

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

% *Judgment Reserved on : 09th December, 2009*
Judgment Pronounced on:15th December, 2009

+ **CRL. APPEAL No.192/2006**

MUKESH KUMAR Appellant
Through : Mr.Amit Kumar, Advocate.

versus

STATE Respondent
Through : Ms. Richa Kapoor, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 3.6.2005, the learned Trial Judge has convicted the appellant Mukesh Kumar for the offences punishable under Section 363 IPC and 364-A IPC read with Section 34 IPC. For the offence punishable under Section 363 IPC, appellant has been sentenced to

undergo rigorous imprisonment for 3 years and to pay a fine in sum of Rs.1,000/-. For the offence punishable under section 364-A IPC, he has been sentenced to undergo imprisonment for life and to pay a fine in sum of Rs.5,000/-.

2. Briefly stated, the case of the prosecution is that at about 10.00 AM, on 29.6.2004, Roshan aged 3 years was playing in the street near C-24, Suraj Park, Delhi with his elder brother Ravi aged 6 years, co-accused Manohar @ Mannu @ Chikna (juvenile offender) enticed Roshan away by offering to buy him some snacks. After doing so, Manohar @ Mannu @ Chikna handed over the child to appellant Mukesh Kumar, who made a telephone call at the factory where Bade Babu PW-1, father of Roshan was working. The call was received by Vikas Garg PW-3, the owner of the factory. The caller told Vikas Garg to inform Bade Babu that if he wanted his child back safely, he should pay Rupees Five lakhs as ransom. On learning this, Bade Babu informed the police. The police traced that the ransom call was made from an STD booth at Pataudi Road, Gandhi Nagar, Gurgaon and reached said place. When appellant along with Roshan visited the STD booth again on 30.6.2004 to make another call to Bade Babu, police apprehended him and recovered the child Roshan.

3. Process of criminal law was set into motion when at around 5.00 PM, on 29.6.2004, Bade Babu PW-1 visited PS Samay Pur Badli, where SI Satpal Singh PW-7 recorded his statement Ex.PW-1/A wherein he stated that at around 10.00 AM that morning, his sons Ravi and Roshan went to play in the street. But, Roshan aged 3 years did not return home. Despite best efforts to search Roshan in the neighbourhood, he could not be traced. His son Ravi aged 6 years told him that a person whom Ravi had earlier seen in the factory had picked Roshan in his arms and took him towards the jhuggis.

4. On basis of the statement an FIR Ex.PW-5/B for the offence punishable under Section 363 IPC was registered. SI Satpal Singh took over the investigation of the case and inspected the factory at C-24 Suraj Park. At the factory, SI Satpal Singh met Vikas Garg PW-3 and recorded his statement Ex.PW-3/A under Section 161 Cr.P.C., wherein he stated that he received a call on his telephone bearing number 27850036 installed in his factory informing him about the kidnap of Roshan and demanding a ransom of Rupees Five lakhs for the release of Roshan from Bade Babu. He stated that there was a caller ID installed on the factory telephone and from that he

knew that the call was made from a telephone bearing number 0124-2314488.

5. On basis of the number disclosed by Vikas Garg, SI Satpal traced the location of the phone bearing said number to a STD booth situated at shop No.84, Pataudi Road, Gandhi Nagar, Gurgaon. Two police teams headed by SI Satpal Singh along with Bade Babu PW-1 reached said location at around midnight, the same day. No progress could however be made till around 12 noon on 30.6.2004 when appellant Mukesh accompanied by the child Roshan visited the STD booth to make another ransom call. Immediately, SI Satpal Singh and his team arrested the appellant and recovered Roshan.

