

*

IN THE HIGH COURT OF DELHI

%

Judgment reserved on: 27.07.2009

Judgment delivered on: 31.07.2009

+

CRL. APPEAL 772/2005

RAM BARAN ...Appellant
Through : Mr.V.K.Raina, Advocate.

versus

STATE ...Respondent
Through : Ms.Richa Kapoor, Advocate.

CRL. APPEAL 849/2005

RAM BARAN ...Appellant
Through : Mr.V.K.Raina, Advocate.

versus

STATE ...Respondent
Through : Ms.Richa Kapoor, Advocate.

CRL. APPEAL 32/2006

SURENDER KUSHWAHA ...Appellant
Through : Mr.V.K.Raina, Advocate.

versus

STATE ...Respondent
Through : Ms.Richa Kapoor, Advocate.

CRL. APPEAL 886/2005

SURENDER ...Appellant
Through : Mr.V.K.Raina, Advocate.

versus

STATE

...Respondent

Through : Ms.Richa Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

: PRADEEP NANDRAJOG, J.

1. Appellants Ram Baran and Surender Kushwaha as also the third co-accused Megh Raj who has since died and for said reason appeals filed by him have been disposed of as having abated, suffered trial in two FIRs being FIR No.30/2002 PS Vikaspuri and FIR No.36/2002 PS Keshav Puram. Pertaining to the first FIR No.30/2002 Ram Baran and Surender Kushwaha have been convicted vide impugned judgment and order dated 30.4.2005 for the offence punishable under Section 364A/34 IPC and the offence punishable under Section 365/34 IPC. Pertaining to FIR No.36/2002 they have been convicted vide impugned judgment and order dated 10.8.2005 for the offence punishable under Section 364A/34 IPC and for the offence punishable under Section 395/34 IPC. The sentences imposed are to undergo imprisonment for life in both cases for the offence punishable under Section 364A IPC. They have been

sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 365/34 IPC and Section 395/34 IPC. Needless to state, the sentence to undergo rigorous imprisonment for five years in each case has been directed to run concurrently.

2. The four appeals are being disposed of by a common judgment for the reason the prosecution alleges against the appellants that they along with co-accused Megh Raj had abducted Anil Suri pertaining to whom FIR No.30/02 is the concerned FIR and had also abducted Suraj Bhan and his son Manoj Kumar pertaining to whom FIR No.36/02 is the concerned FIR. According to the prosecution this fact dawned when Suraj Bhan was set free to arrange the ransom amount to secure the freedom of his son Manoj and he told the police that the appellants and their co-accused had abducted not only him and his son but even Anil Suri.

3. Appellant Ram Baran was the first accused to be arrested on 3.2.2002 and thereafter appellant Surender Kushwaha along with the co-accused Megh Raj were arrested on 3.2.2002 itself.

4. It is thus apparent that except for the evidence pertaining to missing person complaints being lodged; ransom calls being demanded and the two FIRs being registered, there is complete commonality of evidence for the reason Suraj

Bhan and his son Manoj who claim to have been abducted by the appellants and their co-accused Megh Raj have deposed that when they were in the custody of the captors even Anil Suri was held captive by them.

5. Unfortunately, the whereabouts of Anil Suri are still not known. It appears that in all probability he has been killed. We note that as per the prosecution, a fact which could not be proved for the reason it stands recorded in the confessional statements of the appellants the custody of Anil Suri was handed over to a gang of dacoits known as 'Satpal Gang' operating in the jungles of District Etawa, U.P.

6. Pertaining to the abduction of Anil Suri, process of law was set into motion when his wife Smt.Suman Suri went personally to PS Vikaspuri on 19.1.2002 at 1:10 PM i.e. in the afternoon and told the duty constable Rajesh that her husband Anil Suri had gone to Agra with one Sonu to purchase articles on 17.1.2002 and had not since returned home. A missing persons complaint was recorded vide DD No.23-B. SI Sita Ram was entrusted with the job of investigating as to what happened to Anil Suri whose whereabouts could not be ascertained till 25.1.2002. On said date SI Sita Ram recorded a statement of fact to the effect that whereabouts of Anil Suri could not be traced and an offence of kidnapping required to be registered. On receipt of the statement of fact, HC Vijender

