

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

% **CRL.A. 695/2001**

+ **Date of Decision: 21st November, 2012**

VINOD @ PARMOD **Appellant**

! Through: Mohd. Nasir & Mohd. Saleem,
Advocates

versus

\$ **STATE** **Respondent**

Through: Mr. M.N. Dudeja, APP for the State

WITH

% **CRL.A. 703/2001**

SANJAY KUMAR **Appellant**

! Through: Mr. M.L. Yadav, Advocate.

versus

\$ **STATE OF DELHI** **Respondent**

Through: Mr. M.N. Dudeja, APP for the State

AND

% **CRL.A. 736/2001**

SATISH KUMAR **Appellant**

! Through: Mohd. Nasir & Mohd. Saleem,
Advocates.

versus

\$ STATE OF DELHI

..... Respondent

Through: Mr. M.N. Dudeja, APP for the State

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

The appellants had been convicted for the commission of the offences punishable under Sections 120-B IPC and 364/365/386/120-B of Indian Penal Code ('IPC' for short) by the learned Additional Sessions Judge vide judgment dated 28th August, 2001 and vide order dated 30th August, 2001 they had been sentenced to undergo rigorous imprisonment for seven years and also to pay fine of ₹ 5,000/- each and in default to undergo simple imprisonment of six months u/s 120-B IPC; rigorous imprisonment for seven years and also to pay fine of ₹ 5,000/- each and in default to undergo simple imprisonment of six months u/s 364 r/w Section 120-B IPC; rigorous imprisonment for three years and also to pay fine of ₹ 2,500/- each and in default to undergo simple imprisonment of three months u/s 365 IPC and rigorous imprisonment for seven years and also to pay fine of ₹ 2,500/- each and in default to undergo further simple imprisonment of six months u/s 386 r/w Section 120-B IPC. All the substantive sentences of imprisonment were ordered to run concurrently. Feeling aggrieved by the judgment of conviction dated 28th August, 2001 and order on

sentence dated 30th August, 2001 the three convicted accused had filed separate appeals but since all of them were heard together they are now being disposed of by this common judgment.

2. The prosecution case as noticed by the trial Court in para no. 1 of its judgment is as under:-

“On 28.7.91 at about 12.40 p.m. DD No. 8-A was recorded at PS Alipur according to this DD information was received that Jugal Kishore Arora has been taken away in his own car No. PB-011 C 0950 by three/four persons in police uniform. ASI Babu Lal was entrusted with the said DD who along with Const. Nag Raj, Const. Rajbir Singh and ASI K.C. Sharma went to the spot. The matter was also brought to the notice of the SHO of the police station who also went to the spot along with const. Ashok Kumar on his police Gypsy. One Om Parkash s/o Chunni Lal was present on the spot and he gave a statement to ASI Babu Lal (Ex. PW2/A) which when translated into English with interalia read as under:-

“I know Jugal Kishore Arora for the last two years. He has his place of work at Hamirpur Satnam Overseas Export. I purchased bardana from him. Today at about 11.20 p.m. I along with my son Avesh Kumar had come to godown on our two wheeler scooter where we had met Jugal Kishore. We had a talk with him about purchase of Bardana whereafter I along with my son left on our scooter. At about 11.45 a.m. when we reached a place in front of the factory on the Hamirpur Bakoli road we heard the noise of a horn coming from behind. I thought that it was the car of Jugal Kishore. As I turned back, I saw a Maruti Car of white colour parked ahead of the factory. We returned to the place where the vehicle was parked and saw two persons in police uniform standing outside the car of Jugal Kishore. This car was parked behind the Maruti car. Jugal Kishore was sitting on the rear seat of his car and a police officer was sitting beside him. I tried to talk to Jugal Kishore and opened the gate of the car. I was brushed aside by the police officer who stated that I cannot talk to him. In the meanwhile another person in white clothes came there and sat on the driving seat of the car of Jugal Kishore whereas another person sat on the front seat. Both the cars sped towards Kekola. I along with my son came to the godown and told Pawan Kumar about this incident. The police officer who was sitting besides Jugal Kishore was aged about

30/35 years, fair complexion and was 6 feet in height. He was clean shaved and was having a small moustache and he appeared to be a high ranking officer. The other police officer was a young person of good height and was having a wheatish complexion. The other two were also of young age and spoke Hindi and were in white clothes. I could not note down the number of the white Maruti Car. Number of the car of Jugal Kishore is PB-02 C-0250. Maruti 1000 silver gray coloured I am sure that these persons have kidnapped Jugal Kishore and driver Sanjay by force. I can identify these persons.”

