

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

% Date of Decision : 4th May, 2010

+ **Crl. A. 895/2008**

RAKESH KUMAR Appellant
Through: Mr.Rahul Gupta, Mr.Shekhar Dasi,
Mr.Rajnish Mishra and
Mr.Madhur Seth, Advocate.

versus

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

+ **Crl. A. 112/2009**

KAILASH Appellant
Through: Mr.Sunil Bharti, Advocate.

versus

THE STATE OF DELHI 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. 4 accused, namely, Rakesh @Vinod, Ram Sewak, Kailash and Maya Shanker were charged for the offence of having kidnapped Master Aryan Victor at 11:00 AM on 30.4.2005 from near his house at Railway Colony, Kishanganj.

They were further charged with the offence of demanding ransom in sum of Rs.15 lakhs under threat of causing death or hurt to the child i.e. the offence punishable under Section 364-A IPC. Needless to state, all accused were charged of having acted in concert and thus Section 34 IPC was stated to be attracted.

2. At the end of the trial, no incriminating evidence surfaced against accused Ram Sewak and Maya Shanker. Thus, vide impugned judgment dated 1.10.2008 they have been acquitted. Appellants Rakesh and Kailash have been convicted.

3. From a perusal of the impugned decision, we find that Kailash has been convicted on the testimony of Inspector Santosh Kumar Singh PW-12 as per whom Kailash was arrested when he was having custody of the kidnapped child Master Aryan Victor. Appellant Rakesh has been convicted in view of the testimony of Const.Dilbagh PW-8, Insp.Dayanand PW-9 and SI Sanjay Bhardwaj PW-11.

4. It may be noted that Master Aryan Victor aged 5½ years when he was kidnapped has not been produced as a witness.

5. Case of the prosecution is that Master Aryan Victor aged 5½ years, son of the complainant Bhaskar Victor PW-2, was detected to be missing at 11:00 AM on 30.4.2005 from

outside house No.113/10 Railway Colony, Kishanganj. A missing person's complaint was lodged by Bhaskar Victor in which he suspected none for having kidnapped his son. On 16.5.2004 he informed the police that he had received a ransom call on his mobile No.9899031080 from a mobile No.9839030127 and that the caller has demanded ransom in sum of Rs.15 lakhs. The money had to be paid, as per the demand of the caller, in the town of Bareilly in the State of Uttar Pradesh on 19.5.2005 and thus a raiding party consisting of Insp.Dayanand, SI Sanjay Bhardwaj and Const.Dilbagh was constituted who went along with Bhaskar Victor to handover the ransom amounts; and to cheat upon the extortionist, bundles of fake currency were created some having a currency in denomination of Rs.1,000/- and some having a currency in denomination of Rs.500/-. The 3 police officers and Bhaskar Victor proceeded to Bareilly Railway Station on 19.5.2005 and laid in wait for somebody to come and receive ransom amount, hoping that when this would happen the said person would be apprehended.

6. Const.Dilbagh PW-8, Insp.Dayanand PW-9 and SI Sanjay Bhardwaj PW-11 have deposed in unison that when Bhaskar Victor went to pay the ransom amount the caller repeatedly contacted him and made him go from place to place and finally directed that money should be paid on the

left side of the railway track near Bagul Nadi. Bhaskar Victor walked on the track, as directed. He made a gesture to them. They saw a man running on the other side of the track. They chased him and recovered a bag containing the dummy notes. They also seized a mobile phone from the said person, whom they identified as Rakesh in the Court when they deposed.

7. The seizure memo pertaining to the bag containing the dummy notes is Ex.PW-8/B. The seizure memo pertaining to the recovery of the handset from Rakesh is Ex.PW-8/C which records that a Nokia mobile phone having IMEI No.354309005048134 was recovered having SIM card No.89911 50000 28150 16723.

8. In direct variation to the testimony of the 3 police officers, Bhaskar Victor PW-2 deposed that as directed by the caller when he and the police team reached Bareilly Railway Station a call was received by him on his mobile number directing him to reach Bilpur Railway Station. He proceeded to Bilpur Railway Station where he received another call directing him to follow the railway track. He was talking to the caller and in the meanwhile saw that the police had caught hold of Rakesh. He denied having witnessed any recovery from Rakesh.

9. SI Risal Singh PW-6 deposed that the WT message Form Ex.PW-6/A was filled up by him to obtain the printout of

mobile phone and that print out Ex.PW-6/B collectively of the mobile phone was obtained by him.

10. Ex.PW-6/B is the call print out detail purportedly generated through a computer pertaining to various mobile numbers, the first of which is mobile No.9811959940 followed by call details of mobile No.9838586341, the No.9838573405, the No.9838692407 and finally the mobile No.9839412834.

