so as to compel to pay the ransom. Shabir has categorically stated that the caller demanded Rs. 5 lakhs and warned him that if he did not bring the money he would kill his child Bakhtawar Ali. There is no cross-examination on this aspect. This fact has also been stated by the complainant in his statement Ex.PW-2/A on the basis of which rukka was prepared. Shabir had received 4-5 calls from the kidnappers and only when ransom was demanded coupled with the threat to the life of his son, he immediately approached the police.

10. The contention of learned counsel for the appellant Mohd. Azam that there is no corresponding call at 6.45 PM from the PCO on the mobile phone of Shabir deserves to be rejected for the reason that there are calls made on the mobile number of the complainant 9958462309 and there is nothing to suggest in the evidence of the complainant that the said call was made from the PCO. Though the prosecution has placed on record the call records of mobile phone No. 9958462309, which was in the name of Mohd. Shabir, however no record of the phones from where the calls were made have been placed. No doubt, there is a lacuna on this aspect left by the investigating agency as no investigation has been carried out to the corresponding numbers from which calls were made and no effort was made to examine the owners of the telephone numbers from where the calls were made so as to corroborate the version of Shabir, however even in the absence of corroboration on this aspect the prosecution has proved beyond reasonable doubt the kidnapping of the child for ransom as papers in the form of currency notes were taken in the bag to be handed over to Mohd. Azam and Tobir and the child was recovered from Tobir's premises in the presence of independent witnesses.

11. Thus, the prosecution has proved its case beyond reasonable doubt against the appellants for offence punishable under Section 364A IPC.

12. Appeals are dismissed. The appellants will suffer the remaining sentence.

13. T.C.R. be returned.

14. Three copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other two to be handed over to the appellants.