

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

% *Judgment Reserved on : March 04, 2010*
Judgment Delivered on : March 10, 2010

+ **CRL.APPEAL NO.735/2001**

SURJEET SINGH & ANR. Appellants
Through: Mr.R.D.Sharma and Ms.Samta Jain,
Advocates

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.

1. The above captioned appeal has been filed by the appellants challenging the impugned judgment and order dated 13.9.2001 convicting them for the offences punishable under Sections 342/364-A/380/384/394/506(2)/34 IPC. Co-accused Navin has been acquitted.

2. Navin has been acquitted for the reason the case of the prosecution against him that he was the person who withdrew Rs.15,000/- from the account of Davinder Dhawan, the person who was allegedly kidnapped, could not be proved since the witnesses from the bank failed to identify him as the

person who presented the cheque for encashment; and the handwriting expert gave an inconclusive opinion with reference to the sample writings of Navin and that on the cheque in question. Surjeet Singh has been convicted on account of two gold bangles (karas) and the mobile phone of the victim being held proved to be recovered pursuant to the disclosure statement of Surjeet Singh, which articles have been held to be duly proved as belonging to the victim. Chandroop has been convicted on account of a gold mangal-sutra belonging and proved to be belonging to the wife of the victim being recovered pursuant to his disclosure statement.

3. Briefly stated, the case set up by the prosecution is that on 6.6.1997, at about 6:00 P.M., when Davinder Dhawan PW-2 was leaving from his office at Jet Engine Overhaul Complex at IGI Airport and was heading towards his car bearing registration No.DL-2CF-8611 parked in the parking lot, two persons were standing near the said car and requested Davinder Dhawan PW-2 to drop them near Centaur Hotel. Davinder Dhawan consented. All commenced their journey. On the way the third accused was seen walking besides the road and at behest of the two accused, Davinder Dhawan offered a lift to the third accused as well. After traveling some distance, the accused made Davinder Dhawan stop the car. The accused grappled with Davinder Dhawan and compelled

him to lie down in the rear portion of the car and covered his face. One of the accused took the driver's seat and drove the car outside Delhi into some fields in Village Ghuman Khera. The accused blind folded Davinder Dhawan and confined him in a room constructed in between the said fields. They queried Davinder Dhawan about his financial capacity and accordingly demanded Rs.20,000/- from him for his release and threatened that if the said amount was not paid, they would kill him. They also gave beatings to Davinder Dhawan. When Davinder Dhawan informed them that none of his family members were in town to be able to pay the amount, the accused snatched the keys of the house of Davinder Dhawan from him and compelled Davinder Dhawan to draw up a site plan of his house i.e. house bearing No.B-9/9232 at Vasant Apartments, LIG Musoodpur, Main Road, Vasant Kunj. In the night intervening 6.6.1997 and 7.6.1997, at about 3:00 or 4:00 A.M. two of the accused visited said house belonging to Davinder Dhawan and on basis of the site plan drawn by Davinder Dhawan, stole a cheque book pertaining to the bank account of Davinder Dhawan and some jewellery items from the said house. They took the cheque book to Davinder Dhawan and compelled him to draw a bearer's cheque for whatever balance was there in his account. Thus, Davinder Dhawan drew a bearer's cheque for Rs.15,000/-. The accused further

snatched a gold chain which Davinder Dhawan was wearing, Rs.2,000/- to 2,500/- cash which Davinder Dhawan was carrying at that time, and his Motorola cell phone from Davinder Dhawan. After doing so, on the persuasion of Davinder Dhawan, the accused took him to his car and let him go.

4. Thus, it is apparent that as per Davinder Dhawan he was kidnapped on 6.6.1997 and was set free the next day on 7.6.1997.

5. Process of criminal law was set into motion when on 9.6.1997 (two days after he was freed from captivity) Davinder Dhawan submitted a written complaint Ex.PW-2/B at PS IGI Airport enumerating the entire incident commencing from his giving a lift to the three boys, the boys using force upon him and forcibly taking and confining him in a room in some fields outside Delhi, extracting details about his financial position and his residence from him, thereafter going to his house and bringing his cheque book, compelling him to draw a bearer's cheque and snatching cash and gold chain from his person and subsequently releasing him. In the complaint, he additionally stated that during the time he was confined in the room in the fields, the three persons who had confined him constantly used his cell phone having a sim card bearing number 9810073959 to contact some person named Anoop. Davinder

Dhawan also stated in the complaint that when he reached his house he found that gold bangles, mangal sutra, and two gold chains belonging to his wife were missing from the house.

