

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 2nd September, 2009*
Judgment Delivered On: 4th September, 2009

+ **CRL.A. 418/2001**

RAGHUBIR SINGH Appellant
Through: Mr. Sumeet Verma, Amicus Curiae.

versus

STATE Respondent
Through: Ms. Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Six persons; namely, Ram Chander, Raghubir, Daulat Ram, Subhash Chand, Radha Devi and Rajender were accused of having entered into a conspiracy to kidnap for ransom, Harbans aged 4 years and extract ransom from his father Munna Lal. It was the case of the prosecution that Radha Devi and Subhash Chand took Harbans from the lawful custody of his parents i.e. kidnapped him. The young child was confined in the house of Rajender. Ram Chander, Daulat Ram

and Raghubir were instrumental in transporting the child and demanding ransom. The child was recovered from the house of Rajender and at that time Raghubir and Daulat Ram were present in the house. The whereabouts of the house and the child were provided by Ram Chander.

2. Rajender was declared a proclaimed offender and thus trial qua him was segregated.

3. Vide impugned judgment and order dated 28.7.2000, Ram Chander, Daulat Ram, Subhash Chand and his wife Radha Devi have been acquitted. Appellant Raghubir has been convicted. He has been sentenced to undergo imprisonment for life.

4. Harbans went missing from his house on 20.11.1996 and while informing the police of Harbans being missing it was stated by Munna Lal PW-2, the father of Harbans, that his son had gone out to purchase biscuits and had not returned. Six months thereafter, on 11.4.1997, Memsri PW-5, the mother of Harbans, for the first time told the police, as recorded in her statement under Section 161 Cr.P.C. that accused Radha Devi wife of Subhash Chand had come to her house on the day her son went missing and asked her son to go outside and play. Since the only incriminating evidence against Radha Devi and her husband Subhash Chand was the testimony of Memsri PW-

5, as afore-noted, both of them have been acquitted. The reason given by the learned Trial Judge is that the facts disclosed by Memsri after five months inspired no confidence and specially in view of the fact that in the statement Ex.PW-2/A made by her husband to the police on the day Harbans went missing, no such fact was stated. On the contrary, it was stated that Harbans had gone out to purchase biscuits. Finding returned is that Memsri could not be believed.

5. Master Harbans was recovered from the house of Rajender in Etawah U.P. and at that time Raghubir and Daulat Ram were in the house of Rajender. No other evidence was brought on record against Daulat Ram. Wife and children of Rajender were present in the house when Master Harbans was recovered. Holding, that from the mere fact that Daulat Ram was in the house of Rajender when Harbans was recovered, it could not be said that the involvement of Daulat Ram in the conspiracy was conclusively established, Daulat Ram has been acquitted.

6. Qua Ram Chander, on whose disclosure statement the investigating officer reached the house of Rajender where Harbans was recovered, learned Trial Judge has held that the evidence produced by the prosecution did not rule out the possibility of Harbans being recovered from the house of

Rajender and Daulat Ram and Raghubir being arrested, before the disclosure statement of Ram Chander was recorded. There being no other evidence against Ram Chander, even he has been acquitted by giving the benefit of doubt. The reasoning of the learned Trial Judge pertaining to the finding in favour of Ram Chander is in para 9 of the impugned decision, which reads as under:-

“9. So far as accused Ram Chander is concerned the case of prosecution is that he was interrogated at Ferozabad and thereafter he led the police after making a disclosure statement, to Etawah and got the child recovered while being in possession of accused Rajender and where Raghubir and Daulat Ram were also present. However, so far as arrest of accused Raghubir is concerned PW-1 had stated that Ram Chander was arrested from Jalkari Nagar Ferozabad from his house the information regarding which was given by accused Subhash in the hospital and that too on the next morning when such an information was given. On the other hand, PW-7 IO Satpal had stated that accused Ram Chander was present in the hospital itself, where Subhash Chand was admitted and he was interrogated and thereafter he led the police part to Etawah resulting in the recovery of the child. Surprisingly both the IO and PW-1 as well as PW-8 (where not at all stated about the presence of Ram who had at Jarkari Nagar, or at hospital) had admitted that even accused Ram Chander was arrested at Etawah and his disclosure statement along with other accused persons namely Raghubir, Rajinder and Daulat Ram was recorded at Etawah. Now if the disclosure statement itself is recorded after the arrest of accused Rajinder, Daulat Ram and Raghubir who were arrested after the recovery of child, it cannot be said that from the disclosure statement of accused Ram Chander some new facts were discovered by the police and since the disclosure statement of Ram Chander has not led to discovery of fact the same will be inadmissible in

evidence and prosecution version that it is at the instance of accused Ram Chander that the boy was recovered is not proved.”