6. SI Satpal Singh interrogated appellant and recorded his disclosure statement Ex.PW-1/G wherein appellant disclosed the involvement of another co-accused Manohar @ Mannu in the kidnapping of the child. At the instance of the appellant, SI Satpal Singh arrested Manohar @ Mannu, who worked in the same factory where Bade Babu worked. SI Satpal also collected the bill Ex.PW-6/A raised by the service provider pertaining to a telephone having STD facility installed at the booth of Aditya Kumar as also printouts of bills Ex.PW-6/B having two entries at point marked 'A' and 'B' on Ex.PW-

6/D showing that on 29.6.2004 at 4:46 PM a call was made from the telephone installed at the booth to the number 27850036 at Delhi and the next day i.e. on 30.6.2004 at 11:53 AM a second call was made to the same number.

7. The accused were put to trial. Accused Manohar @ Mannu @ Chikna being a juvenile, was tried separately before the Juvenile Board. At the trial of appellant Mukesh, in all the prosecution examined seven witnesses. The testimonies of the relevant ones are being noted below.

8. Bade Babu PW-1 deposed that he was employed in a factory manufacturing polythene bags situated at C-24 Suraj Park, Samay Pur Badli. At about 10.00 AM on 29.6.2004, two of his sons namely Ravi aged 6 years and Roshan aged 3 years went to the street to play. At about 1.00 PM, he learnt that Roshan was missing. His son Ravi told him that a boy working in the factory where he worked, had taken Roshan away towards the jhuggis. He looked for his son, but could not trace him. At around 4.00 PM, he lodged a report with the police. After sometime, Vikas, the son of the owner of the factory, informed him that a telephone call was received informing that Roshan was in the custody of the caller. The caller demanded Rs.5 lacs as ransom for release of Roshan. Subsequently, a

caller ID was got installed at the telephone in the factory, and from the same it was learnt that the call was received from Gurgaon. A police team was formed to go, and he accompanied them to Gurgaon. They reached Gurgaon at around midnight and the child was recovered from the custody of appellant Mukesh at around 2 or 3 AM. Co-accused Manohar was also arrested from the factory in the evening of the day of incident.

9. On being cross-examined he stated that appellant was arrested when he identified his son coming with the appellant towards the STD booth in Gurgaon. Accused Manohar was arrested on basis of the disclosure of appellant Mukesh. Appellant was arrested at around 6-7 AM.

10. Vikas Garg PW-3 deposed that he was the son of the owner of the factory situated at C-24 Suraj Park. At around 2.00 PM on 29.6.2004, when he was present at the factory, he received a telephone at the phone bearing number 27850036 installed in the factory. The caller inquired about Bade, and when he told the caller that Bade was not available, the caller asked him to inform Bade that the son of Bade was in the custody of the caller and Bade should pay Rupees Five lakhs for the safe release of the child. After this call, he installed a

caller ID on said phone. On being cross-examined by the learned APP he admitted that in his statement Ex.PW-3/A recorded by the police, he gave the telephone number from which the call was received with reference to the caller ID facility.

11. Sohran Singh PW-6 deposed that his son Aditya Kumar was running an STD booth at shop No.84, Pataudi Road, Gurgaon and that Ex.PW-6/A and Ex.PW-6/B were handed over by him to the investigating officer.

12. SI Satpal Singh PW-7 deposed that at about 5.00 PM he recorded statement of Bade Babu and after making an endorsement thereunder, got an FIR registered under section 363 IPC. While investigating the case, he inspected the factory at C-24 Suraj Park and from Vikas Garg learnt about a ransom call. From the caller ID installed on the telephone in the factory, the number was traced to Gurgaon. From the Gurgaon telephone exchange, the location of the telephone from which the call was received was found out. Two police teams and Bade Babu PW-1 went to the concerned STD booth in Gurgaon and at around 12 noon on 30.6.2004, when appellant visited the STD booth with the child to make another ransom call, appellant was arrested. At the instance of the

appellant, co-accused Manohar was also arrested. Later on he collected the call records of the ransom calls made from the STD booth at the telephone installed in the factory, from Sohran Singh PW-6.

13. Vide impugned judgment and order dated 3.6.2005, the learned Trial Judge convicted the appellant Mukesh for the offences punishable under Sections 363 IPC and Section 364-A IPC read with Section 34 IPC. While doing so, Learned Trial Judge relied upon the testimonies of SI Satpal Singh PW-7, HC Yashpal Singh PW-4 and Bade Babu PW-1 to hold that the child Roshan was recovered from the possession of the appellant when he was arrested. With reference to the testimony of Vikas Garg PW-3, the learned Trial Judge has held that it was established that ransom was demanded for the safe release of Roshan.

