

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

Date of Hearing & Decision: 24<sup>th</sup> May, 2011

+ **CRL.A. 91/2011**

DEV LAL

... APPELLANT

Through: Mr.Sachin Mishra, Advocate.

Versus

STATE

... RESPONDENT

Through: Lovkesh Sawhney, APP for the State.

**AND**

**CRL.A. 176/2011**

VINOD @ NAULAKHA

... APPELLANT

Through: Ms. Anita Abraham Advocate.

Versus

STATE

... RESPONDENT

Through: Lovkesh Sawhney, APP for the State.

**AND**

**CRL.A. 517/2011**

SARVESH

... APPELLANT

Through: Mr.Ajay Verma, Advocate.

Versus

STATE

... RESPONDENT

Through: Lovkesh Sawhney, APP for the State.

**AND**

**CRL.L.P. 156/2011**

STATE

... PETITIONER

Through: Mr.Saleem Ahmed, Advocate.

Versus

JASODA & ORS.

... RESPONDENTS

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE G.P.MITTAL**

1. Whether reporters of local papers may be  
allowed to see the Order?

Yes

2. To be referred to the Reporter or not?

Yes

3. Whether the Order should be reported  
in the Digest?

Yes

### **J U D G M E N T**

#### **G.P. MITTAL, J.**

1. These are three criminal appeals and one criminal leave petition directed against the judgment and order of sentence dated 30.08.2010 and 01.09.2010, respectively. The Appellants-Dev Lal, Vinod @ Naulakha and Sarvesh in CrI.A.No.91/2011, 176/2011 and 517/2011 respectively, are aggrieved by their conviction and sentence, whereas, according to the State learned Additional Sessions Judge fell into error in acquitting the Respondents Jasoda and Dharambir (in CrI.L.P.No.156/2011) when, on the basis of the same evidence the three Appellants were convicted.
2. On 01.12.2007, Geeta (Complainant) lodged D.D.No.19/A, when she could not find her son Hariom. There was no clue as to the whereabouts of Hariom till 28.12.2007. The complainant (Geeta) went to Police station Jahangirpuri on 28.12.2007 and made a statement to ASI Shanti Prakash suspecting her husband Rajbir, his brother Shyam Singh, his brother-in-law Jethpal and his father Siyaram as those responsible for kidnapping Hariom (her son). After registration of FIR (bearing No.811/2003) under Section 363 IPC, investigation was started. During the course of investigation it was revealed that Dev Lal and his wife Jasoda, with the help of Dev Lal's brother, Suresh had kidnapped Hariom for a ransom. It is alleged that the kidnapped child was handed over by them to co-accused Vinod @ Naulakha, who sent a ransom letter addressed to the complainant (Geeta) through Dev Lal's brother Suresh. According to the prosecution version the letter was written by co-accused Dharmender @ Lala (proclaimed offender). The letter was posted at Etah and another letter demanding ransom was handed over to Dev Lal through Vinod. The said letter was dropped by Dev Lal outside the complainant's (Geeta) residential room. On the basis of the ransom letter the complainant reached village Kotakpur where she met accused Dharmender @ Lala,

Vijender @ Kallu and Damodar @ Damua. It is alleged that Vijender @ Kallu talked to accused Vinod in Delhi and asked him to release the kidnapped boy. However, he could not be traced from the day he was missing. Five accused namely Vinod @ Naulakha, Vijender @ Kallu, Damodar @ Damua, Dharmender @ Lala and Suresh were declared Proclaimed Offenders and a report under Section 173 Cr.P.C. was filed against the accused Jasoda, Dev Lal and Suresh. During trial accused Vinod and Suresh were arrested. A supplementary challan was filed against them after which the trial started. The accused pleaded not guilty to the charge punishable under section 364A/120B read with Section 34 IPC.

