

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

% *Judgment Reserved on: May 19, 2009*  
*Judgment Delivered on: May 22, 2009*

+ **CRL.A.537/2001**

NARESH PAL ..... Appellant  
Through: Ms. Charu Verma, Advocate  
  
versus

STATE ..... Respondent  
Through: Mr. Pawan Sharma, Advocate

**CRL.A.238/1999**

RAMAN PAL ..... Appellant  
Through: Ms. Charu Verma, Advocate  
  
versus

STATE ..... Respondent  
Through: Mr. Pawan Sharma, Advocate

**CRL.A.682/2000**

MAHIPAL ..... Appellant  
Through: Ms. Charu Verma, Advocate  
  
versus

STATE ..... Respondent  
Through: Mr. Pawan Sharma, Advocate

**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

**INDERMEET KAUR, J.**

1. Vide impugned judgment and order dated 02.02.1999; and order on sentence dated 04.2.1999, the trial court had convicted the appellants for the offence punishable under Section 364-A read with Section 34 IPC and had sentenced each appellant to undergo imprisonment for life as also to pay a fine of Rs. 2,000/- each; in default of payment of fine to undergo RI for six months.

2. Facts of the case, as culled out by the prosecution are, that on 07.11.1996, Vivek @ Fakira was reported missing from his house No.218/11, Block-C, Brahmpuri, Delhi. His father, Sh.Gajraj lodged a missing report at 9.45 p.m. on the same day at Police Station Seelampur. FIR under Section 363 IPC was registered.

3. On 18.11.1996, a letter was received at the house of Sh.Gajraj, wherein a demand in sum of Rs.5,00,000/- was made as ransom for release of Vivek @ Fakira. The letter mentioned that the above stated amount was to be paid on 19.11.1996 at Khera Baghera Turning, Distt. Shahjahanpur, U.P.

4. On 23.11.1996 Sh.Gajraj informed the police that he had received a telephone call at the shop of his neighbour Sh.Sanjay, wherein the demand for release of the child on payment of ransom was reiterated. Sh.Gajraj was instructed that he should not inform the police or else his child would be killed. He was further instructed to deliver the ransom in a bag on 24.11.1996 at Jagat Ghat on the bank of Baigul river, Distt. Shahjahanpur.

5. Supplementary statement of Sh.Gajraj was recorded and the FIR initially registered under Section 363 IPC was converted to one under Section 364-A IPC.

6. Sh.Surat Singh, elder brother of Sh.Gajraj, was informed of these developments by Gajraj. He accompanied the police party at Jagat Ghat on the bank of Baigul river, District Shahjahanpur, U.P. on 24.11.1996 i.e. the appointed date. The police officials were in civil dress. Sh.Surat was holding the bag purporting to contain the ransom money. Accused Naresh Pal and accused Mahipal approached Surat. Accused Naresh Pal asked him, if he had brought the ransom money and as per his instruction Surat proceeded to hand over the bag containing the ransom money to co-accused Mahipal. At that time, on the signal given by Surat, the police party pounced and apprehended Naresh Pal and Mahipal. Both were interrogated at the spot and disclosed that the kidnapped child was with co-accused Raman Pal and they

offered to lead police party to the place where Raman Pal was with the child.

7. Pursuant to the disclosure statement of the said accused persons, they led the police party to village Buria Wali Katri Jangle where accused Raman Pal was apprehended and the child Vivek @ Fakira was found in his company. The child was recovered and handed over, on superdari to his father Sh.Gajraj.

8. The prosecution had examined seven witnesses to prove its case.

9. Father of the victim, Sh.Gajraj PW-2, deposed that on not being able to trace out his child he had lodged a missing report at Police Station Seelampur and that on his statement, the FIR Ex.PW-2/A was registered and recorded in the hand of HC Daya Nand PW-5. He further deposed that on 18.11.1996 he found a letter Ex.P-3 in the envelope Ex.P-4 in front of his house wherein a demand in sum of Rs. 5,00,000/- was raised for release of his son Fakira. That as per letter Ex.P-3 he was warned not to report the matter to the police or else his son would be killed and that he should pay ransom demanded on 19.11.1996 and that he handed over the letter to the police as recorded in the memo Ex.PW-2/B. That on 22.11.1996, he received a message from Sh.Sanjay, his neighbour, that there was a telephone call for him at his shop. When he talked to the caller, the demand for ransom

was reiterated with the threat that if he took police help his son would be killed.

