

R-67

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

% *Date of Decision: 29th January, 2009*

+ **CRL A 765-67/2005**

HAZARI LAL & ORS. Appellants

Through: Mr.R.S.Mishra, Advocate
versus

STATE Respondent

Through: Mr.M.N.Dudeja, Advocate

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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. The appellants have been convicted for the offence of having entered into a conspiracy to kidnap for ransom Master Abhishek son of Rakesh and of having given effect to the conspiracy.

2. Co-accused of the appellants who could not be apprehended were separately shown in a list appended to the charge sheet as not having been sent for trial on account of said persons being declared proclaimed offenders.

3. The case of the prosecution is that Master Abhishek

aged about 3½ years was found missing from his house on 29.5.2000 and since the young child could not be located his father Rakesh Kumar PW-6 lodged a missing person's complaint at the local police station entered vide DD No.33 at 10:50 PM. The child could not be traced till 31.5.2000 when FIR No.256/2000 under Section 363 IPC PS Hazrat Nizammudin was registered. On 31.5.2000 a letter Ex.PW-3/B was found in the shed where Rakesh Kumar used to tie his cattle as per which it was informed to Rakesh Kumar that his child was in the custody of the sender of the letter and if he desired the safety of his child ransom in sum of Rs.3,00,000/- should be paid by him. It was intimated to Rakesh that even his life was in danger.

4. Letter Ex.PW-3/B was handed over by Rakesh to the police who received the same and got added the offence of kidnapping for ransom i.e. the offence punishable under Section 364 A IPC in the FIR which had already been registered.

5. By means of a telephone call Rakesh was informed that ransom should be paid at Rajghat near river Ganga in the State of UP. The area fell within District Badhu, UP. The police station within jurisdiction whereof the area fell was PS Rajpura.

6. A team of police officers from Delhi, inter alia,

comprising SI Ajay Kumar Singh PW-5 and SI A.K.Singh PW-14 accompanied by Jaibir PW-3, the younger brother of Rakesh PW-6 left for District Badhu UP and got in touch with the police officers of PS Rajpura. A team comprising of local police personnel, namely Const.Shailender Singh PW-10, HC Rajinder Singh PW-11, Const.Davinder PW-12 and Const.Ram Singh PW-13 joined the police officers from Delhi. The naka had to be set up.

7. An informer informed the local police that 10-12 men on horse back with a child were seen in the forest near village Rajpura. This information was received in the afternoon of 6.7.2000. The two aforementioned police officers from Delhi and the 4 police officers attached to PS Rajpura, names noted hereinabove, proceeded on a jeep towards the jungle and stationed their vehicle at the Bridge Hari Baba. They saw certain persons on horses and a few on foot with a child with them.

8. The police team divided itself into 3 groups and took position from different directions and challenged the persons in the forest informing that they had been surrounded and should surrender. The child in the company of the said group was abandoned and the persons in the forest fled.

9. The child Abhishek ran towards Jaiveer PW-3 calling

him 'Papa-Papa' and his recovery was entered in the memo Ex.PW-3/A.

10. Appellant Hazari Lal had worked with Rakesh the father of Abhishek and the young child informed that Hazari Lal had removed him from the lawful custody of his parents. He informed that he was taken around on horseback.

11. The appellants Bhajan Lal and Hansraj were history sheeters at PS Rajpura. Badam Singh, Panni Pal, Banwari and Kripal the stated other persons involved in the offence but who could not be apprehended, were also known faces to the police personnel at PS Rajpura. HC Rajinder Singh PW-11, Const.Davinder PW-12 and Ram Singh PW-13, the police personnel attached at PS Rajpura claimed to have seen appellant Bhajan Lal and appellant Hansraj as also aforementioned persons as within the group of 10-12 persons whom they had seen in the jungle.

12. Thus, the investigation became complete and the only job was to apprehend the accused.

13. Appellant Hazari Lal, appellant Bhajan Lal and appellant Hansraj could be apprehended. Other could not be apprehended.

14. When in jail appellant Hazari Lal, through his wife sent a letter Ex.PW-6/B to Rakesh Kumar expressing regret

and volunteering to suffer a punishment in monetary terms for his misdeeds.

15. It may be noted at the outset that in the letter the sin for which pardon was sought has not been detailed.

16. Needless to state the case of the prosecution hinged upon the testimony of Master Abhishek, Jaibir PW-3, Rakesh Kumar PW-6, SI Ajay Kumar Singh PW-5, Const.Shailender Singh PW-10, HC Rajinder Singh PW-11, Const.Davinder Singh PW-12, Const.Ram Singh PW-13 and SI A.K.Singh PW-14.

17. Master Abhishek PW-2 was examined without oath in view of his tender age. He stated that accused Hazari a person in Court whom he correctly pointed out, took him to a jungle from outside his house. He could not recognize Bhajan Lal or Hansraj.

18. Jaibir PW-3 stated that he was the younger brother of Abhishek's father and was present with the police team in District Badhu when his nephew was recovered. He stated that they have gone to the jungle where the child was produced by a Pradhan.

19. PW-5, PW-10, PW-11, PW-12, PW-13 and PW-14, the 6 police officers who had organized the naka deposed that they had surrounded the forest at around 4:00 PM on

5.7.2000. They saw 10-12 person on horses. On being challenged, the said persons ran away leaving behind the child. The child rushed towards his father crying 'Papa-Papa'.

