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IN THE HIGH COURT OF DELHI

Judgment reserved on : February 18, 2009

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Judgment delivered on : February 20, 2009

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CRL.A. 85/2001

JAI SINGH Appellant
Through: Mr. Salman Khurshid, Sr. Adv.
Mr. Imtiaz Ahmed, Adv.
Mrs. Naghma Imtiaz, Adv.

versus

STATE NCT OF DELHI Respondent
Through: Ms. Richa Kapoor, Advocate

CRL.A. 166/2001

SONE LAL & ORS. Appellants
Through: Mr. Salman Khurshid, Sr. Adv.
Mr. Imtiaz Ahmed, Adv.
Mrs. Naghma Imtiaz, Adv.

versus

STATE Respondent
Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

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

: PRADEEP NANDRAJOG, J.

1. The appellants were charged for the offence punishable under Section 364-A IPC read with Section 120-B IPC.

2. The gravamen of the allegation was that pursuant to a criminal conspiracy hatched by the appellants to kidnap for ransom, Umesh son of Jaipal, on 21.8.1999 Umesh Kumar aged 3 years was kidnapped from outside House No.G-53, Gali No.3, Shastri Park, Delhi and a ransom in sum of Rs.10,00,000/- (Rupees Ten Lacs) was demanded from Jaipal for releasing Umesh Kumar.

3. Vide judgment and order dated 16.12.2000 appellants Jai Singh, Sone Lal and Shripal have been found guilty of the offences punishable under Section 364-A and Section 120-B IPC. Appellant Santosh Kumar has been found guilty of the offence punishable under Section 364-A read with Section 368 IPC. For the offences punishable under Section 120-B IPC the said appellants have been awarded imprisonment for life and to pay a fine of Rs.2,000/-. For the offence punishable under Section 364-A sentence imposed is of imprisonment for life and fine of Rs.3,000/-. Santosh Kumar has been awarded the punishment to undergo imprisonment for life for the offences punishable under Section 364-A read with Section 368 IPC.

4. Learned Trial Judge has held that the evidence does not establish that Santosh Kumar had entered into a conspiracy to kidnap the young boy but knowing that the young boy had

been kidnapped, wrongfully concealed the young boy in his house, and hence same intention as that of the co-accused had to be imputed to him by virtue of Section 368 IPC.

5. As per the prosecution, at 5:00 PM on 21.8.1999, Basant (PW-1) informed Jaipal (PW-8) that he had seen his child Umesh Kumar, aged 3 years, in the company of some person. Jaipal proceeded to search for his child and also informed the police at the number 100. The information was received at PS Seelam Pur vide DD No.17-A, entry whereof was made by HC Umender Kumar PW-6 to said effect. The police went to the house of Jaipal and recorded his statement Ex.PW-8/A pursuant where to a FIR under Section 363 IPC was registered at around 8:25 PM by HC Umender Kumar PW-6.

6. On 24.8.1999 Jaipal received a telephone call from an unknown person who demanded ransom in sum of Rs.10,00,000/- (Rupees Ten Lacs) for the return of the child informing Jaipal that if he wanted the child safely back he should pay the ransom amount between 4 to 6 PM at Mohamddabad Bridge on 26.8.1999. Said information was conveyed by Jaipal to the police which was duly noted. Jaipal's telephone bearing No.2194096 on which the ransom call was made was put under observation.

7. On 26.8.1999 another call was received at the said telephone by the wife of Jaipal. On 27.8.1999 he i.e. Jaipal received another call at the said telephone and the caller enquired as to why he had not reached the designated place on 26.8.1999. He told the caller that he did not have Rs.10,00,000/- (Rupees Ten Lacs) with him. The caller reduced the demand to Rs.5,00,000/- (Rupees Five Lacs) and told him to deliver the same on 29.8.1999 at Fateh Garh Chowk between 10 AM or 11 AM. He expressed the inability to pay said amount. The caller reduced the amount to Rs.3,50,000/- (Rupees Three Lac Fifty Thousand) and demanded the same to be paid on 29.8.1999 at Fateh Garh Chowk between 10 AM to 11 AM.

8. Accordingly, a raiding party was constituted which consisted of Inspector Rajender Gautam PW-3, HC Satya Prakash PW-4, Const. Rajesh Gaud PW-10, SI Anwar Khan PW-12 and SI Vinod Kumar Meena PW-15. On 28.8.1999, the police team left Delhi and reached Fateh Garh Railway Station on 29.8.1999 at about 8/8:15 AM and reported to the police post at Fateh Garh Railway Station. Const. Suresh Chand Yadav PW-14, employed with the railway police at Fateh Garh Railway Station and attached to the police post at the railway station under jurisdiction of PS Farukhabad, joined the raiding party.

9. Jaipal was left by himself and the other police officers disguised themselves and hid themselves. Everybody waited till 1:30 PM. Accused Jai Singh came near Jaipal and asked whether he had brought the money at which Jaipal gave a pre-designated signal by raising his hand to his head at which the police officers immediately pounced upon and apprehended accused Jai Singh. He was interrogated at the spot and made a disclosure statement Ex.PW-4/B as per which he told that the kidnapped child was with accused Sone Lal.