10. At this stage, learned APP had sought permission of the court to cross-examine the witness, but it appears that this was clearly due to inadvertence, as till then, PW-2 was fully supporting the case of the prosecution.

11. In his cross-examination by the learned Additional Public Prosecutor PW-2 stated that he was told on the telephone that if he tried to make a fool of them, his son Fakira would be killed. He stated that he was perplexed at that time. He informed his brother Sh.Surat Singh, who went with police party to meet the demands of the accused.

12. The witness was cross examined. He denied the suggestion that he did not receive any phone call on 22.11.1996. The witness was cross-examined at length by learned defence counsel for the accused, but nothing has come out in his cross-examination which could assail his credibility.

13. Sh. Surat Singh, brother of Sh.Gajraj, was examined as PW-1. He deposed that his brother Sh.Gajraj had informed him on 18.11.1996 that his son Fakira @ Vivek had been kidnapped and a letter raising demand of ransom in sum of Rs.5,00,000/- has been received by him and that his brother told him that the caller had told him that only two persons should carry the

ransom money and they should be attired in yellow clothes. As per the instructions in the said letter, he went with the police party on 19.11.1996 to the spot i.e. Sunehra Banehra turn Badayun, U.P. and was accompanied by ASI Mahmood Ali PW-7. They remained at the spot for 1½ to 1¾ hours but nobody turned up. That on 23.11.1996, his brother Sh.Gajraj had received telephone call at the phone of their neighbour Sanjay. Sh.Gajraj told him that the caller had told him that in case the ransom amount is not paid his child would be killed. As per the instructions given on the telephone, he along with the police party reached Badayun, U.P. on 24.11.96 at 10.00 AM with a bag containing ransom money. Inspector Mahmood Ali and SI Krishan Kumar had accompanied him. Two boys, whose names were later on revealed as Naresh Pal and Mahipal approached him and asked him whether he had brought the ransom money. He affirmed this fact and showed them the bag containing the money. At that point of time, the police personnel, who were hiding behind bushes, over powered both the accused. The disclosure statement of the accused Ex.PW-1/D and Ex.PW-1/E were recorded. Pursuant to their disclosure statements, they led the police party to Katiyawala Jungle which was at a distance of half kilometre from the spot. Raman Pal accused was found hiding there along with the kidnapped child Fakira. The child

was rescued and his recovery memo Ex.PW-1/H was prepared. Accused Raman Pal was also apprehended.

14. On being cross examined PW-1 stated that the disclosure statement of all the accused persons was recorded in his presence and accused Naresh Pal has pointed out the spot at Katiyawala Jungle. He admitted that he knew accused Mahipal and Naresh Pal prior to the incident as they were tenants under his brother Sh.Raghubir Singh. He further admitted that Mahipal and Naresh Pal were earlier tenants under his brother Sh.Gajraj and thereafter under his other brother, Sh.Raghubir.

15. The child victim has been examined as PW-4. After preliminary questions put to him to test his rationality to depose as a competent witness, he was put into the witness box. PW-4 deposed that he was playing on the street near his house when Naresh Pal told him that he would give him toffees and on this pretext he took him in a rickshaw, then in a bus and then in a train to a jungle. He was made to sleep on the floor and he remained there for many days. That apart from accused Naresh Pal the other accused Mahipal and Raman Pal were present at the place where he was confined. He identified the accused Mahipal and Raman Pal in Court. On being cross examined he denied the suggestion that he was deposing falsely at the behest of the police officials or he was tutored to make the statement.

He admitted that accused Naresh Pal was known to him because he was residing in the house of his Tau in the same neighbourhood.

16. Sanjay has been examined as PW-3. He deposed that he had a photo studio in the neighbourhood of Sh.Gajraj and that a phone call had been received on 23.11.1996 at his shop for Sh.Gajraj.

17. SI Krishan Kumar was examined as PW-6. He joined the investigation on 23.11.1996. He had accompanied the police party on 24.11.1996 at Jagatpur Ghat, Baigul River where as per the information received by Sh.Gajraj, the accused persons would be reaching to collect their ransom money. He deposed that both the accused Naresh Pal and Mahipal came towards Sh.Surat, the uncle of the kidnapped child, who was holding the bag of money in his hand and enquired if the money had been brought. But, before the bag of money could change hands, the accused were apprehended and arrested. The personal search memo of accused Naresh Pal Ex.PW-1/A and that of accused Mahipal Ex.PW-1/B was prepared. They had led the police party to Katiyawala Jungle where the child victim was found in the company of the accused Raman Pal. Accused Raman Pal was arrested and his personal search memo Ex.PW-1/C was prepared.