20. Rakesh Kumar PW-6 deposed that he lodged the missing person's complaint on 29.5.2000 when his son was found missing and that he received the letter Ex.PW-3/B demanding ransom which he handed over to the police. He stated that his brother Jaibir had accompanied the police to UP where the ransom had to be paid. It may be noted here that while deposing as PW-6, Rakesh Kumar, the father of Abhishek has stated that his son used to call his uncle Jaibir as 'Papa'. He deposed that the letter Ex.PW-6/B was handed over to him by the wife of Hazari Lal when he was in jail. He deposed that Hazari Lal was working in his dairy.

21. HC Rajinder Singh PW-11 deposed that he could recognize Hansraj, Badam Singh, Banwari, Karan Singh and Bhajan Lal in the group of persons whom they had seen in the forest as they belonged to his Ilaqa.

22. Const.Ram Singh PW-13 likewise deposed that he had seen appellant Bhajan Lal and Hansraj in the group.

23. Likewise Const.Davinder PW-12 stated that Bhajan Lal and Hansraj were present in the group and he recognized them and a few other persons as they were from his Ilaqa.

24. All the police officers deposed pari-materia that they had gone to the forest area near the village as a secret informer had informed that 10-12 persons on horseback with a child were seen in the jungle. All deposed that when they challenged the group of 10-12 men who had the child with them, they left the child and ran away. The child in question was Abhishek.

25. Needless to state, the appellants have been convicted with reference to the testimony of Master Abhishek who has inculpated appellant Hazari Lal and on the testimony of PW-3 and the police officers with reference to the role of appellants Bhajan Lal and Hansraj.

26. It is urged by learned counsel for the appellants that the shaky testimony of Master Abhishek is insufficient in quality to sustain the conviction of Hazari Lal.

27. We do not agree. Master Abhishek was aged 4½ years when he deposed in Court on 7.12.2001. He was an infant when he deposed. He stated that he knew accused Hazari who took him on a horse to a jungle from outside his house.

28. It assumes importance to note that when Master Abhishek was recovered from the jungle he was with a group of persons who were on horses. The child has thus correctly

stated that he was taken to jungle on a horse, but a young infant is bound to state facts as have been stated by Master Abhishek.

29. The letter Ex.PW-6/B also indicates a guilty trouble mind of Hazari Lal and it being addressed to Abhishek's father is indicative of a wrong committed by Hazari Lal and his desire to come clean.

30. The golden opportunity for Hazari Lal to come clean and throw light was when he was examined under Section 331 Cr.P.C. and throw light on his letter Ex.PW-6/B. He has chosen to deny the said incriminating circumstance. He has chosen not to explain the same.

31. Accordingly, we hold that there is sufficient evidence wherefrom guilt of Hazari Lal can be inferred.

32. Qua appellant Bhajan Lal and Hansraj it is to be noted that neither SI Ajay Kumar Singh PW-5 nor SI A.K.Singh PW-14 from Delhi Police recognized them as a part of the gang in the forest who were having with them Master Abhishek. The reason is obvious, the two police officers could not have recognized any person in the forest for the reason as deposed to by Const.Davinder PW-12 they had seen the group of men on horse back from a distance of 250 meters.

33. Experience tells us that if a person sees an

unknown person at a distance of 250 meters the viewer would not be able to remember the features of the person seen.

34. The persons who have identified appellant Bhajan Lal and Hansraj as a part of the group in the jungle are police officers of PS Rajpura who saw the group of men from a distance of 250 meters. It needs to be highlighted that the said police officers have given a justification for having recognized Bhajan Lal and Hansraj on the ground that Bhajan Lal was a history sheeter and hence known to the local police and hence Hansraj was an inhabitant of their Ilaqa.

35. Unlike cities where police personnel may not know by name and face the persons residing within the area of their police station, in rural areas police personnel do know by name and face the persons residing in the area falling within the jurisdiction of their police station.

36. Experience guides us that if one sees a known face at a distance of 250 meters, the viewer instantly recognizes the person concerned.

37. It be highlight that the day when Abhishek was recovered was 6.7.2000 and the time was around 3/4 PM. In the month of July, in the Northern and Central part of India there is good sunlight between 3 and 4 PM. The place where the child was recovered is District Badhu in the State UP.

38. It is true that while deposing in Court Jaibir PW-3 has said that the child was handed over by the Pradhan of the village in District Badhu, but all other witnesses to the recovery of the child have deposed unanimously that Master Abhishek was recovered by them on being abandoned in the forest when the group of men in whose custody he was were challenged by the police and upon seeing that they were surrounded by the police the said men fled from the forest leaving behind Master Abhishek.

39. The ingredient of a threat to the life of Master Abhishek is to be found in the ransom note Ex.PW-3/B.

40. We find no reasons to interfere with the impugned decision.

41. The appeal is dismissed.

42. 3 copies of the present decision are directed to be sent to the Superintendent Central Jail Tihar for the reason the appellants are still in jail. The Superintendent Central Jail Tihar shall make available a copy each to the appellants.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

**JANUARY 29, 2010
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