

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

% *Date of Decision: 19th March, 2010*

+ **CRL.APPEAL NO.271/2008**

COLLECTOR @ D.M. S/O NAWAB SINGH Appellant
Through: Ms.Shraddha Bhargava, Advocate

Versus

STATE Respondent
Through: Ms.Richa Kapoor, 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. Vide impugned judgment and order dated 31.05.2007, the appellant has been convicted for the offences punishable under Section 368 IPC and Section 364-A IPC.

2. For the offence punishable under Section 364-A IPC, the appellant has been sentenced to undergo imprisonment for life and for the offence punishable under Section 368 IPC he has been sentenced to undergo RI for 4 years.

3. In sustaining the conviction of the appellant, the learned trial Judge has accepted the testimony of the victim Babble PW-6. The learned trial Judge has held additionally that the testimony of HC Richhpal Singh PW-1, Ct. Nathu Ram PW-3, Ct.Sohanbir Singh PW-4, Mukesh Kumar PW-7 (the brother of Babble) and SI Satyender Pal Singh Tomar PW-8 establishes that the victim i.e. Babble was rescued from the clutches of the appellant.

4. The only question before us which we need to consider is, whether the witnesses of the prosecution are credible witnesses.

5. At the outset, it may be noted that for the first time, Mukesh Kumar PW-7 reported that his brother Babble PW-6 was kidnapped on 03.09.2005 when his statement Ex.PW-7/A was recorded at the police station by ASI Sunita PW-2 and based thereon FIR Ex.PW-2/B was registered and investigation was assigned to SI Satyender Pal Singh Tomar PW-8.

6. In his statement Ex.PW-7/A Mukesh Kumar stated that his brother Babble was missing since 19.08.2005 and that on 23.08.2005 he received a telephone call from Rajesh @ Bhura who was staying next to their residence demanding Rs.5

lacs to release his brother under threat of killing his brother. He informed that he did not tell the police because he was threatened that if he did so, life of his brother would be in danger.

7. As claimed by the police officers names whereof have been noted hereinabove, SI Satyender Pal Singh Tomar immediately formed a raiding party and reached village Dabua, District Farukhabad,UP and were able to locate the place where the victim had been kept in custody. The victim was found tied and was rescued. The appellant was apprehended at the spot.

8. Rajesh @ Bhure and his family members were declared as Proclaimed Offenders.

9. Let us have a look to the testimony of Babble PW-6, the victim. He deposed that his sister Sudesh was married in Village Kotluwali. Bhure, nephew of the appellant was residing as a tenant in a room in their house and on Raksha Bandhan day asked him to accompany to his native village. He went with Bhure to village Dabua. Appellant met them in the said village. He was taken to a hut in a forest. He was ill fed. On asking as to why he was ill treated by them, Bhure told him that he would extract ransom from his mother. Babble told them that he

would leave for his house on which they tied him with a rope. He was taken to a STD booth and was forced to make a telephone call to his mother. He rang up Mobile No.9818284728 belonging to his brother. The police came on a Sunday along with his brother and rescued him.

10. On being cross-examined, he stated that once before, may be 3 or 4 years prior, he had gone to village Bewar with Bhure. He stayed with Bhure for 12-13 days and used to roam around in the village.

11. Thereafter, we find considerable confusion in the testimony of Bhure for the reason he has referred to vagabonds being present and his being scared of them but it is not clear whether he has referred to vagabonds being present when he went to village Bewar 3 or 4 years ago or when he was kidnapped. For the benefit of the reader of this judgment we think it appropriate to quote verbatim of what Babble has deposed.

12. After deposing that 3-4 years prior he had gone to village Bewar with Bhure, he deposed: *"Bewar is at a distance of about 60-70 kms from village Dabua. Bhure took me along with him on the pretext of visiting his village. In village Dabua,*

Bhure and his family members lives in a katcha house. The hut, where I was kept in the forest was at a distance of about 15 Kms from village Dabua. I was taken to that hut without ties my hands and legs. It was told to me that Bhure and his family members were going to the house of sister of Bhure. I went to that hut along with Bhure alone from village Dabua. We had gone by train and we had to walk on foot for reaching that hut for about 2 Kms. I cannot name that Railway Station where we alighted from the train. From there, we boarded private vehicle and went to Kempel. From Kempel, I was taken on foot to the hut referred above. That hut was in forest and one can reach to that hut only on foot, after travelling a considerable distance. There were five persons, present in that hut. Bhure told that those persons were known to him. Till I stayed in that hut, those five persons were also present there. Food was cooked there in that hut. I was kept there for about one or two week. Again said, I reached Delhi after two weeks. I left Delhi on Raksha Bandhan. I stayed for one night at village Dabua and on the next day, I was taken to the hut referred above. I cannot give the exact date when I was taken to the hut. That hut may be 20 feet in length. There were five-six other huts nearby.