3. The prosecution, establish its case, examined 21 witnesses. PW-1 Ramwati, PW-2 Sushila, PW-6 Sanjay, PW-9 Mahavir, PW-10 Ashok Kumar, PW-13 Babu Ram Kashyap, PW-15 Rajbir were examined by the prosecution to prove various circumstances which pointed to the guilt of the accused (of kidnapping Hariom for a ransom).
4. PW-4 Geeta is the complainant. She deposed that having seen Hariom on 01.12.2003 going along with accused Dev Lal, Jasoda and Suresh at about 7.00 p.m.; they offered *Chowmein* to him after which her son never returned. She deposed that accused Suresh returned later at night at about 12.00 p.m., when Dev Lal enquired about her son. She testified that accused Suresh informed Dev Lal that he would disclose the whereabouts of her son only after she (the complainant) leaves. PW-4 deposed that she made a complaint against Dev Lal and Suresh on the same day. Dev Lal and Suresh were arrested but were released on the same day.
5. The complainant came out with the story that accused Dev Lal persuaded her to believe that her husband Rajbir, with whom she had a strained relationship, was responsible for kidnapping Hariom. Further, she stated that she had found a ransom letter lying near her door on 31.12.2003 and as directed in the ransom letter, she had gone to the village of Kotakpur

and met accused Vijender @ Kallu, Dharmender @ Lal and Damodar @ Damua (near the culvert at Kotakpur). The three accused asked her to come after eight days to the same place with a sum of ₹ 2 lacs. Accordingly, after eight days she went to the village again but could not find the aforesaid accused persons. She thereafter went to a nearby village (Dariyaipur) and met PW-13 Baburam Kashyap, who was the husband of the Pradhan of the village. He enquired from the Complainant whether she could recognize the persons who she had met near the culvert. The complainant replied in the affirmative and thereafter, in pursuance thereto, he (PW-13) gathered all the villagers. It is alleged that Geeta, the complainant, identified Vijender, Dharmender and Damodar as the persons who she had met near the culvert and the said persons admitted keeping Hariom in their custody. The witness (complainant) stated that Baburam Kashyap asked Vijender to call his brother Vinod and Dev Lal for releasing Hariom on the ground that he (Vijender) had received ₹ 1.4 lacs from PW-4 (Geeta). The complainant met Vinod at Delhi, however, her son was still not released.

6. On closure of the prosecution evidence three Appellants (Dev Lal, Vinod @ Naulakha and Sarvesh in CrI.A.No.91/2001, 176/2011 and 517/2011 respectively) and two respondents (Jasoda and Dharmbir in CrI.L.P.No.156/2011) were examined under Section 313 Cr.P.C. They denied the prosecution's allegations and pleaded false implication. They did not produce any evidence in defence.
7. By the impugned judgment, the Trial Court reached the conclusion that the case for the offence punishable under Sections 120B and 364A read with Section 120B IPC was proved against the Appellants namely Dev Lal, Sarvesh and Vinod, whereas Respondents Jasoda and Dharmbir were acquitted and given the benefit of doubt.
8. The findings of the Trial Court are extracted hereunder:

*“The facts analyzed and scrutinized hereinabove establish that prior to 01.12.2003, complainant PW-4 Smt.Geeta and accused Dev Lal bid for committee of ₹ 10,000/-. The accused Dev Lal asked for a loan of ₹ 10,000/- from PW-4 Smt.Geeta but she did not accede to the demand of ₹10,000/-. This fact is corroborated by PW-2 Smt.Sushila. The accused Dev Lal, his wife Jasoda and brother-in-law Suresh also seen in the company of complainant Smt.Geeta’s son by PW-17 Pappu Khan at about 8:30 p.m. outside the house of accused persons. PW-17 Pappu Khan corroborates the fact stated by PW-4 Smt.Geeta that at about 7:00 p.m. accused Dev Lal took her child on the pretext of giving him chowmein.*

*The important witnesses of the prosecution in respect of accused persons Dev Lal, Suresh and Vinod are PW-9 Mahavir, landlor and PW-10 Ashok Kumar, who explained that after about one month of the incident, the accused Vinod, Dev Lal and Suresh suddenly left the tenanted premises.*