6. Relevant would it be to note that in the complaint the description of the three persons who allegedly kidnapped Davinder Dhawan has been given with graphic details being that one person was dark complexioned and had curly hair. His approximate height was 5'10" or 5'11", had a small trimmed moustache and during the captivity wore a white T-shirt and jeans with sports shoes. The second person was described to be approximately 5'10" in height, had straight hair and moustache and during the period of confinement wore a light blue coloured shirt with jeans and sports shoes. The third person was described to be dark complexioned, wearing specs, slightly shorter in height than the other two persons and during the period of confinement wore a grey-coloured pant and shirt with sports shoes.

7. The said complaint was assigned to SI Ravinder Kumar PW-17 for investigation, who on the basis of the complaint got registered FIR No.192/1997 Ex.PW-20/A at PS IGI Airport. He inspected the site from where the accused took lift from the complainant. He obtained the call records Ex.PW-17/C of the cell phone bearing number 9810073959 from 4.6.1997 to 7.6.1997. As per said call records, on 7.6.1997 at

08:23 A.M. a call was made from the cell phone belonging to the complainant to telephone bearing number 011-5182918 and on the same day at 10:01 A.M. and 12:14 Noon two calls were made from said cell phone to the telephone bearing number 011-5012313. SI Ravinder Kumar tracked the said telephones and learnt that the number 011-5182918 was in the name of one Anoop Kumar while the number 011-5012313 was in the name of one Bharti of Village Ghumman Hera. On 12.6.1997, SI Ravinder Kumar reached village Ghumman Hera and on interrogating Bharti and her two sons learnt that the said telephone number was installed in a grocery shop and was in public use. When SI Ravinder Kumar described the features of the persons as described by complainant Davinder Dhawan in his complaint to the sons of Bharti, the said sons of Bharti acknowledged that the description matched Surjeet and Chandroop. They told SI Ravinder that Surjeet was working in a workshop of Indian Airlines and that both Surjeet and Chandroop often used the telephone in question to make or to receive calls. Taking cue from said information, SI Ravinder contacted the brother of Surjeet Singh i.e. Veer Singh who confirmed that Surjeet Singh worked in the repair workshop of Jet Planes. On learning from Veer Singh that Surjeet Singh was expected to return soon, SI Ravinder waited there and when Surjeet Singh appeared arrested him. He interrogated Surjeet

and recorded his disclosure statement wherein Surjeet disclosed the involvement of accused Navin in the incident apart from Chandroop and him. He also stated that he can get recovered Rs.5,000/- in cash, the two gold karas and the mobile phone belonging to the complainant. Pursuant to the said disclosure statement, Surjeet led the investigating officer to his house and from a room got recovered Rs.5,000/- cash, two gold karas i.e. his share of the loot along with a battery of a mobile phone and a mobile phone of Motorola make. The same were seized vide memo Ex.PW-15/A. At the instance of Surjeet Singh, appellant Chandroop was also arrested. His disclosure statement was also recorded as per which he stated that he can get recovered the mangal-sutra belonging to the wife of the complainant. Thereafter Chandroop led the investigating officer to his house and from a room therein got recovered a mangal sutra belonging to the wife of the complainant and a toy pistol stated to be used in the commission of the offence. The two were seized vide memo Ex.PW-17/G.

8. The seized jewellery articles were put up for TIP before Sh.Brijesh, learned Metropolitan Magistrate, on 4.8.1997. As per the TIP proceedings as recorded in Ex.PW-12/A duly proved by Sh.Brijesh Sethi PW-12, the Gold Karas Ex.P-2 and the Mangal Sutra Ex.P-1 were correctly identified by

the complainant Davinder Dhawan and his wife Nisha Dhawan PW-3. Relevant would it be to note that the mobile phone allegedly got recovered by appellant Surjeet was not put up for TIP.

9. Complainant Davinder Dhawan deposed the facts as noted in para 3 above pertaining to how he was kidnapped on 6.6.1997 and what happened to him during captivity and his being set free on 7.6.1997, but with a material difference qua the identity of the accused.

10. In direct conflict with the contents of his written complaint Ex.PW-2/B in which he gave graphic details of the physical features of the accused, while deposing in Court, he failed to identify any accused and stated that he could not identify the accused because they were wearing black goggles and caps and that he was blind folded when he was kidnapped.

11. Relevant would it be to further note that with reference to his testimony in court that the two gold karas and the mangal-sutra got recovered by the appellants belonged to his wife, on being cross-examined he admitted that the gold karas and the mangal-sutra were shown to him at the police station before the Test Identification Proceedings were held. It may be noted that for the first time in court a mobile phone was identified by him as belonging to him; this was the mobile

phone claimed by the prosecution which was got recovered by appellant Surjeet.

