

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

% Date of Decision : 12th May, 2010

+ **CRL.A. 1050/2008**

RADHA RAMAN Appellant
Through: Mr.V.C.Gautam, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, APP

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. A missing person's complaint Ex.PW-1/D was registered on 14.10.2003 at P.S. Ashok Vihar when Dal Chand PW-2, the elder brother of Manak Chand PW-6, went to the police station and informed the Duty Officer that his nephew named Vinod, aged 10 years, was missing since 9:00 AM in the morning and could not be located, till the missing person's complaint was lodged at 8:25 PM.

2. Attempts were made by the local police to try and locate Vinod but without success.

3. Unknown to the police and the family members, on

19.10.2003 information of a dead body lying in the jurisdiction of P.S. Nand Nagri was registered at the said police station which was seized and sent to the mortuary for post-mortem with a request to preserve the body for 48 hours as it had yet to be identified.

4. Since Vinod could not be located till 19.10.2003, the Investigating Officer at P.S. Ashok Vihar who was assigned the duty to locate Vinod made an endorsement Ex.PW-4/A beneath the statement Ex.PW-1/D and vide DD No.14A, Ex.PW-1/C got FIR registered for the offence of kidnapping at 5:30 PM on 19.10.2003.

5. Later on, it surfaced that the dead body of the male child which was found within the jurisdiction of P.S. Nand Nagri was that of Vinod.

6. It was only on 21.10.2003 that parents of Vinod, Mange Ram PW-9 and Hoti Lal PW-18 told the Investigating Officer certain facts which made the appellant a suspect.

7. What were those facts?

8. The parents of Vinod told the investigating officer that their daughter Rani PW-10 had seen the appellant who is the real brother-in-law of Dal Chand in the company of Vinod and had taken him from the jhuggi where they resided. The parents also claimed that on 18.10.2003 Mange Ram PW-9 had told them of having received a telephone call at the provision

store of Hoti Lal PW-18. The caller told him to convey to them that ransom in sum of Rs.50,000/- should be delivered at Khajuri Khas Pushta for the safe release of Vinod and that Mange Ram recognized the voice of the caller as that of the appellant. Mange Ram PW-9 confirmed the said fact to the Investigating Officer. Rani PW-10 also confirmed said fact to the Investigating Officer. Hoti Lal PW-18 also confirmed having received a call at his shop and that after he returned from the house of Vinod the caller rang up again, which call was attended to by Mange Ram. Thus, the appellant who all throughout continued to reside along with Dal Chand and never made any attempt to flee was arrested and sent for trial.

9. Needless to state, at the trial Dal Chand PW-2 deposed of his nephew Vinod being missing and his lodging the missing person's report Ex.PW-1/D at 8:25 PM on 14.10.2003.

10. Rani PW-10 deposed that the appellant took her brother from their jhuggi at around 10:00 AM on 14.10.2003 and that she had told said fact to her mother on the same day.

11. Manik Chand PW-6 and his wife Raj Rani PW-11 deposed that their son could not be located till the night of 14.10.2003 and hence they lodged the missing person's complaint. Raj Rani PW-11 additionally stated that she enquired from her daughters about her son Vinod on

14.10.2003 itself and Rani had told her that the appellant had taken Vinod with him in the morning from their jhuggi. Both parents further deposed that on 18.10.2003 Mange Ram had told them that a ransom call was attended to by him in the shop of Moti Lal and he recognized the voice of the caller as that of the appellant and additionally told them that ransom in of Rs.50,000/- was demanded to be delivered at Khajuri Khas Pushta. It may be noted that in the same breath while stating as aforenoted, Raj Rani contradicted herself by stating that since they did not have suspicion on anybody they never informed that their son had left with the appellant or that the appellant had demanded the ransom.

12. Manik Chand and Raj Rani stated that the appellant knew that they had a fixed deposit receipt in sum of Rs.95,000/- or Rs.1,00,000/- and it was his greed which made him kidnapped their son.