*The above discussed fact and circumstances as per prosecution witnesses established beyond reasonable doubt that accused Dev Lal, Vinod, Suresh alongwith co-accused persons Dharmender @ Lala, Damodar @ Damua, Sarvesh and Vijender @ Kallu hatched conspiracy to kidnap Hariom, minor child of PW-4 Geeta, complainant. The main conspirator is accused Dev Lal, which is established on the basis of the testimony of complainant Geeta, when he diverted her and go lodged a report against her husband Rajbir, father-in-law and brother-in-law on 28.12.2003. The conspiracy is further established when complainant PW-4 Geeta visited Kotakpur, Near Patiyali, District Etah after receiving of the ransom letter. The meeting of mind in the conspiracy of accused Sarvesh, Vinod and Proclaimed Offenders Suresh, Vijender @ Kallu, Dharmender @ Lal, Damodar @ Damua also established. The conduct of accused Dev Lal, Suresh and Vinod when they suddenly left the houses at Jahangirpuri further corroborate the hatching of conspiracy by them with the main object of kidnapping the child Hariom for ransom. However, as per testimony of prosecution witnesses, the material on record against accused Jasoda and Dharambir is very weak to connect them with the conspiracy because Jasoda is the wife of main conspirator Dev Lal and accused Dharambir used to visit house of accused Dev Lal has come on record. Apart from these weak evidence, nothing substantial proved by the*

*prosecution beyond reasonable doubt against both accused  
Jasoda and Dharmbir.*

9. We have heard Mr. Sachin Mishra, Ms. Anita Abraham and Mr. Ajay Verma, the learned counsels appearing for the Appellants-Dev Lal, Vinod @ Naulakha and Sarvesh respectively. We have also given our thoughtful consideration to the submissions advanced by Mr. Lovkesh Sawhney and Mr. Saleem Ahmed, learned APP's for the State.
10. PW-1, Ramwati, was examined by the prosecution to prove that on 05-02-2003 she overheard Dev Lal and Jasoda saying that they had kidnapped Hariom. She did not support the prosecution version and denied having made any such statement to the police.
11. PW-2, Sushila was examined to prove that Dev Lal had threatened the complainant that there would be serious consequences when she declined to give him a loan of ₹ 10,000/-, which she received from her chit fund (draw of lots). She did not support the prosecution version and was allowed to be cross-examined by the learned APP.
12. Statement of PW-3 is not relevant as he was arraigned as an accused later on.
13. PW-6, Sanjay is the brother of the complainant (Geeta). He deposed that three years ago he went to his native Village Danchaura, Distt. Mainpuri, UP. When he came to know that his sister's son was kidnapped by Appellant-Vinod, he, along with SI Sandeep Gupta and other police officials, reached Police Station Daryaganj Distt. Etah, where accused (Vinod's brother) met them. He was informed that his sister's son would be recovered from Delhi. He further testified that he met the *Pradhan* of the village PS Daryaganj who asked Virender to make a call to Appellant-Vinod. He, along with the police staff, returned to Delhi and went to the house of Appellant-Vinod where he came to know that Vinod had vacated his rented house. During cross-examination, this witness was confronted

with his statement Ex.PW-6/DA, where the names of Appellant Dev Lal, Respondent-Jasoda and Dharambir were not recorded.

14. PW-8 constable Kishan Ram deposed about the allegations made by Geeta (complainant) against her husband, Devar, father-in-law and brother-in-law (Jija) regarding Hariom's kidnapping. He deposed that after interrogation the complainant was satisfied that her husband and other family members were not involved in the kidnapping.
15. PW-9, Mahavir testified that Appellant-Vinod was his tenant in the year 2003. He further deposed that Vinod had suddenly vacated his house in the year 2004 at about 3:00 a.m. at night, but he could not give the exact date or the month in which Vinod vacated the house.
16. PW-10, Ashok Kumar testified that the Complainant (Geeta), including accused Jasoda, her husband Dev Lal and brother-in-law Suresh were tenants in their house. He stated that Geeta's son Hariom was kidnapped and resultantly Geeta had vacated their house. Further, he also stated that he had come to know that Geeta's son Hariom was kidnapped by Dev Lal, Jasoda and Suresh, but he could not give any source for this information
17. PW-11 Woman Constable Neena deposed about the arrest of Appellants Dev Lal, Suresh and Respondent-Jasoda.
18. PW-12 ASI Dharambir proved the recording of DD entry No.19/A Ex.PW-12/A on 1.12.2003. He also deposed about recording of FIR 881/2003 on 28.12.2003 on the basis of rukka sent by ASI Shanti Prakash.
19. PW-13 Shri Babu Ram Kashap was examined by the prosecution to prove that the ransom letter was written by accused Dharminder which was handed over to Appellant-Sarvesh for passing the same to the complainant and also to prove that the accused persons had conspired with Appellant-Sarvesh for kidnapping Hariom. This witness did not support the prosecution case. He merely deposed that complainant (Geeta) contacted him (he could not give the date, month or the year of the meeting) and he