7. Convicting appellant Raghubir, the evidence discussed by the learned Trial Judge and the reasoning thereon, is in para 11 of the decision, which reads as under:-

“11. So far as accused Raghubir is concerned from his possession diary Ex.PW-1/H containing the addresses of Munna Lal as well as other half counter part of note of Rs.1 denomination was recovered. The other half was sent and so received by Munna Lal along with the letter Ex.P-2 received by him on 4.12.1996 in the envelop Ex.P.3 from his possession another envelope Ex.P-1 was recovered which bears the address of Munna Lal. From his possession, an identity card Ex.PW-1/K was recovered on the reverse of which the address namely Subhash Chand, Shiv Durga Vihar, Gali No.11, Phase-I, House No.6A is mentioned and visiting card Ex.PW-1/K was recovered bearing the address of Munna Lal which corresponds to the address mentioned on envelope Ex.P-3 and Ex.P-5 in which ransom letters Ex.P-2 and Ex.P-4 were sent containing demand of Rs.30 lakhs and Rs.15 lakhs respectively. From the possession of Raghubir Singh copy Ex.PW-1/N was also recovered having pages exactly similar in nature, which fact can be observed by merely glancing and looking at the copy, along with one slip wherein phone numbers of Subhash Chand as well as Munna Lal were mentioned. The recovery of these articles along with the opinion of PW-9 vide report Ex.PW-7/B who had compared with the specimen handwriting S-1 to S-4 i.e. letters Ex.P-6, P-7, P-8 and P-9 had opined that the author of specimen handwriting and the author of letter Ex.P-2 which has been marked Q-2 by the expert and letter Ex.P-4 marked Q-4 by the expert and envelope Ex.P-5 marked Q-3 by the expert are the same i.e. to say that the envelope that both the ransom letters Ex.P-2 and Ex.P-4 are in the handwriting of Raghubir Singh and the writing on envelope Q-2 containing letter Ex.P-2 is also of Raghubir Singh.”

8. Learned counsel for the appellant urged that the specimen writings S-1 to S-4, exhibited as Ex.P-6, P-7, P-8 and P-9, of the appellant were obtained by the investigating officer during the period the appellant was in custody of the police. Thus, counsel urges that the opinion Ex.PW-7/E of the handwriting expert was inadmissible in evidence because Section 5 of the Identification of Prisoners' Act was violated. Counsel urged that as held in the decisions reported as AIR 1980 SC 791 State of U.P. vs. Rambabu Mishra, 1994 (5) SCC 152 Sukhwinder Singh & Ors. vs. State of Punjab and AIR 2003 SC 4377 State of Haryana vs. Jagbir Singh & Ors. since no permission of the Court empowered to try the offence was obtained, the report had to be ignored. Second submission made is that the half portion of the one rupee note i.e. Ex.PW-1/M stated to have been recovered from the diary Ex.PW-1/H has not been entered in the seizure memo Ex.PW-1/G which records the seizure of the diary, the slip Ex.PW-1/L and the two visiting cards Ex.PW-1/I and Ex.PW-1/J. Thus, counsel urges that the said half counter part of the one rupee note bearing No.83B 612044 has obviously been planted. Consequently, counsel urged that it cannot be linked to the half one rupee note received by Munna Lal along with the ransom letter Ex.P-2, as recorded in the seizure memo Ex.PW-2/B. Counsel urged

that ignoring aforesaid two pieces of evidence, the only evidence on record would be the apprehension of the appellant from the house of co-accused Rajender when the kidnapped child was recovered from the house of Rajender and the recovery of the diary Ex.PW-1/H, recovery of the slip Ex.PW-1/L and the recovery of the visiting card Ex.PW-1/I and Ex.PW-1/J and the recovery of the envelope Ex.P-3 from the appellant. Counsel urged that the said evidence does not form a complete chain of circumstances where from the guilt of the appellant can be inferred.