13. Mange Ram PW-9 and Hoti Lal PW-18 deposed in harmony with each other, with Hoti Lal deposing that on 18.10.2003 a call was attended to by him at the telephone installed in his provision shop and the caller requested him to call somebody from the house of Vinod and that he went to the house of Manik Chand who was not there and when he returned another call was received which was attended to by Mange Ram and the caller demanded ransom. Mange Ram

deposed that he had attended the call referred to by Hoti Lal and he recognized the voice as that of the appellant. He was told to convey to the family of Vinod that ransom in sum of Rs.50,000/- should be paid at the Pushta to secure the release of Vinod.

14. Now, it is apparent that the moot question which arose for consideration before the learned Trial Judge was pertaining to the most unnatural conduct of the parents of the Vinod, who while lodging the missing person's report at 8:25 PM on 14.10.2003 did not disclose that their daughter had seen the appellant take away their son. Further conduct which needed to be evaluated was that even till 5:30 PM on 19.10.2003 when the FIR was registered for the offence of kidnapping, it was never disclosed to the police that the accused had taken away their son as seen by their daughter. Further, claiming to have received a ransom call on 18.10.2003; the call being attended to by Mange Ram duly conveyed to them, it was not stated to the police that they had a suspect, being the accused i.e. the appellant since Mange Ram had recognized his voice.

15. How has the learned Trial Judge dealt with the issue?

16. In our opinion, in a most unsatisfactory manner. What has been held by the learned Trial Judge is that neither

PW-6, nor PW-9, nor PW-10 and nor PW-11 were proved to be having any motive to falsely implicate the appellant and thus their testimony had to be believed.

17. We are afraid, we cannot accord our imprimatur on the opinion rendered by the learned Trial Judge. Howsoever rustic the witnesses of the prosecution may be, it is plain commonsense even to a rustic person that when ransom call is received, the alarm bell must ring, and hence said information should be passed on to the police, more so when the said rustic witnesses have already taken the help of the police four days prior to the receipt of the ransom call. Howsoever rustic a person may be, commonsense would guide the person to tell the police that her child was last seen in the company of whosoever was the person with whom it is claimed that the child was last seen with.

18. A rustic person may not remember the time, date or even the month but certainly is not so foolish as not to understand the worth of some valuable information which needs to be passed on to the police, for the realization of the value whereof, no special intelligence is needed.

19. Thus, if Rani PW-10 as deposed to by her had told her mother on 14.10.2003 itself that she had seen Vinod in the company of the appellant it is unexplainable that Raj Rani PW-11 did not convey this to her husband who did not convey this

to his younger brother Dal Chand who lodged the missing person's complaint. Further, it is unexplainable that neither the parents of Vinod nor Mange Ram nor Hoti Lal told the investigating officer till the evening of 19.10.2003 that Mange Ram had received a ransom call and the voice of the caller was that of the appellant and thus allowed the investigating officer to make an endorsement beneath the missing person's complaint that there were no needs and the FIR for the offence of kidnapping be registered.

20. The over emphasis by the learned Trial Judge as to why would the witnesses be telling a lie has plainly resulted in a miscarriage of justice. The learned Trial Judge forgot that one safe test to test whether a person is a liar or not is to weigh the contemporaneous conduct of the person with reference to the facts alleged by the person as till his personal knowledge. A mismatch of conduct and the knowledge of a person in a given situation is a good index of the person not telling the truth. As regards the motive for a witness to be telling a lie, just like it becomes difficult for the prosecution to prove a motive for the crime, it is equally difficult for the accused to prove motive for witnesses to falsely depose against him. That apart, where there is overwhelming evidence to discard as untruthful the percipient evidence, it would be a most injudicious approach to over look the same

and accept the percipient evidence as truth only on account of motive not being proved for the witness to be deposing falsely.

21. The faint motive that the accused knew that the parents of the deceased were having a fixed deposit is too tenuous a circumstance to be used against the appellant.

22. The appellant is entitled to an acquittal for the reason we find complete inconsistency in the contemporaneous conduct of the parents of Vinod vis-à-vis their claim to the facts as disclosed by them in their testimony.

23. The appeal is accordingly allowed. The impugned judgment and order dated 16.10.2008 is set aside. The order on sentence dated 22.10.2008 is also set aside.

24. The appellant is acquitted of the charges framed against him of having murdered Vinod and of having kidnapped Vinod for ransom.

25. The appellant is on bail and hence we discharge the bail bond and surety bond furnished by the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

MAY 12, 2010
'mr'