Singh the duty constable at PS Vikaspuri registered FIR No.30/02 under Section 365 IPC. SI Sita Ram appears to be a wise man. His gut feeling told him that in all probability Anil Suri was abducted for ransom and since a telephone having number 5545271 was installed in the house of Anil Suri, he anticipated that if his gut feeling proved to be correct, the abductor would in all probability demand ransom by making a call over the phone. He immediately put the said telephone under observation. His gut feeling proved to be correct. On 26.1.2002 a call was received which was answered by Smt.Suman Suri. The caller demanded ransom in sum of Rs.18 lakhs to release Anil Suri. The detail of the call showed that the telephone from where the call was made was somewhere in District Etawa in the State of Uttar Pradesh.

7. Before the location of the telephone number from where the ransom call was made could be pinpointed, on 28.1.2002 another call was received which was responded to by Neelam, the sister of Anil Suri. The caller disclosed his name as Ram Baran and told that ransom in sum of Rs.18 lakhs should be delivered in village Toda near railway station Etawa.

8. Suman Suri received a letter dated 23.1.2002 on a date subsequent thereto, the exact date not having come on record, addressed to her mother-in-law Vimla Suri stating that

Anil Suri was in the custody of the sender and that Rs.13,51,000/- should be paid for the release of Anil Suri. SI Sita Ram seized the said letter.

9. On 28.1.2002, SI Sita Ram left for Etawa and was accompanied by Const.Vikram Singh, Const.Amar Singh and Const.Sharan Dutt. The three police officers reached Etawa the next day.

10. On 28.1.2002, the process of law pertaining to FIR No.36/2002 was put into motion. Sushila wife of Suraj Bhan went to police station Keshav Puram and told the duty officer that her husband Suraj Bhan and her son Manoj Kumar and another boy also named Manoj had left from their residence being House No.360, Rampura, Harijan Basti on 27.1.2002 at 10:00 AM to purchase cosmetics and that till 7:00 PM on 28.1.2002 her husband and her son had not returned. ASI Harjit Singh on duty as the duty officer recorded said statement vide DD No.17-A. SI Sukhram Pal at PS Keshav Puram was entrusted to investigate the matter.

11. On 30.1.2002 a telephone call was received at the telephone number 7157792 installed in the house of Om Prakash, the elder brother of Suraj Bhan. The caller informed him that Suraj Bhan and Manoj were in his custody and would be released if ransom of Rs.25 lakhs was paid. A threat was extended that the two would be killed if the ransom was not

paid. Om Prakash was instructed to pass on the information to the wife of Suraj Bhan and was told that the caller would ring up within an hour. Om Prakash immediately contacted Sushila who reached his house. Indeed, another call was received which was responded to by Sushila. The caller told her to arrange Rs.25 lakhs and that the money should be paid in the jungles of Gwalior, the time and place where the same has to be delivered would be told later on. Sushila passed on said information to SI Sukhram Pal who recorded her statement and made an endorsement beneath the statement and handed over the same to HC Savitri, the duty officer at PS Keshav Puram who registered the FIR No.36/02 for an offence punishable under Section 364 IPC. SI Sukhram Pal not only placed the telephone number 7157792 under observation but even found out from the local telephone exchange as to where from the ransom call was made and learnt that the telephone number where from the call was made was in District Etawa, Uttar Pradesh.

12. SI Sita Ram who was investigating FIR No.30/2002 PS Vikas Puri went to Etawa and from the telephone exchange found out the place where the telephone number 51155 was installed. He did so for the reason said telephone was the one wherefrom calls were being made to the telephone number 5545271 installed in the house of Anil Suri and his wife Suman

Suri. The subscriber of the said telephone was one Rajiv Gupta who had obtained a connection for a public PCO/STD booth and the number was used by the public for making local and outstation calls. The STD booth was near Numaish Chowk, Etawa. Rajiv Gupta handed over the copies of three bills to SI Sita Ram which showed that from telephone number 51155 calls were made to the telephone numbers 5545271 and 7157792 at Delhi.

13. The help of local police was taken by SI Sita Ram. SI Kanwar Pal in-charge special operation group, Etawa was associated to crack the case. Const.Vikram and Const.Sharan Dutt from Delhi Police were stationed at Etawa to keep a watch on persons making telephone calls from the STD booth where the telephone number 51155 was installed.

