

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

% *Date of Decision : January 27, 2010*

+ **CRL.APPEAL NO.729/2007**

BRIJESH KUMAR GAUTAM Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.

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 20.12.2006, the appellant has been convicted for the offence punishable under Section 364-A IPC.

2. Vide order on sentence dated 22.12.2006, the appellant has been visited with the penalty to undergo imprisonment for life and pay fine in sum of Rs.5,000/-; in default of payment of fine it has been directed that the appellant shall undergo 6 months' simple imprisonment.

3. On 7.11.2004, Vijay PW-1, aged 9 years went out of his house to play at around 2:00 PM and when he did not return within reasonable time his parents started searching for the young child and on not finding him his father Lotan Dass PW-3 lodged a report that his child was missing; pursuant whereeto FIR Ex.PW-11/A was registered.

4. Ransom calls were received on telephone No.22824312 which was installed in the house of Jagdish Prasad PW-4, a neighbour of Lotan Dass PW-3. A caller ID was activated on the phone. Repeat call being received it was identified that the place wherefrom ransom call was made was Allahabad. A police team was constituted to proceed to Allahabad and on 15.11.2004, the appellant was apprehended along with the kidnapped child at Sarai Chandi Railway Station, Allahabad.

5. The owner of two telephone booths; namely Sanjay Kumar Yadav PW-7 and Vipin Singh PW-9 informed the police that apart from the appellant another person used to accompany him when calls were made from their STD booths. From the appellant, the police learnt that the name of the said boy was Narinder Kumar Maurya who was also apprehended and being a juvenile was sent for trial before the Juvenile Justice Board.

6. Needless to state, qua the appellant the evidence led at the trial was of the appellant, along with the juvenile co-accused, visiting the STD booth of Sanjay Kumar Yadav PW-7 and Vipin Singh PW-9; the two STD booths being in Jaunpur, UP and Allahabad, UP and making telephone calls to telephone No.22824312. This was attempted to be proved through the testimony of Sanjay Kumar Yadav and Vipin Singh. Link evidence was of Jagdish Prasad PW-4 in whose name telephone No.22824312 was installed by the MTNL authorities. Further evidence was of the kidnapped child being recovered from the appellant at the railway platform, which recovery was sought to be proved through the testimony of Lotan Dass PW-3, the father of the child kidnapped, the testimony of Vipin Singh PW-9; the testimony of SI Dharmender Pratap Singh PW-13 and that of HC Satender Kumar PW-12. Lastly, was the testimony of the kidnapped child Master Vijay PW-1.

7. Sanjay Kumar Yadav PW-7 proved call records maintained by him of his STD booth i.e. Ex.PW-7/A, but he failed to identify the appellant as the one who had been visiting his booth to make calls to the telephone No.22824312.

8. Vipin Singh PW-9 proved the call details Ex.PW-9/A pertaining to his STD booth which showed calls made to the telephone No.22824312. He identified the appellant as the

one who had made the calls.

9. The call records Ex.PW-7/A show that on 8.11.2004 two telephone calls have been made from the STD booth of PW-7 to the telephone No.22824312. The call records Ex.PW-9/A of the STD booth belonging to Vipin Singh PW-9 reveals that on 13.11.2004 a call has been made from his telephone booth to the telephone No.22824312.

10. Having perused the testimony of PW-7 and PW-9 and having perused the call record details Ex.PW-7/A and Ex.PW-9/A it is apparent that calls were made from the STD booths of the two witnesses to the No.22824312 at Delhi. That PW-7 failed to identify the appellant as the one who had made telephone call from his booth does not dent the case of the prosecution for the reason PW-9 has identified the appellant as the one who made the telephone call from his booth. Recovery of the kidnapped child from the custody of the appellant has been duly proved through the testimony of PW-3, PW-9, PW-12 and PW-13. We find no blemish in the evidence of the said persons. Testimony of PW-4 proves that telephone No.22824312 was installed at his residence.

11. The child who was kidnapped; namely Vijay, has appeared as PW-1 and has identified the appellant as the one who kidnapped him and threatened to drop him in the well if

ransom was not paid. He has also deposed that the appellant used to beat him. He had deposed that the appellant took him away on the pretext of taking him to the house of his aunt.

12. We find no blemish in the testimony of PW-1.

13. When the parents of the kidnapped child; namely Smt.Lali and Shri Lotan Dass appeared as PW-2 and PW-3 respectively, suggestions were put to them that due to a property dispute with the sister of the appellant he was falsely implicated.

14. They admitted that the appellant was the son of the brother-in-law of the son of the elder brother of PW-3. They also admitted that there was some property dispute.

15. But it would be interesting to note that when he was examined with respect to the incriminating circumstances against him, the appellant stated it was a false case. He did not kidnap Vijay. He took him along on the request of Vijay's father. No such suggestion was given to Lotan Dass when he appeared as PW-3.

16. From the evidence led the prosecution has successfully established that Master Vijay went missing from his house on 7.11.2004. On 8.11.2004, a ransom call demanding Rs.4 lakhs for the safe release of Vijay was received on telephone No.22824312 installed in the house of

Jagdish Prasad PW-4, a neighbour of the kidnapped child. Through the testimony of PW-7 and PW-9 it has been established that calls were made from their STD booths to the telephone No.22824312. PW-9 has identified the appellant as the one who had made telephone calls from his STD booth.

17. The recovery of the kidnapped child from the custody of the appellant has been proved through the testimony of PW-3, PW-9, PW-12 and PW-13.

18. PW-1 i.e. Vijay, the child kidnapped has given an eye-witness account.

19. That there was a threat to the life of the kidnapped child has been proved through the testimony of PW-1 and PW-3. PW-1 has clearly stated that the appellant had threatened to throw him inside a well if ransom was not paid. PW-3, the father of PW-1 has stated that he was threatened that if he would not pay the ransom, his son would be shot.

20. It is virtually an open and a shut case against the appellant. There is hardly any scope for any worthwhile arguments to be advanced on behalf of the appellant.

21. Before concluding we may say that there admittedly is some property dispute between the parents of the kidnapped child and the sister of the appellant. But, from said fact we cannot draw an inference that the parents of the kidnapped

child have falsely implicated the appellant. It could well be that because of not receiving the dues, as thought of by the appellant, from the parents of the kidnapped child, the appellant thought that one route to get money would be to kidnap Vijay and demand ransom.

22. We find no merit in the appeal which is dismissed.

23. Since the appellant is in jail, copy of this order be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 27, 2010
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