9. The inadmissibility of the report Ex.PW-7/E of the handwriting expert is writ large for the reason the specimen handwritings of the appellant were obtained without the permission of the Court and in violation of Section 5 of the Identification of Prisoners' Act. The issue stands concluded by the decisions of the Supreme Court in Ram Babu Mishra's case (supra), Sukhwinder Singh's case (supra) and Jagbir Singh's case (supra). Thus, it cannot be held that the two ransom notes received by Munna Lal PW-1, the father of the kidnapped child were written by the appellant. Further, the seizure memo Ex.PW-1/G pertaining to the recoveries effected from the appellant do not record that half portion of the one rupee note bearing No.83B 612044 was recovered from within the pocket

diary of the appellant. Thus, it cannot be said that incriminating evidence of half note, remaining half portion which was sent along with the ransom note received by Munna Lal on 4.12.1996.

10. Excluding aforesaid two pieces of evidence, the incriminating evidence against the appellant is:-

- (a) Presence of the appellant in the house of Rajender when Master Harbans was recovered.
- (b) Recovery of the visiting card Ex.PW-1/J on which the address of Munna Lal has been written.
- (c) Recovery of the postal envelope Ex.P-3 on which the address of Munna Lal has been written.

11. What was the appellant doing with the postal envelope Ex.P-3 on which the address of Munna Lal was written? This fact is in the personal knowledge of the appellant and the investigating officer had no means to access the same. Section 106 of the Evidence Act comes into play and requires the appellant to explain as to what was he doing with the said postal envelope, which we note bears the postal stamp of Re.1. The appellant has not explained the same when examined under Section 313 Cr.P.C. He has denied the recovery from him. The recovery thereof has been proved through the testimony of PW-1 and the investigation officer SI Satya Pal

PW-7.

12. A person buys a postal envelope to send a written communication through the postal authorities. If the name of the addressee is written on the postal envelope, it is obvious that the communication proposed to be sent in the postal envelope is to the addressee.

13. Thus, the recovery of the postal envelope Ex.P-3 from the appellant is highly incriminatory against the appellant, for the reason the obvious inference would be that the appellant possessed the postal envelope with the address of Munna Lal thereon as he had wanted to send a communication to Munna Lal. The fact that the appellant has rendered no explanation whatsoever qua the envelope would justify an adverse inference to be drawn against the appellant who has no official or personal dealings with Munna Lal and thus had no justifiable cause to send any communication to Munna Lal.

14. Why was the appellant having the address of Munna Lal with him? It was for the appellant to explain the reason thereof. He has not done so. This is another incriminating evidence supplying the link against the appellant.

15. Thus, as against the case qua Daulat Ram against whom no incriminating material has surfaced, save and except

his being present in the house where the kidnapped child was recovered, appellant being present in the house where the kidnapped child was recovered and the appellant being in possession of the envelope Ex.P-3 and the visiting card Ex.PW-1/J on which the address of Munna Lal was written and no satisfactory explanation given by the appellant pertaining to Ex.P-3 and Ex.PW-1/J are sufficient evidence wherefrom it can safely be gathered that the appellant had a role in the kidnapping of the young child for ransom. Whereas the presence of Daulat Ram in the house of Rajender can possibly be an innocent presence, the presence of the appellant in the house of Rajender is not innocent because of recovery of Ex.P-3 and Ex.PW-1/J from him.

16. That instant case attracts Section 364-A IPC would require a finding that a threat to the life of the kidnapped child was extended while demanding the ransom or fear of injury to the child was put to his father from whom the ransom was demanded. The ransom letters Ex.P-2 and Ex.P-4 contain a threat that if the ransom was not paid, the child would be sent to heaven, meaning thereby, would be put to death.

17. We find no merit in the appeal which is dismissed. The finding of guilt returned by the learned Trial Judge is affirmed.

18. The bail bond and surety bond furnished by the appellant are cancelled.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 04, 2009
Dharmender