14. On 3.2.2002 at about 6:35 PM accused Ram Baran went to the STD booth and made a call to the number 5545271 i.e. to the house of Anil Suri and Suman Suri. This was the number under watch and the job of the police was to nab the caller who rang up said number. Const.Vikram and Const.Sharan Dutt immediately apprehended Ram Baran and informed SI Sita Ram of having caught the elusive fish. SI Sita Ram immediately reached the STD booth and seized the print out of the bill showing that on 3.2.2002 a call was made at

6:35 PM from the telephone number 51155 to the telephone number 5545271 at Delhi.

15. Ram Baran was interrogated by SI Sita Ram and his disclosure statement was recorded as per which he informed that he was associated with a gang of Satpal @ Satola who was specializing in kidnapping for ransom. He told that Anil Suri was a captive with the said gang. He further informed that two more persons, namely, Suraj Bhan and Manoj were also held captive by the gang and he could take the police team to the place where some members of the gang of Satpal @ Satola were staying. He informed that the members of the gang included Megh Singh, Surender Khuswaha, Dilasa and one more person whose name he did not know. He led the police team headed by SI Sita Ram to a jhuggi in Ashwapur Kachchar in Etawa from where Surender and Megh Singh were arrested and other members managed to escape. Surender and Megh Singh were interrogated. Their statements were recorded. They confessed being members of Satpal gang. The three accused namely Ram Baran, Surender and Megh Singh were arrested and brought to Delhi.

16. So bold were the remaining gang of Satpal gang that notwithstanding Ram Baran, Surender and Megh Singh being in police custody, Suran Bhan was set free and was told to return with the ransom amount in sum of Rs.25,00,000/-

under threats of danger to the life of his son Manoj Kumar. Suraj Bhan was threatened that if he told anything to the police or did not return with the ransom money, his son Manoj would be killed. Notwithstanding the threat given to Suraj Bhan that his son Manoj would be put to death if he told anything to the police, Suraj Bhan told the police that he was at Delhi and should be provided protection. He handed over to SI Shiv Raj Singh the railway ticket evidencing his journey from Agra to Delhi as also two slips of paper and informed SI Shiv Raj Singh that one slip of paper contained the handwriting of one of the kidnapper on which in Devnagri script was written: *16.2.2002 February Din Shukarwar*. On the other in Devnagri the address: *678, Vikas Kunj, New Delhi – 18 District Centre Telephone 5545271* was written.

17. Since in his disclosure statement Ram Baran had informed that two more persons namely Suraj Bhan and Manoj were in the custody of the kidnappers and the print out of the calls made from the telephone number 51155 at Etawa showed calls made not only to the telephone number 5545271 installed in the house of Anil Suri and Suman Suri, which number was already in the knowledge of SI Sita Ram, calls were even made to the telephone number 7157792, SI Sita Ram made inquiry pertaining to the said number and learnt

that ransom calls were being made at said number demanding ransom to release Suraj Bhan and Manoj.

18. SI Sita Ram learnt that FIR No.36/02 was registered at PS Keshav Puram pertaining to the abduction of Suraj Bhan and his son Manoj. He immediately contacted the investigating officer of said case and learnt that Suraj Bhan had been released with a direction that he should arrange the ransom money to be paid so that his son Manoj could be released and that Suraj Bhan had informed that even Anil Suri was in the custody of Satpal gang.

19. The water which was flowing in two channels hitherto fore pertaining to FIR No.30/02 PS Vikas Puri and FIR No.36/02 PS Keshav Puram, henceforth started flowing in a single channel for the reason it became apparent to the investigating officers of the two FIRs that they were cracking two cases involving abduction of Anil Suri, Suraj Bhan and his son Manoj Kumar and that the kidnappers were the same.

20. On 10.2.2002 another letter dated 2.2.2002 was received by Suman Suri addressed to her mother-in-law Vimla Suri specifying that the ransom of Rs.13,51,000/- be delivered on 15.2.2002 in the evening between 8:00 PM to 5:00 AM at a place 2 kms towards the east of a pakka pul on the river Yamuna in Etawa. SI Sita Ram seized the said letter.