10. Personal search of accused Jai Singh resulted in the recovery of a slip of paper on which telephone No.2194096 i.e. the telephone number of Jaipal as also telephone number of his neighbour Pehlwan Shakil, being No.2177832, was written. The said slip was taken into possession by the police vide memo Ex.PW-4/A.

11. Accompanied by accused Jai Singh the police team and Jaipal left for village Munder at a distance of 20 kms from Farukhabad to go to the house of Sone Lal. Sone Lal was apprehended and upon interrogation made a statement Ex.PW-4/D informing the police that the young child was in the custody of accused Santosh at his house in Farukhabad. Everybody returned to Farukhabad and went to the house of accused

Santosh who was arrested in his house and the kidnapped child Umesh, was recovered by the police as per the memo Ex.PW-4/G. Accused Sone Lal named accused Shripal as an accomplice. He was also apprehended and as per the police, the telephone number 2194096 and the telephone number 2177832, written on the slip of paper recovered from accused Jai Singh vide seizure memo Ex.PW-4/A, were in the handwriting of Shripal, whose role was to keep a watch on the family of the kidnapped child and inform the co-accused as to what was the family doing. Accordingly, the police obtained the specimen handwriting Ex.PW-9/B and Ex.PW-9/C of Shripal and sent the same for expert opinion. The report Ex.PY reported that no specific opinion could be given. The police seized the telephone bill pertaining to telephone number 2177832, being Ex.PW-2/A.

12. At the trial, Jaipal father of Umesh, appeared as PW-8 and deposed the facts pertaining to Basant informing him that his child Umesh Kumar was seen by him at 5:00 PM on 21.8.1999 in the company of unknown person and he having informed the police thereof as recorded in DD No.17A. He deposed that Ex.PW-8/A was his statement recorded by the police at 8:25 PM. He deposed that he received a ransom call on 24.8.1999 at his telephone number 2194096 and that

another call was received by him on 27.8.1999. He deposed of the facts noted hereinabove pertaining to the raiding party reaching Fateh Garh Railway Station and accused Jai Singh being apprehended followed by Sone Lal and Santosh being apprehended and his son being recovered from the house of Santosh. He deposed about the disclosure statements recorded in his presence.

13. Unfortunately, the day Jaipal PW-8 was examined i.e. 1.4.2000, the infamous lawyers' strike was on in the District Courts. The accused were not represented by a counsel. The learned Judge gave an opportunity to the accused to cross examine him. Neither accused cross examined PW-8. He was discharged. An application was filed to recall the witness. The same was allowed on 28.4.2000. By said date, the witness had changed residence and in spite of summons being repeatedly sent on as many as 8 dates, the police could not locate the whereabouts of Jaipal. On 20.10.2000 an order was recorded that despite best efforts Jaipal could not be traced. It was recorded that his deposition would be read in evidence.

14. The police officers, Inspector Rajender Gautam PW-3, HC Satya Prakash PW-4, Const. Rajesh Gaud PW-10, SI Anwar Khan PW-12 and SI Vinod Kumar Meena PW-15 as also Const.

Suresh Chand Yadav PW-14 from the police post at Fateh Garh Railway Station deposed in harmony with the deposition of PW-8 pertaining to the apprehension of accused Jai Singh when he came to receive the ransom money from PW-8 and further facts disclosed by PW-8 pertaining to the arrest and the disclosure statements made by Sone Lal and Santosh as also the recovery of the child from the house of Santosh.

15. Since no material contradictions were pointed out in the deposition of the police witnesses whose evidence was found to be credit worthy and finding corroboration to the testimony of PW-8, the learned Trial Judge has held that the prosecution has successfully established the case against all the accused persons.

16. We note that the accused examined 5 witnesses namely Rakesh DW-1, Urmila DW-2, Hira Lal DW-3, Gyan Prakash DW-4 and Ram Lakhan DW-5, all of whom deposed that on 29.8.1999, Master Umesh was recovered from the house of one Raghubir who had some dealings with Jaipal PW-8 and that at the police post some compromise was effected pursuant whereeto Raghubir paid a sum of Rs.25,000/- (Rupees Twenty Five Thousand) to Const. Suresh PW-14. All of them deposed that thereafter accused Jai Singh, Sone Lal and Santosh were

illegally arrested from their respective houses and taken by the police to Delhi.

17. We note that Rakesh DW-1 is the brother of accused Jai Singh. He admitted that he never lodged a complaint regarding the arrest of his brother. Smt. Urmila DW-2 is the sister-in-law of accused Santosh. Even she admitted not having made any complaint to anyone about Santosh being arrested. Hira Lal DW-3 is the brother of Santosh. Even he admitted not having made any complaint to any person about Santosh being illegally arrested. Gyan Prakash DW-4 is a neighbour of Santosh. Even he admitted that no complaint was made to any authority regarding Santosh being illegally apprehended. Ram Lakhan DW-5 is the brother of Sone Lal. Even he admitted not having made any complaint to any authority.