(PW-13) gathered the villagers, so that the Complainant could identify the people who demanded ransom from her. Geeta (complainant) positively identified all the accused i.e. Vijender, Damua and Dharminder (who had demanded ransom from her). The testimony of this witness is not of any avail as far as the roles of Appellants and Respondents are concerned.

20. PW-14 Goray Lal was a witness to the arrest of Appellant-Dev Lal and his wife Respondent-Jasoda. He did not support the prosecution version and denied that he (PW-14) accompanied the Appellants/Respondents to village Modeen Pur, PS Narki, Distt. Ferozabad, UP.
21. PW-15 Rajbir (father of the kidnapped child), deposed that his son Hariom was kidnapped on 01.12.2003. He came back to Jahangir Puri (where his wife Geeta was residing). He received an envelope Ex.PW5/B containing ransom letter and read the same and handed it over to the police.
22. He (PW-15) testified that he along with his wife and the police, went to village Kotakpur, Distt Etah where accused Damodar, Lala and Vijender (Proclaimed Offenders) met them and demanded ₹ 2 lacs from him (PW-15). He also deposed that they had threatened him that in case the said amount was not paid, his son would be killed. Thereafter, he testified that accused Dharmender @ Lala, Vijender and Damua informed the co-villagers that his son was in Appellant-Vinod's custody. His testimony is in the shape of hearsay evidence.
23. PW-16 SI Shanti Prasad is the initial investigating officer of this case. He deposed about his visit to village Kotakpur, as Geeta (complainant) was directed to come to the said village (as specified in the ransom letter). PW-16 identified the ransom letter as Ex.5/C. He (PW-16) also deposed about the arrest of the appellants Dev Lal, Sarvesh and Jasoda. He stated that when he alongwith SI Sandeep Kumar, constable Mahavir, lady constable Meena and Geeta (complainant) reached MCD Flats, Jahangirpuri, Appellants Dev Lal, Sarvesh and Jasoda were overpowered. He deposed that further investigation was conducted by SI Sandeep.

24. PW-17 Pappu Khan was the neighbour of the complainant (Geeta) and Appellants (Dev Lal, Suresh and Jasoda). He testified that Appellant Vinod also visited the house of Jasoda on 01.12.2003. When he (PW-17) returned to his house from his work, he saw that Hariom (son of Geeta) was standing in between all the accused persons outside the house of the Respondent-Jasoda. He deposed that he did not listen to the conversation between the accused persons. He (PW-17) stated that after their arrest the accused persons informed the police that they killed the child Hariom and threw his dead body at the corner of the Bhalswa Lake. The confession made by the Appellants to the police as claimed by this witness is not admissible in evidence. No recovery has been made in pursuance of the alleged disclosure statement claimed to have been made by some of the accused persons. Thus the only evidence which has come against Appellants-Dev Lal, Suresh and Respondent-Jasoda through this witness is the innocuous statement that the kidnapped child Hariom was noticed standing between the accused persons outside the house of Respondent-Jasoda. Admittedly, the complainant (Geeta), Appellant Dev Lal and Respondent-Jasoda were neighbours and, therefore, no inference of kidnapping can be drawn against the Appellants or the Respondents simply because Hariom was noticed standing in between the accused persons on 01.12.2003 at about 7:00 p.m.
25. Thus the incriminating evidence against the Appellants and the Respondents has only come in the testimony of Complainant (PW-4-Geeta).
26. We therefore turn to the testimony of the complainant (Geeta). Her statement that accused Vijender (Proclaimed Offender) made a telephonic call to Appellants-Vinod and Devi Lal in Delhi and told them to release the boy as they had received ₹1.40 lacs has not been corroborated by PW-13 Babu Ram (husband of the Pradhan of the village). Even otherwise this part of the testimony of PW-4(Geeta) is of no consequence as there is no guarantee as to whom Vijender (PO) had spoken to on the telephone and

what were the exact contents of the conversation and the response given by the person on the other side of the telephone.