We note that PW-6 was cross-examined at length, but nothing has emerged which could discredit his testimony.

18. Investigation of the case was assigned to ASI Mahmood Ali PW-7 on 07.11.1996. He had got the case registered under Section 363 IPC. He deposed that on 23.11.1996 Gajraj had come to the police station and informed him that he had received a telephone call demanding ransom from him for release of his child. That he had been instructed on telephone to bring the demanded amount at Jagatpur Ghat, Baigul River at Katiyawala Jungle. On the following day i.e. 24.11.1996 PW-7 had accompanied PW-2 and PW-6 to the appointed place where the accused Naresh Pal and Mahipal came towards Surat Singh and asked him if he was carrying the ransom money. Before the bag containing the money could be handed over to the accused, the police party apprehended and over powered the accused.

19. In his cross-examination PW-7 admitted that SI Krishan Kumar, Constable Mohd. Sajid, Constable Kundan Singh and Constable Chaina Ram along with Sh.Surat joined him for investigation on 23.11.1996 and 24.11.1996 but he did not obtain the signatures of all these police officials. He stated that accused Raman Pal was arrested from a place which was 10/15 yards away from the place pointed out by the co-accused, which was a dense forest. He denied the suggestion that he had

concocted the story and the accused persons were falsely implicated.

20. From the evidence which has been proved on record, it has emerged that Vivek @ Fakira had been taken out of the lawful custody of his father Sh.Gajraj on 07.11.1996 by Naresh Pal, Mahipal and Raman Pal. Gajraj had received a letter Ex.P-3 in the envelope Ex.P-4 raising demand for ransom in sum of Rs.5,00,000/- and the money was instructed to be paid on the following day i.e. 19.11.1996 at Sunehara Banehara turn Badayun, .U.P. On 19.11.1996 Sh.Surat Singh accompanied by ASI Mamood Ali reached the spot but no one turned up. On 23.11.1996 a telephone call was received by Sh.Gajraj on the instrument of Sanjay wherein demand for ransom in sum of Rs.5,00,000/- was reiterated and Gajraj was instructed to come with the ransom money on 24.11.1996 at the bank of Baigul River, Jaitpur, Shahjanpur. He was clearly threatened that if he informed the police, his son would be killed. On the same day i.e. 24.11.1996, Gajraj, accompanied by SI Krishan Kumar and ASI Mahmood Ali reached the spot. The bag of money was in the hand of Surat Singh. Accused Naresh Pal and Mahipal approached him and asked him whether he was carrying the ransom money. The bag of money was shown to the said accused persons and it was affirmed that the bag contained the

money. Before the bag could be exchanged between Surat Singh and accused Naresh Pal and Mahipal, the police party apprehended them. The said accused were interrogated at the spot and disclosed that the kidnapped child was with co-accused Raman Pal. Both of them thereafter led the police to a place within the jungle and got recovered the kidnapped child. That the child was recovered as aforesaid stands corroborated by the fact that as deposed to by PW-7, information was given at PS Jettipur in U.P. and SI Jiyalal from said police station had joined them in organizing the raid. After the child was recovered he was produced in the Court of the Illaka Magistrate at Shahjahanpur and vide superdginama Ex.PW-1/J, the learned Magistrate handed over the child to his uncle Suraj.

21. On behalf of the accused, it has been argued by learned defence counsel that the ransom letter allegedly received by PW-1 Sh.Surat Singh on 18.11.1996 is not connected with the accused persons. That the prosecution has failed to prove that the writing on this letter and its envelope was in the hand of any of the accused persons and in the absence of which, the accused persons cannot be connected with this demand for ransom. It was further argued that the phone call purported to have been received by Sh.Gajraj, father of the victim, on 23.11.1996 has

also not been proved and there is no evidence to connect this call with the accused. It was further argued that the ingredients of Section 364-A IPC necessarily entail that coupled with the kidnapping, there must be a reasonable apprehension that death or hurt could be caused to the kidnapped person and that this ingredient was missing in the instant case as per evidence led. Learned defence counsel had placed reliance on a judgment dated 9.4.2009 delivered by a Division Bench of this Court in Crl.A.No.460/2004 Rukshar & Ors. Vs. State of NCT of Delhi to support the submission, that in the absence of this necessary ingredient, i.e., threat to cause death or hurt to the victim, the offence under Section 364-A IPC is not made out.