21. SI Sita Ram moved an application before the learned Metropolitan Magistrate for Test Identification of the accused and the date 25.2.2002 was fixed for the Test Identification proceedings to be conducted. Renu Bhatnagar, Metropolitan Magistrate, Delhi conducted Test Identification proceedings on said date. Suraj Bhan correctly identified accused Surender. Ram Baran and Megh Raj refused to participate in the Test Identification Proceedings.

22. It appears that Satpal Gang went into a disarray because three of its members were arrested and the police knew the presence of the remaining in Etawa. Manoj Kumar managed to escape from the custody of the abductors and returned to his house on 25.2.2002. SI Sita Ram made inquiries from him on 28.2.2002. Manoj Kumar told him about Anil Suri being in the captivity of the abductors. SI Sita Ram made efforts to trace Anil Suri but failed in his endeavours.

23. Suman Suri received yet another letter dated 5.3.2002 on 8.3.2002. The same was apparently written by Anil Suri and was addressed to his mother Vimla Suri praying that she should get him released very soon as the captors were treating him harshly and were beating him. SI Sita Ram took possession of the said letter.

24. Specimen writing sample of Ram Baran S-1 to S-4 were obtained and were sent along with the ransom notes

received as also the slip containing the writing: *16.2.2002 February Din Shukravar*. The handwriting expert opined that no definite opinion could be given with regard to one ransom note but that the other questioned documents were in the same hand as of the author of the sample writings S-1 to S-4.

25. In spite of all efforts Anil Suri remains untraced. Presumably, he is dead. Unfortunately, other members of Satpal gang could not be arrested. The ravines of Etawa and the adjoining district of Gwalior continue to be infested with dacoits and kidnappers.

26. Armed with the material afore-noted collected during interrogation and listing as witnesses the police officers associated with the investigation as also Suraj Bhan and Manoj as the eye-witnesses two charge-sheets were filed pertaining to the two first FIRs. Needless to state, the wife of Anil Suri was cited as a witness to prove her husband going missing and not returning and receipt of ransom letters as also ransom calls by her. Sushila was cited as a witness to prove her husband and son going missing and the ransom calls received by her.

27. Needless to state, there is considerable commonality in the evidence led in the Sessions Trial pertaining to the two FIRs. The bills pertaining to the STD calls made from the STD booth of Rajiv Gupta as handed

over by Rajiv Gupta to SI Sita Ram were proved in both cases. The ransom notes received by Suman Suri were proved in the Session Trial pertaining to FIR No.30/02. The police officers associated with the investigation in the two cases after Ram Baran was arrested on 3.2.2002 were examined in both the trials. Suraj Bhan and his son Manoj were examined as witnesses of the prosecution in both the cases. We shall be referring to the various exhibits proved in both the trials with reference to the exhibit marks in the Sessions Trial pertaining to FIR No.30/02 PS Vikaspuri.

28. The bills handed over by Rajiv Gupta to SI Sita Ram were proved as Exs.PW-1/A, PW-1/B, PW-1/C and PW-1/E in the Sessions Trial pertaining to FIR No.30/02. Ex.PW-1/E shows that a call was made at 6:35 PM on 3.2.2002 from the telephone No.51155 at Etawa subscriber whereof is Rajiv Gupta PW-1 who deposed that he was the subscriber of the number and that he handed over the said bills to Inspector Sita Ram. The same shows a call made to telephone No.5545271 at Delhi, which number, as noted above was installed at the house of Anil Suri. The other three bills show telephone calls made from said number at Etawa to the telephone number 5545271 and 7157792. It is thus apparent that the testimony of Suman Suri as also Sushila of having received ransom calls at said two numbers stands linked and established. The

testimony of Const.Vikram PW-7 and Const.Sharan PW-10 that they apprehended Ram Baran at 6:35 PM on 3.2.2002 while he was making a call stands reassured by the fact that Ex.PW-1/E shows that the caller was making a call to the telephone number 5545271 installed in the house of Anil Suri.

29. Thus, qua Ram Baran the prosecution has led unimpeachable evidence of Ram Baran demanding ransom for release of Anil Suri. Said evidence alone is sufficient to prove that he was an abductor or a part of a gang who had abducted Anil Suri. Qua him the charge of having committed the offence punishable under Section 364A IPC for the abduction for ransom of Anil Suri stands proved for the reason Suman Suri has clearly stated in her testimony that the ransom caller would threaten physical harm to his husband if ransom was not paid. His having committed the offence of wrongfully confining Anil Suri also stands established by said evidence.

