

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

% Date of Judgment: 25th September, 2009.

+ **CRL.A.898/2004**

SAJAN @ SONU ...Appellant
Through: Ms. Neelam Grover, Advocate.

Versus

STATE ...Respondent
Through: Mr.M.N.Dudeja, APP.

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. (ORAL)

Crl.M.(Bail) No.1143/2009

1. Learned counsel for the appellant states that if the appeal is heard for disposal, preferably today itself, she would not press the application which seeks suspension of sentence pending hearing of the appeal.

2. Learned counsel for the State submits that he is prepared to argue the appeal if the learned counsel for the appellant argues the appeal today itself.

3. Since we are hearing the appeal today itself, we dispose of Crl.M.(Bail) No.1143/2009 as infructuous.

Crl.A.No.898/2004

1. Vide impugned judgment and order dated 9.8.2004, the appellant has been convicted for the offence punishable under Section 364-A IPC.

2. Co-accused Sanjay, a juvenile, faced trial before the Juvenile Justice Board and was also convicted, but was let off on probation.

3. Learned counsel for the appellant urges that apart from others, one of the ingredient constituting the offence of kidnapping for ransom is threat or conduct giving rise to a reasonable apprehension that the person kidnapped would be hurt or put to death. Counsel urges that in the instant case the testimony of the witnesses of the prosecution does not bring out that the accused extended any threat to the person or the life of the child who was kidnapped. Counsel urges that there is no evidence of any conduct of the kidnapper wherefrom an apprehension of injury or threat to the life of the child kidnapped could be inferred.

4. On merits, counsel urges that the testimony of Lokesh PW-2 does not inspire confidence.

5. As per the prosecution Master Sachin, a student of Class-V and aged around 10 years as on 23.1.2003 went missing in that did not return from school. The appellant who was previously employed by Lokesh PW-2, the father of Sachin, lured him and on 24.1.2003 made a telephone call at the telephone installed in the residence of Mahesh Kumar PW-5 and demanded ransom in sum of Rs.5 lakhs. The matter was reported to the police. At the designated time and place intimated by the appellant where the ransom money was to be paid, appellant approached Lokesh PW-2 to receive the ransom and was apprehended at the spot. His disclosure statement Ex.PW-2/E was recorded, as per which he disclosed the place where the kidnapped child was confined. The appellant took the Investigating Officer and the father of the kidnapped child to village Loni and pointed out the house, from where Master Sachin was recovered.

6. Sachin has appeared as PW-1. He has fully supported the case of the prosecution and identified the appellant and the co-accused, namely, Sanjay, as the persons who had kept him in illegal confinement. He deposed that the appellant met him after

school time was over and took him away. He deposed that the kidnappers used to keep him with love and affection.

7. Lokesh PW-2 has also supported the case of the prosecution and proved D.D.No.18-A i.e. the missing person's complaint lodged on 23.1.2003 pertaining to Sachin being missing. He deposed that after he received a call on 24.1.2003 at telephone No.2621206 installed at the house of Mahesh, kidnappers demanded Rs.5 lakhs for release of his son. He conveyed said information to the police and his statement Ex.PW2/A was recorded. He deposed that as advised by the police, he took fake currency and on 25.1.2003 reached the place where he was directed to hand over the ransom amount i.e. Durgapuri Chowk, Gole Chakkar. The accused snatched the bag from his hand and started running but was overpowered. He deposed that on being interrogated the accused informed that his child was in a house in village Loni and thereafter he took the police to Gali No.2, Johripur Enclave, Loni from where his child was recovered.

8. One Sadanand PW-3, deposed that he had accompanied Lokesh to Durgapuri Chowk on 25.1.2003. That appellant came and after snatching the bag from the hand of Lokesh started running but was overpowered. He took the police party to Johripur from where the kidnapped child was recovered.

9. Mahipal PW-4 deposed that he used to reside in village Johripur and that in that month of January the accused had taken a room on rent adjoining the room taken on rent by him. On 25.1.2003, the kidnapped child was recovered from the said room and that the appellant had brought the police there.

10. Mahesh Kumar PW-5 deposed that telephone No.2621206 was installed at his residence and that on 24.1.2003, he received a call and the caller asked him to call Lokesh. The caller told him that Lokesh's child was in his custody and he wanted to talk with Lokesh. He called Lokesh. This call was received at 7.30 PM. It was followed by another call at 9 PM. At the second call, the caller demanded ransom in sum of Rs.5 lakhs.

11. We have perused the testimonies of PW-1 to PW-5. We find no blemish in their testimonies. The witnesses have been subjected to cross-examination and have withstood the test of cross-examination. Of the five witnesses, we may note that Mahipal PW-4 is not a relative or a friend of Lokesh PW-2. He is a completely independent witness and we see no reason as to why he should be deposing falsely. The testimonies of the witnesses clearly establish that the appellant kidnapped Master Sachin, in that, removed him from the lawful custody of his parents. The evidence also establishes that ransom was demanded.

12. But, as urged by learned counsel for the appellant, to establish the offence of kidnapping for ransom there has to be a threat to cause death or hurt to the person concerned i.e. the person who has been kidnapped or there has to be evidenced that the kidnapper, by his conduct, gave rise to a reasonable apprehension that the person kidnapped may be put to death or hurt.

13. None of the witnesses of the prosecution have deposed that the appellant ever extended any threat to the person or the life of Sachin. There is no evidence that by his conduct, the appellant gave rise to an apprehension in the mind of anyone that if the ransom was not paid, Sachin would be hurt or put to death.

14. In his testimony Sachin has deposed:

"They used to keep me with love and affection."

15. Unfortunately, the learned Trial Judge has treated as if the offence of kidnapping for ransom is complete when a person is kidnapped and ransom is demanded for the release of the said person. It appears that the attention of the learned Trial Judge was not drawn to one of the essential ingredients of Section 364 IPC; namely, threat to the person or the life of the kidnapped child or a conduct which gives rise to an apprehension that the person kidnapped would be put to death or bodily injury caused.

16. Thus, we hold that the evidence on record does not establish the commission of offence by the appellant punishable under Section 364-A IPC.

17. The offence committed by the appellant is of kidnapping with intent to cause the person to be secretly and wrongfully confined i.e. the offence punishable under Section 365 IPC.

18. The offence is punishable with a maximum sentence of seven years.

19. We convict the appellant for the offence punishable under Section 365 IPC.

20. The nominal roll of the appellant shows that he has remained in judicial custody for six years and eight months and has also earned substantial remissions.

21. Thus, if we impose the maximum sentence of imprisonment i.e. to undergo imprisonment for seven years the appellant would be required to be set free forthwith as with remissions he has undergone a sentence of more than seven years. We note that actual sentence undergone by the appellant is six years and eight months.

22. Accordingly, we sentence the appellant to undergo imprisonment for the period already undergone.

23. Unless required in any other case, the appellant is directed to be set free forthwith.

24. Copy of this order be sent to the Superintendent, Central Jail, Tihar. A copy thereof be supplied to learned counsel for the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 25, 2009
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