27. The complainant (Geeta) testified that Appellant-Dev Lal gave *chowmein* to his son, who ate it at Dev Lal's room. She deposed that thereafter Appellants-Dev Lal, Suresh (PO) and Respondent-Jasoda took his son to the market and when she called her son (Hariom) he told her that he would return after some time. She deposed that Appellant-Dev Lal returned after one and a half hours. She inquired from him (Dev Lal) about her son (Hariom) and Dev Lal informed her that he was with accused Suresh (PO). She deposed that she kept searching for her son and at about 12:00 in the night when Suresh returned (in a drunken state), she asked him about the whereabouts of her son but he (Suresh) did not disclose anything. Appellant-Suresh told Dev Lal that he would disclose about Hariom only when she (complainant) leaves. She deposed that on the next morning she went to police station and lodged a report. Immediately, Appellants-Dev Lal and Suresh (PO) were arrested but released on the same day.
28. This testimony of the complainant (Geeta) is not believable for more than one reason. As per record, DD Entry No.19/A Ex.12/A was recorded on the report of the complainant (Geeta). She (PW-4) did not have any suspicion against Dev Lal, his wife Jasoda and Suresh. She (PW-4) simply informed the police that her son aged 11 years left the house the previous evening at about 7:30 p.m. and had not returned thereafter. After 28 days the complainant (Geeta) lodged another report Ex.PW-5/A with the police on the basis of which the present case was registered.
29. In the said statement also the complainant (Geeta) did not express any suspicion on the Appellants or the Respondents. She rather suspected her husband and his family members.
30. An explanation was sought from the complainant (Geeta) in cross-examination about the same; she (Geeta) deposed that she did not disclose the name of Dev Lal and Suresh as Dev Lal accompanied her for making a

police report for the first time (on 01.12.2003) as well as on 28.12.2003. This fact is not borne out from the record. The DD No.19/A was recorded in the police station on 11:10 p.m. whereas the complainant (Geeta) deposed that Dev Lal informed her that the child was with Suresh (PO) and he (Suresh, PO) returned totally drunk to the house of Dev Lal only at 12:00 in the night. According to PW-4 Geeta, even Appellant-Dev Lal accompanied the complainant to the police station. Thus there was no question of having any suspicion on Dev Lal at that time. Moreover, if we believe the complainant (Geeta) that Appellant-Dev Lal informed her that Hariom was with Suresh (PO) there was no possibility for the complainant to go to the police station and lodge a report until Suresh returned at 12:00 a.m. in the night.

31. It is highly improbable that if the Complainant suspected the Appellants-Dev Lal and his associates of kidnapping her son, she would lodge a missing report or lodge a report against her husband even if they had a strained relationship at that point of time. No mother would lodge a false report against her husband if she knows that her child has been kidnapped by some other person. The mother is more concerned with the safety of her child than settling scores with her estranged husband and family members. We are, therefore, not inclined to believe the complainant's version that the child was kidnapped by Dev Lal, Jasoda and Suresh on 01.12.2003 at about 7.00 p.m. No other evidence has come on record to connect the Appellants or the Respondents with the crime.
32. In view of our aforesaid discussion, we are of the opinion that the learned Sessions Judge was perhaps swayed by the disclosure statements (which were inadmissible in evidence) made by some of the accused persons. Unfortunately, the circumstance of Dev Lal, Suresh and Vinod suddenly vacating the tenanted premises after a couple of months after the incident was given undue importance by the learned Additional Sessions Judge.

33. In our view the prosecution has failed miserably to establish its case against the Appellants and the Respondents on the same set of evidence for which the Appellants were convicted while the Respondents were acquitted.
34. In view of above the Appeals have to be allowed and the leave petition has to fail. We accordingly allow the Appeals. The appellants in custody are directed to be set at liberty forthwith and leave petition is hereby dismissed being without any merits.

**(G.P. MITTAL)**  
**JUDGE**

**(S. RAVINDRA BHAT)**  
**JUDGE**

May 24, 2011  
sa