30. Receiving ransom calls over the telephone and the threat of physical injury to their kin has been proved through the testimony of Suman Suri and Neelam, the sister of Anil Suri as also through the testimony of Sushila, the wife of Suraj Bhan and the mother of Manoj.

31. Suraj Bhan and Manoj are the victims and hence eye-witnesses.

32. In the Sessions Trial pertaining to FIR No.30/02 PS Vikaspuri the father and son appeared as PW-2 and PW-3 respectively. In the Sessions Trial pertaining to FIR No.36/02 they appeared as PW-7 and PW-4.

33. While deposing as the witness of the prosecution in both the Sessions Trial Suraj Bhan named and identified Ram Baran, Surender Kushwaha and Megh Raj as the three persons being part of the gang which had kidnapped him and his son and had kept them in illegal confinement and had threatened to kill them if ransom was not paid. He deposed that he was set free to bring the ransom amount. He deposed that he handed over Ex.P-2 and P-3 being the slips of paper referred to in para 16 above and that he handed over the same to SI Shivraj Singh. He also deposed in both Sessions Trial that even Anil Suri was a captive with them. Manoj son of Suraj Bhan named and identified Ram Baran, Surender Kushwaha and Megh Raj as a part of the gang of abductors who had abducted him and his father while appearing as PW-4 in the Session Trial pertaining to FIR No.36/02. He also deposed that when he and his father were held as captives one Anil Suri was also held captive by the gang. But, while appearing as PW-3 in the Session Trial pertaining to FIR No.30/02 he deposed at a variance stating that appellant Surender Kushwaha was a part of the gang and used to be seen by him when he was held

captive but categorically denied having seen Ram Baran or Megh Singh.

34. This is the only flaw in the case of the prosecution and learned counsel for the appellants was quick to pounce upon the same during arguments in the four appeals. Learned counsel urged that since Megh Raj has died, he need not bother about Megh Raj and neither should this Court trouble itself with Megh Raj. Counsel urged that the changed testimony of Manoj proves that Ram Baran is innocent. Qua appellant Surender Kushwaha learned counsel urged that no reliance could be placed on the testimony of a witness who flip-flops.

35. This was the only submission made by learned counsel for the appellants. The same has hardly impressed us.

36. The reason is obvious. Ram Baran was arrested on 3.2.2002. He was arrested at 6:35 PM from outside the STD booth of Rajiv Gupta. Ex.PW-1/E shows a telephone call made from the telephone No. 51155 installed in the STD booth of Rajiv Gupta to the telephone No.5545271 installed in the house of Anil Suri. Ex.PW-1/A to Ex.PW-1/C shows prior calls made from said number at Etawa to the telephone number 5545271 and the telephone No.7157792 installed in the house of Om Prakash, the brother of Suraj Bhan. Due to the said two telephones at Delhi being put under surveillance SI Sita Ram

had traced calls being made from telephone No.51155 and had deputed police personnel to keep a watch at the telephone STD booth of Rajiv Gupta. Ram Baran being apprehended at 6:35 PM on 3.2.2002 from the STD booth of Rajiv Gupta as deposed to by Const.Vikram and Const.Sharan Dutt and the bill Ex.PW-1/E conclusively and unerringly proves the involvement of Ram Baran.

37. As noted above, the report of the handwriting expert shows that save and except one ransom letter the others received by Suman Suri are in the handwriting of Ram Baran. Even the writing on the slip Ex.P-2 handed over by Suraj Bhan to the police contains the writing of Ram Baran. But, in the absence of any evidence that Section 5 of the Identification of Prisoners' Act was complied with, we ignore said report.

38. Just because Manoj son of Suraj Bhan has retraced a part of his testimony while deposing in one out of the two Sessions Trial does not mean that the testimony of his father Suraj Bhan has to be thrown to the wind. Suraj Bhan has stood his ground while deposing twice as a witness in the two Sessions Trial. He has categorically named both the appellants as a part of Satpal gang and his, his son's and Anil Suri's tormentors.

39. The testimony of Suraj Bhan inspires confidence and establishes that he and his son as also Anil Suri were held captive by the appellants and their cohorts.

40. We find no merit in the appeals which are dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JULY 31, 2009
dharmender