11. What is the relevance of the call details of the aforesaid 5 mobile numbers has remained a mystery. Indeed, Mr.M.N.Dudeja, learned counsel for the State, on instructions from SI R.B.Joshi PW-10 who prepared the charge-sheet which was signed by the SHO and filed in Court, is unable to explain the relevance of filing and proving Ex.PW-6/B. That apart, we are surprised at the fact that the learned Trial Judge has exhibited mobile call details of 5 telephone numbers without the same being proved as required by the mandate of Section 65B of the Evidence Act.

12. That apart, what has left us wondering is as to why the handset of Bhaskar Victor was not seized, for the reason it would have been incriminating evidence if linked to the handset purportedly recovered from appellant Rakesh. We have been equally left wondering as to why call details of his mobile number were not obtained and filed at the trial for the same could have linked his mobile number to the handset

recovered from appellant Rakesh. We are further surprised to note that neither call details of mobile No.9899031080 nor of the mobile No.9839030127 obtained.

13. The result is that there is no proof that appellant Rakesh was in contact with Bhaskar Victor through the medium of any mobile telephone.

14. We have on record the testimony of the 3 police officers, as noted above and the testimony of the complainant, as noted above, which testimonies are contrary to each other.

15. Bhaskar Victor, the person who had to hand over the bag containing the dummy currency does not say that he handed over the bag to Rakesh and thus Rakesh would be entitled to the benefit of doubt, more so for the reason Bhaskar Victor states that while he was still speaking to the caller he saw that the police persons had already apprehended Rakesh. He denied witnessing any recovery from Rakesh.

16. As regards appellant Kailash, as noted above, the stated incriminating evidence used by the learned Trial Judge against him is the recovery of the kidnapped child from his custody. There is only one witness to the same. He is Insp.Santosh Kumar Singh PW-12.

17. Let us see what he deposes. He states that he was posted as SI in the Special Protection Group, Etawah, U.P. on 19.5.2005 and he received a telephonic message that the

kidnapped child would be travelling on Kalka Express Train from New Delhi to Howrah and would be disembarking at Etawah. Accordingly, he and his team took position at Railway Station Etawah. The train reached the station at around 3:00 PM. His further testimony needs to be noted verbatim. It is as follows: *“After that the passenger started coming out from the main gate of the railway station a person wearing Jamuni colour shirt and Jeans pant was going towards cycle stand and scooter stand in suspicious condition and a boy aged about five and a half years was following him. That boy was wearing green colour half T shirt and blue jeans pant. That person was walking and standing, walking and standing in suspicious condition. On his activity I wanted to inquire from him and tried to stop him. On this he tried to run away but I and the remaining police officers of the raiding party had apprehended him while running and using police force.”*

18. He further deposed that the said person was accused Kailash.

19. Relevant would it be to note that as per Insp.Santosh Kumar Singh information received by him was that the kidnapper with the kidnapped child would be reaching Etawah in Kalka Express Train. He states that he was on the lookout for a man and a child and saw Kailash walking suspiciously with the boy following him.

20. It seems strange to us that a child who is kidnapped would be permitted to walk callously behind the person who had kidnapped the child. The least precaution which a kidnapper would take would be to hold the child by the hand, lest the child slips away. It is also important to note that the child was missing since 30.4.2005 and by 19.5.2005 would be fairly traumatized in the captivity of his tormentors.

21. The quality of the testimony of Insp.Santosh Kumar Singh PW-12 leaves much to be desired and since this is the only incriminating evidence against Kailash, we are of the opinion that Kailash would be entitled to the benefit of doubt.

22. Thus, both appeals are allowed.

23. The appellants are acquitted of the charges framed against them.

24. The sentence imposed upon the appellants is set aside.

25. Since the appellants are still in jail we direct the Superintendent, Central Jail Tihar, to release the appellants forthwith unless they are required in some other case.

26. Before finally signing off, we must express our anguish at the manner in which the investigating officer has filed the challan and the manner in which the investigating officer has gone about collecting incriminating evidence. Ignoring that he had to obtain the call printout details of the

mobile number of the complainant and that of the alleged handset recovered from the possession of Rakesh with further proof in the form of the SIM card number recovered from Rakesh being linked to a mobile number, nothing of the sort has been done and as against that, useless call details have been proved after obtaining the printouts from the service provider. The learned Public Prosecutor has also been oblivious to Section 65B of the Evidence Act. So is the learned Trial Judge who has exhibited the same forgetting the mandate of Section 65B of the Evidence Act. Computer generated printouts cannot be exhibited on being tendered by a police officer with the simple statement that "Exhibit so and so" are the call details which he has received.

27. It is apparent that the investigating officer, the Public Prosecutor as well as the learned Trial Judge have done a most shoddy job and the result is a crime of kidnapping for ransom going unpunished, but we cannot help it.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

May 04, 2010
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