Occupants of those huts were not visiting the hut, where I was detained. I was kept for one week at the hut, where food was cooked. When I insisted to leave for Delhi, I was removed to the hut from where I was recovered. I was kept at that hut for about one week. I was assaulted by Bhure and one other boy. I was kept free at the hut, where food was cooked without tying my hands and legs. During my stay for one week at the hut referred above, where food was cooked, I was not told that I would be freed after payment of ransom. During that period, I used to roam here and there. By that time, I was properly fed. I was not assaulted by then. I had not moved alone towards Delhi, since vagabonds used to roam in the area on horses and they would have killed me. When, I went to that hut along with Bhure, there was no fear for we people, since Bhure was known to those vagabonds. Bhure told me that he was known to those vagabonds, when I was staying there at the aforesaid hut without any restraints on me. In my presence, none of the vagabond came to hut of Bhure to visit him. When, I was tied and kept at another hut, no vagabond came there to meet Bhure and his family members.”

13. It is apparent that Babble has mumbled-jumbled everything. With reference to his earlier visit with Bhure and his staying with Bhure in village Bewar for 12-13 days, he has stated that he used to roam around in the village and for the reason he claims to have come back, it appears that he would not be referring to vagabonds moving around when he was tied up.

14. For otherwise we find it strange that when Babble was abducted and tied, yet vagabonds were permitted to move around and come near him.

15. With reference to the testimony of the four police officers and PW-7, we find considerable confusion as to where exactly was Babble recovered from.

16. Even there is confusion as regards the time when they reached the village.

17. At the fore-front of our doubt regarding recovery is the fact that no police officer from the concerned police station in the district concerned in the State of UP has deposed that any police team from Delhi came to P.S. Nawabganj. The place where from Babble was ostensibly recovered falls within the jurisdiction of P.S. Nawabganj.

18. As per HC Richhpal Singh and Ct.Sohanbir Singh it was night time when they reached the village in U.P. As per Ct.Nathu Ram the time was 10:00 A.M. As per Mukesh Kumar the time was 5:00 to 6:00 P.M. when they reached village Dabua.

19. As per HC Richhpal Singh, Babble was recovered from a place beneath a tree and there was no hut nearby. As per Ct.Nathu Ram, Babble was recovered from near a hut. Ct.Sohanbir Singh also speaks in the same language as Ct.Nathu Ram. Even Mukesh Kumar speaks in harmony with Ct.Nathu Ram and Ct.Sohanbir Singh but SI Satyender Pal Singh Tomar speaks at a variance. According to him, Babble was recovered from a cot inside the hut.

20. Let us have a look to the testimony of Mukesh PW-7.

21. As against what Babble stated about the call of ransom i.e. that he rang up the mobile number of his brother, Mukesh claims that the telephone was received at the house of their neighbour.

22. It is important to note that as per Babble he was taken to a telephone booth wherefrom ransom call was made and he was made to speak to his mother and brother. The

owner of the STD booth has not been examined as a witness. Neither has Mukesh's mobile number and his call details seized and produced in evidence nor his neighbour in whose house Mukesh claimed having received the ransom call has been examined as a witness.

23. We note that no site plan of the place wherefrom Babble was recovered has been prepared or proved at the trial. We further note that while deposing in court Mukesh Kumar has not stated that he did not report kidnapping of his brother prior to 03.09.2005 on account of fear.

24. If Mukesh had received a ransom call on 23.08.2005 and he was put under fear of death of his brother if matter was reported to the police and for the said reason he did not report the matter to the police, we would have expected Mukesh Kumar to have spoken as to what did he do for nearly two weeks to secure the release of his brother. It assumes importance to note that as per Mukesh Kumar when he received the ransom call on 23.08.2005, Bhure spoke to him. Bhure was known to him. Bhure demanded ransom. If this be so Mukesh's natural conduct would be to go to the village of Bhure and try

and secure the release of his brother. Mukesh Kumar has done nothing of the sort.

25. The gibberish testimony of Babble coupled with the afore-noted features of the case compels us to hold that benefit of doubt needs to be extended to the appellant. We do so.

26. The appeal is allowed. Impugned judgment and order dated 31.05.2007 is set-aside. The sentence imposed upon the appellant vide order dated 01.06.2007 is quashed.

27. The appellant is still in jail. A copy of this order be sent to the Superintendent, Central Jail, Tihar with a direction that the appellant be released unless required in custody in some other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 19, 2010
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