22. Dealing with the last contention urged, whether the offence punishable under Section 364-A IPC is made out or not, has to be determined on the facts and circumstances of each case. There can be no quarrel with the proposition that an essential limb of the offence of kidnapping for ransom is the threat to the person or the life of the child kidnapped. In the instant case, it has come in the clear version of PW-1 Sh.Surat Singh, that PW-2 Sh.Gajraj Singh, who had received the telephone call making a demand for ransom had told him that in case the ransom money is not paid, the dead body of his son would be sent to him. This information received by Sh.Gajraj was passed on to him i.e. Surat Singh.

Sh.Surat Singh PW-1 has also, on oath, affirmed that a telephone call had been received by his brother Sh.Gajraj. Gajraj who appeared as PW-2 has himself deposed that he was told over the telephone not to inform the police and pay the ransom if he wanted the life of his son to be spared. Thus, it has been established that Fakira @ Vivek has been kidnapped for ransom and his father had been threatened on phone that in case police help is taken, his child would not be seen alive.

23. The judgment relied upon by learned defence counsel i.e. the decision in Crl.A.No.460/2004, Rukshar Vs. State of NCT of Delhi is distinguishable on its own facts. In said case, the offence under Section 364-A IPC was held not established as there was no evidence of the extortionist threatening the life or the limb of the kidnapped child. Thus, the conviction was sustained for the offence punishable under Section 363 IPC.

24. It is correct that the prosecution has not been able to establish that the letter Ex.P-3 was penned in the hand of any of the accused persons. Nevertheless, the contents of the letter cannot be ignored. This letter dated 18.11.1996 was received at the door steps of Sh.Gajraj, meaning thereby, that the person who had delivered this letter knew that this was the house of the child victim. The letter further gave details of the wearing apparel of the child; it further suggested the different routes to

be taken by the person who would bring the ransom amount at the appointed place. It is apparent that the details of the wearing apparel of the child were disclosed to the parents to make good the threat that their child was with the kidnappers. By giving said details, the obvious intention was, to give proof that the kidnapped child was with the kidnapper. In these circumstances, it can safely be presumed that the only person interested in penning this letter would be the person who would be having the custody of the child and was waiting to receive the ransom money in exchange for the child.

25. Even presuming for sake of arguments, that this letter is to be ignored, the telephone call received by Sh.Gajraj on 23.11.1996 reiterating the same demand in sum of Rs.5,00,000/- for the exchange of the child has also to be answered to by the defence counsel. It has come in the evidence of PW-3 Sh.Sanjay, that a telephone call was received on his instrument for Sh.Gajraj and that he called Gajraj to speak to the caller. Gajraj has clearly deposed that he spoke to the caller through the phone of Sanjay and that a ransom was demanded from him.

26. The identity of the accused persons is not disputed. It has come in the testimony of PW-1 and PW-2 that accused Naresh Pal and Mahipal were known to them and they were tenants, earlier under Gajraj and thereafter under their brother Sh.Raghubir

Singh. The victim child i.e. Fakira has also identified all the accused persons while deposing in Court. He had remained in their custody for more than two weeks i.e. in the intervening period between 7.11.96 to 24.11.1996. He was recovered from the custody of co-accused Raman Pal and his recovery was effected in the presence of Sh.Surat Singh apart from SI Krishan Kumar, ASI Mahmood Ali.

27. To sustain a conviction for the offence punishable under Section 364-A IPC it is necessary to prove that not only kidnapping or abduction took place, but thereafter, the accused threatened to cause death or hurt to such person or by conduct gave rise to a reasonable apprehension that such person may be put to death or hurt. See the decision reported as JT 2007 (5) 48 Vishwanath Gupta Vs. State of Uttranchal.

28. The term 'ransom' has not been defined in the statute. To hold someone to ransom, means to hold someone capture and demand payment for his release.

29. It is thus clear, that in the instant case, the ingredients of section 364-A IPC have been met. Not only has the child been kidnapped and taken away from the lawful guardianship of his father, but ransom demand has also been made and communicated over telephone. The bag containing the ransom

money had been taken to the spot, where again, the demand for payment was set in motion by the accused persons. The accused persons had clearly communicated this demand to Sh.Surat Singh at the spot. It has been proved by the prosecution that the accused had kidnapped the child and kept him in their custody after such kidnapping w.e.f. 7.11.1996 to 24.11.1196 and this kidnapping was for a ransom amount.

30. Necessary corollary is that the conviction of the accused persons is upheld.

31. Appeals having no merit; they are dismissed.

**(INDERMEET KAUR)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

May 22, 2009  
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