3. The police then swung into action and found out during investigation that some persons, including the abducted person’s driver, appellant Sanjay, had entered into a conspiracy to abduct PW-7 Jugal Kishore for ransom and after getting ransom of twenty lacs of rupees he was released on 29/7/91. The police suspected the involvement of appellant Sanjay and so he was arrested and then on his disclosure statement other accused were arrested. Test Identification Parade(TIP) of those accused was arranged by the police but they allegedly refused to participate in the TIP. On completion of investigation ten accused persons were charge-sheeted. After the trial began, two of them absconded and so they were declared proclaimed offenders and after trial five accused were acquitted by the trial Court while the three appellants were convicted.

4. Feeling aggrieved by their convictions the three appellants filed separate appeals.

5. Arguments were advanced on the basis of trial Court record which was re-constructed one since the original could not be traced.

6. As far as appellant Sanjay is concerned he has been convicted despite the fact that his employer PW-7 Jugal Kishore, did not express even a suspicion about his involvement in his abduction. The trial Court has observed while convicting him that if he was not involved in the abduction of his master he should have informed the police or to the brother of PW-7 about the involvement of accused Satish and Jagmal in the crime as they were known to him and since he failed to do that his involvement in the crime was clear. In my view, this reasoning of the trial Court cannot be accepted at all. It was for the prosecution to adduce necessary evidence against him and he could not be convicted on conjectures. He had followed the instructions of PW-7, as claimed by PW-7 himself also, to bring money from his brother (PW-4) which he did and handed over to accused Satish, as per the prosecution case. There was no evidence to show that this accused knew accused Satish and Jagmal (PO). Another reason given by the trial Court to convict Sanjay was that on his disclosure appellant Vinod was arrested and he had got recovered police uniform which he was wearing at the time of abduction. However, this circumstance also could not be used against Sanjay since PW-7 did not claim in his evidence that accused Vinod was one of his abductors. Since PW-7 in his examination-in-chief had not identified accused Vinod he was cross-examined by the prosecutor and that too after more than four years and only then on the pointing out of the prosecutor he admitted the suggestion that Vinod was the same person who was wearing uniform of a constable at the time of

incident. That identification of accused Vinod by PW-7, in my view, cannot be accepted since if actually this accused was one of his abductors PW-7 would not have categorically said in his chief-examination that he could not identify any of the accused except Satish and his recognising Vinod after more than four years does not inspire confidence. No other evidence against appellant Sanjay was brought to my notice by the learned Additional Public Prosecutor. So, the conviction of accused Sanjay cannot be sustained.

7. Since the only evidence against appellant Vinod brought to my notice by the prosecutor was his identification by PW-7 Jugal Kishore in his cross-examination by the prosecutor, which as just now noticed, was conducted more than four years after his examination-in-chief in which he had failed to identify him, the prosecution case against him also becomes doubtful and so his conviction also deserves to be set aside.

8. After examining the evidence against appellant Satish I find that the prosecution case against him also is not free from doubts and it cannot be said that the prosecution has been able to establish its case against him also beyond reasonable doubt. PW-7 Jugal Kishore in his examination-in-chief had after narrating the incident as to how he was forced to accompany the abductors from one place and another and also about their demanding ransom of thirty lacs and then settling for twenty lacs stated at the end that accused Satish was one of the three

persons other than two who were in police uniform. He, as noticed already while noticing his evidence qua accused Vinod, had not identified any other accused. In cross-examination by the prosecutor he had also stated that ransom money was taken by this accused as well as Vinod. However, that statement also made in cross-examination does not inspire confidence since he had claimed so after more than four years of his examination-in-chief. Learned prosecutor had submitted that the evidence of his identification by PW-7 in Court alone is sufficient to uphold the conviction of accused Satish as nothing has been brought on record by him in the cross-examination of PW-7 that he had any motive to falsely claim him to be one of his abductors. However, in my view, and as was argued by the counsel for accused Satish also, merely on the basis of evidence of identification of this accused by PW-7 in Court for the first time after about four years of the incident without TIP he should not be convicted. Though the investigating officer had claimed that Satish had refused to participate in TIP but no evidence to that effect was brought to my notice by the prosecutor.

9. No other submissions were made by the learned prosecutor in respect of any of the three appellants-convicts.

10. In the result, all the three appeals are allowed and the impugned judgment and order on sentence passed by the learned Additional Sessions Judge are set aside and consequently the convictions of the

three appellants on all the counts also stand set aside. They were released on bail during the pendency of the appeals and now with their acquittal their bail bonds stand discharged.

P.K.BHASIN, J

November 21, 2012