18. Mr. Salman Khurshid learned senior counsel for the appellants urged, that as regards accused Shripal, there is no evidence save and except a statement made by co-accused Sone Lal to the police to the effect that Shripal was also a conspirator and his role was to keep a watch on the family members of the victim and keep the other co-accused informed of what was happening.

19. Indeed, we find no evidence against Shripal. The slip

of paper recovered vide seizure memo Ex.PW-4/A containing telephone number 2194096 and telephone number 2177832 has not been opined to be containing the handwriting of Shripal. Further, the telephone bill, Ex.PW-2/A, pertaining to telephone number 2177832, the telephone of Pehlwan Shakil, the neighbour of PW-8, merely shows a bill raised for 228 calls. No call details have been obtained by the police from the service provider and thus there is no evidence of any calls being made from said number to any particular telephone number. There is no evidence of Shripal being in contact with any co-accused.

20. We agree with the submission made by learned senior counsel for the appellants that there is no evidence against accused Shripal. Indeed, Ms. Richa Kapoor, learned counsel for the State could not point out any evidence against Shripal, save and except his being named as a conspirator by the co-accused Sone Lal.

21. Pertaining to the other 3 co-accused, namely Jai Singh, Sone Lal and Santosh, learned counsel for the appellants urged that there was no reason to disbelieve DW-1 to DW-5 that Master Umesh was recovered from the house of Raghubir and that a deal was struck with the help of PW-14 pursuant where to Raghubir paid Rs.25,000/- and was let off and Jai Singh, Sone Lal

and Santosh were illegally arrested.

22. We find no substance in the defence, for the reason each defence witness admitted not having made a complaint to any superior authority that the Delhi Police had illegally arrested Jai Singh, Sone Lal and Santosh. In fact Hira Lal DW-3, has categorically deposed that the Pradhan of the village was present when the police from Delhi was at village Farukhabad. It is difficult for us to believe that in the presence of the Pradhan of the village, 3 innocent men would be apprehended and the real accused would be let off.

23. The submission of learned senior counsel for the appellants that no public witness was associated at the time of the arrest of Jai Singh, Sone Lal and Santosh and thus their being arrested as claimed by the police has to be looked at with suspicion, is without any substance for the reason in a case of kidnapping the trap has to be laid with utmost secrecy and to involve one too many would endanger the life of the victim. Further, there is no presumption that the police officers would always tell a lie. Further, though PW-8 was not cross examined, but his testimony cannot be ignored and the question arises as to why would PW-8 let off the real culprit and falsely implicate 3 innocent men.

24. Indeed, no material contradiction, discrepancy or improvement was shown to us in the deposition of the police officers and PW-8 to discredit the case of the prosecution vis-à-vis accused Jai Singh, Sone Lal and Santosh.

25. Accused Jai Singh had with him a slip of paper containing the telephone number of Jaipal PW-8 i.e. the father of the kidnapped child. He has not explained as to why was he having said telephone number with him. This assumes significance.

26. Though the child was not recovered from Sone Lal, but his disclosure statement that the child was with co-accused Santosh and was in the house of Santosh, is admissible evidence inasmuch as pursuant thereto the child, Umesh, was recovered from the house of Santosh, meaning thereby, a fact was discovered by the police, hitherto fore not in the knowledge of the police, i.e. the kidnapped child being kept in the house of Santosh. The incriminating evidence against Jai Singh is of meeting Jaipal at the pre-designated place and asking him whether he had brought the ransom amount. The incriminating evidence against accused Santosh is the recovery of the kidnapped child from his house.

27. A last submission urged by learned senior counsel for

the appellants may be dealt with before bringing the curtains down.

28. Learned counsel urged that to sustain a charge under Section 364-A IPC it is not enough to prove that a ransom was demanded for releasing the kidnapped child. It has to be proved that there was a threat to cause death or hurt to the kidnapped child under pain of payment of ransom. Learned counsel urged that there was no evidence that Jaipal PW-8 was threatened that his son would be hurt or would be killed if ransom was not paid. Hence, counsel urged that the charge under Section 364-A was not established.

29. The submission of learned counsel for the appellants ignores the expression '*or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt*' in Section 364-A IPC.

30. Implicit in every demand of ransom, as a condition to release the kidnapped child, is the threat that if the ransom would not be paid, the child would not be released and would be harmed. The very act of kidnapping a child and demanding ransom for his release, by the very nature of the act, would give rise to a reasonable apprehension that the child would be hurt or killed if ransom is not paid.

31. In any case, we need not theorize for the reason PW-8 has categorically deposed that when he received the ransom call he was told that '*if I wanted to get my child safe, I had to pay Rs.10,00,000/-*'. Thus, the safety of the child was put to the notice of PW-8, under threat, that if he wanted the safety of his child he should pay the ransom.

32. Criminal Appeal 85/2001 filed by appellant Jai Singh is dismissed.

33. Criminal Appeal 166/2001 is allowed pertaining to appellant Shripal. The impugned judgment of conviction and order of sentence against him is set aside. Shripal is acquitted of the charge framed against him.

34. In so far as appellants Sone Lal and Santosh are concerned, the said appeal i.e. Criminal Appeal 166/2001 is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 20, 2009
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