14. At the hearing of the appeal, learned Counsel for the appellant urged that the prosecution had failed to examine two vital witnesses; namely, Roshan the child who was kidnapped and Aditya Kumar the owner of the STD booth from where the ransom calls were ostensibly made. Learned Counsel further urged that there was no evidence as to where the child was kept after he was kidnapped. Nor was there was

any evidence as to in what condition the child was kept after he was kidnapped and there was no evidence of any weapon being used in the offence. In absence of the same, Counsel urged that the kidnapping of the child itself appears to be a myth.

15. Needless to state, the aforesaid contentions require hardly any consideration for the reason it hardly matters as to where the child was kept; in what condition he was kept and whether or not any weapon was used when the child was kidnapped. Roshan was aged 4 years and was an infant. It hardly matters whether he was not examined. Similarly, it was not the case of the prosecution that Aditya Kumar saw the appellant at his booth and thus there was no need to examine him.

16. The only worthwhile contention urged was that the story of the prosecution that the appellant was apprehended at 12:00 noon as a watch was kept at the STD booth owned by Aditya Kumar is unbelievable for the reason the call records noted in Ex.PW-6/B shows that one call was made to the telephone installed in the factory of the father of Vikas Garg at 4:46 PM on 29.6.2004 and the second call was made the next day at 11:53 AM. Counsel urged that Vikas Garg deposed that

the caller ID was installed on the telephone of his father after the ransom call was received, meaning thereby that the police could not know as to from which number the first call was made. It was only when the second call was made that with reference to the caller ID facility could the police know at 11:53 AM on 30.6.2004 that the calls were being made from a telephone installed in Gurgaon. Counsel submitted that it was impossible for the police to identify through the telephone exchange at Gurgaon the place where the telephone was installed in Gurgaon and reach by 12:00 noon to apprehend the appellant.

17. As noted above, Vikas Garg PW-3 admitted that his statement Ex.PW-3/A was recorded by the police and as noted in the statement he gave the telephone number from which the call was received with reference to the caller ID facility installed at the number of the telephone at the factory of his father. Ex.PW-3/A is the statement of Vikas Garg recorded by the investigating officer on 29.6.2004 and the same notes that the call was received from the telephone number 0124-2314488.

18. It is apparent that Vikas Garg forgot the correct facts while deposing in examination-in-chief, but on being

cross-examined by the learned Public Prosecutor, corrected himself.

19. We note that Vikas Garg deposed in Court on 1.12.2004 and the incident took place on 29.6.2004. It is apparent that deposing to a fact after five months, Vikas Garg incorrectly stated the date when the caller ID facility was activated. His statement Ex.PW-3/A recorded contemporaneously by the investigating officer has cleared the doubt.

20. We thus conclude by holding that with reference to the caller ID facility available on the telephone installed at the factory of Vikas Garg's father, when he received the ransom call he noted the number from where the call was made and informed the investigating officer of said number. This happened on 29.6.2004. The claim of the police that they checked the telephone at Gurgaon from where the call was made under surveillance and when the appellant revisited the booth and made another call at 11:53 AM on 30.6.2004, he was apprehended and was having with him the kidnapped child.

21. The last submission urged that there was no threat to the child and hence an essential ingredient of Section 364-A

IPC i.e. extending threat to the life or causing injury to the person of the victim or a conduct which gives rise to such apprehension is missing, is noted and rejected for the reason Vikas Garg has categorically deposed that the caller told him that Bade Babu should be informed that if he wanted his child safely back, ransom in sum of Rs.5 lakhs should be paid. It is apparent that the call for ransom contained a threat to the safety of the child.

22. We find no merit in the appeal.

23. The appeal is dismissed.

24. Copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant who is still in jail.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 15, 2009
Dharmender