12. SI Ravinder Kumar PW-17 deposed that on 9.6.1997 the complaint Ex.PW-2/B was assigned to him for investigation. He collected the call details of the SIM card pertaining to the No.9810073959 belonging to the complainant and from the same learnt that on 7.6.1997 calls were made to two telephone numbers having No.5182918 and 5012313 respectively. On tracking the said telephone numbers he learnt that one of the said number was installed in village Ghumman Hera. On visiting village Ghumman Hera, from the lady in whose name the said telephone was installed he learnt that the description given by the complainant matched Surjeet and Chandroop. He arrested Surjeet from the said village and recorded his disclosure statement wherein he stated that he could get two gold karas, a mobile phone and Rs.5,000/- cash recovered from his house. Pursuant to his disclosure statement Surjeet got recovered Rs.5,000/- cash and two gold karas and a mobile phone from an iron almirah lying in a room in his house. Thereafter, accused Chandroop was arrested at the instance of Surjeet. Chandroop made a disclosure statement and stated that he could get a gold mangal sutra recovered from his house. Pursuant to said disclosure

statement Chandroop got recovered a gold mangal sutra from a sandook lying in his house.

13. HC Ram Phal PW-15 deposed that on 12.6.1997 he accompanied SI Ravinder Kumar when SI Ravinder arrested accused Surjeet from his house and effected recovery of a cell phone, two gold karas and Rs.5,000/- cash at the instance of Surjeet from his house. SI Ravinder also arrested Chandroop in his presence and effected the recovery of a gold mangal sutra from the house of Chandroop at his instance pursuant to his disclosure statement.

14. Davinder Dhawan PW-2 and Nisha Dhawan PW-3 identified the two gold karas and the mangal-sutra got recovered by the appellants as belonging to them.

15. In view of the testimony of Davinder Dhawan that he could not recognized any accused because he was blind folded and that the three persons who had kidnapped were wearing caps and dark glasses, casts a very serious doubt on the very foundation of the case of the prosecution for the reason SI Ravinder Kumar PW-17 claims to have tracked the appellants on the basis of their descriptions disclosed to him by Davinder Dhawan.

16. It also assumes significance that Davinder Dhawan, who claims to have been kidnapped on 06.06.1997 and released on 7.06.1997, took time till 09.06.1997 to report the

matter to the police. He has rendered no satisfactory explanation why he took two days to report the time. If indeed, Davinder Dhawan was kidnapped as claimed by him, it was expected that he would report the crime immediately when he regained his freedom. If at all he was kidnapped, it is obvious that Davinder Dhawan thought over for two days as to what he should tell the police. This delay which has remained unexplained becomes fatal to the prosecution.

17. As regards the recoveries attributable to the appellants, suffice would it be to note that in the peculiar facts of the instant case, there is a possibility of planting taking place. We find it strange that three persons would kidnap Davinder Dhawan who is a man of some means evidenced by the fact that he owns a motor vehicle and lives in a reasonably well of colony, but would release him on a paltry gain of Rs.15,000/-, two gold karas and a gold mangal-sutra. The whole story as told by Davinder Dhawan appears to be a fairy tale. That the police in India resorts to planting articles was noticed as far back as 67 years past. The Lahore High Court, in the decision reported as Shera v. Emperor AIR 1943 Null 5 observed:-

“.....When the evidence of recovery of stolen property is attacked, the Court has to examine the evidence in the light of the following alternative hypothesis: (1) The complainant might have been persuaded by the police to state in the first information report that property which in fact was not stolen

had been stolen and to hand over such property to the police to be used in fabricating recoveries from the accused persons. This assumes a conspiracy between the informant and the police from the very start. (2) The police might have obtained property similar to the stolen property from the complainant or some one else and used it for the purpose of fabricating the recoveries. (3) The police might have suppressed some of the stolen property recovered from an accused person and utilized it in inventing a recovery from another accused person, (4) The property might have been recovered from a third party and used by the police in one of the impugned recoveries.”

18. Giving emphasis to the fact that the architect of the case of the prosecution Sh.Davinder Dhawan who also happens to be the victim of the crime has not supported the case of the prosecution, additionally noting afore-noted facts as per paras 13 to 17 above, we are of the opinion that the appellants are entitled to at least, the benefit of doubt.

19. We do so and acquit the appellants of the charge held proved against them. The appeal is allowed. The appellants are acquitted of the charge framed against them. The impugned judgment and order dated 13.09.2001 is set aside and also the order on sentence dated 14.09.2001.

20. The appellants are on bail. The bail bond and surety bonds furnished by the appellants are discharged.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

March 10, 2010