

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. Appeal No. 394/2009**

Reserved on: 16th November, 2012
% Date of Decision: 03rd December, 2012

UDHAL SINGH Appellant
Through Ms. Anita Abraham, Advocate.

Versus

STATE ...Respondent
Through Mr. Sanjay Lao, APP.

+ **Crl. Appeal No. 430/2009**

VINOD @ SAHIB SINGH Appellant
Through Mr. Abdul Sattar, Advocate with
Ms. Saahila Lamba, Advocate.

Versus

STATE OF NCT OF DELHI Respondent
Through Mr. Sanjay Lao, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S. P. GARG

SANJIV KHANNA, J.

The appellants Udhal Singh and Vinod @ Sahib Singh impugn their conviction under Section 364A read with Section 120B of the Indian Penal Code (IPC, for short) vide judgment dated 30th January, 2009 in SC No. 58/2006, arising out of FIR No. 146/2006, P.S. Badarpur. They have also impugned the order of sentence dated 31st January, 2009 by which they had been sentenced to imprisonment for

life and fine of Rs.5,000/- each, in default of payment of fine, they have to undergo simple imprisonment of two months each.

2. The prosecution case is that the victim Ravi (PW-2) was kidnapped for ransom and there was a threat to cause death or hurt to him, or because of appellants' conduct, there was reasonable apprehension that he may be put to death or hurt. The alleged kidnapping happened on 25th February, 2006, at about 7.00 P.M. and PW-2 was rescued on 28th February, 2006, at about 3.30 – 4.00 P.M., from Lal Garhi, Near Sikandrara, U.P.

3. Kidnapping for ransom is covered under Section 364A IPC and reads as under:-

364A. Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international inter-governmental organization or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine].

4. The essential ingredients of the said Section are:

(A) The victim should have been kidnapped or abducted by the accused or detained by the accused after such kidnapping or abduction.

(B) The accused should have threatened to have caused death; or his conduct should have been such that there was a reasonable apprehension

that such person may be put to death or hurt; or causes hurt or death to such person.

(C) The conduct mentioned in clause (B) should be in order to compel any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

5. In order to bring home the aforesaid charge, under Section 364A IPC, the prosecution relies upon the testimony of the victim Ravi (PW-2), Ravi's mother Urmila (PW-1), Ravi's two brothers-in-law (Jijas)- Rajinder Singh (PW-3) and Ram Babu (PW-4). The prosecution also relies upon the depositions of the police officers- Sub-inspector H.R. Bansalia (PW-14), Const. Ashok Kumar (PW-8) and Constable Bhagirath (PW-10) who have stated how they had conducted the rescue operation.

6. Appellant Vinod and Ravi (PW-2) were known to each other since they both worked as sweepers, in the same company, at Badarpur, New Delhi. Urmila (PW-1), mother of the victim PW-2, has stated that, on the 25th day of the month, 2006, her son Ravi, then aged about 19 years, did not return from his job. Therefore, her two son- in- laws 'jamai(s)' went to the company office where her son worked, to inquire regarding his where about. She has stated that she also made a call to PCR no. 100. Her statement to the police (Ex. PW1/A) is dated 27th February, 2006 and was recorded at 7.30 P.M. Thereupon, DD entry No. 8A, was

recorded on the same day, and FIR was registered at Police Station, Badarpur at 8:10 P.M. She further stated that Ravi was ultimately rescued, by the police, from Sikandra Rao (U.P.), on the fourth day from 25th February, 2006. PW-1's statement, to the effect, that her son-in-law Rajinder Singh (PW-3) received a ransom call, demanding payment of Rs.3,00,000/- for PW-2's release and to save his life, would amount to hearsay and has to be ignored.

7. Rajinder Singh (PW-3), brother-in-law of the victim, has averred that PW-2 worked in a company, at Badarpur. On 25th February, 2006, PW-2 did not return, after his duty shift, at 5.30 P.M., and, therefore, PW-3 went to company's office. There he learnt that Ravi left the premises at about 4.30 P.M., with appellant Vinod and his brother Manoj, to see a picture, on a compact disc. On 26th February, 2006, PW-3 went to the appellant Vinod's house. He met the said appellant and his brother Manoj but Ravi was not there. Then, on 27th February, 2006, while he was on his way to meet an astrologer, he received a call, at 11:30 A.M., on his mobile no. 9871127652, demanding Rs.3,00,000/- as ransom, for releasing Ravi. The caller threatened that police should not be informed, otherwise, Ravi's life would be put in danger. The caller further stated "Jiski Talash hai who mere paas hai". PW-1 and PW-4 were with PW-3 since they were out trying to trace Ravi. The telephone

no. was relayed to the police and, subsequently, Ravi was recovered, on 28th February, 2006, from U.P.

8. Ram Babu (PW-4), in his examination-in-chief, has stated that he went to PW-2's office, on 25th February, 2006, since PW-2 had not returned home. There the guard, Vinod Chaudhry (PW-6) revealed that PW-2 had left, at about 4:30 P.M. Again, on 26th February, 2006, he went to the company office, when PW-6 recollected that Ravi, Vinod and Manoj Kumar were talking about playing a picture CD. PW-4 took the address of other two, Vinod and Manoj Kumar, and met both of them, at their residence. They informed him that Ravi had not come to their house, for picture CD. While on the way to an astrologer, PW-3 received a call, at 11:00/11:30 A.M., demanding Rs.3,00,000/- as ransom. A threat was made that the matter should not be reported to police and that another call would be made, at 8:00 P.M., to direct about further action. The caller had stated that "Jiski Tum Talash Kar Rahey Ho Who Mere Pass Hai, Ghar Wapis Lot Jayo". PW-3 handed over the phone to PW-4 and he heard the conversation. Thereafter, No. 100 was called and they were advised to file a complaint in the police station.

9. Ravi (PW-2), the victim, has stated that his occupation was as a cleaner, in a Badarpur Company. He has stated that, on 25th February, 2006, at about 4:30 P.M., he met the appellant Vinod, a co-worker, in the company premises. Vinod was going to a relative's place in Ballabhgarh

and asked PW-2 to accompany him. PW-2 initially resisted but on appellant's insistence, he agreed to accompany the appellant Vinod. They proceeded to a Qualis car, in which two more persons, aged 40 and 20, respectively, were already sitting. Third person, named Salim, who was being addressed as Subhash, was there with a fourth person who was driving the car. The Qualis was taken towards Badarpur Border and, on the way, Vinod purchased liquor, for which Subhash paid. After some hesitation, and on much insistence of Vinod, PW-2 consumed liquor. Thereafter, PW-2 lost conscious and when he eventually gained conscious, he found himself to be tied to a cot, with a rope ('rassi') which he identified in the Court. At that time, there were three individuals in the room who asked him his telephone number. PW-2 identified Udhal, the other appellant, to be one of the three kidnappers, who was present in the room. PW-2 was enquired about his background by the kidnappers i.e. his occupation, money he possessed, family members. He disclosed that his mother was a widow and he had four brothers and one sister. He told them that he owned a 50 yard house which, on market price, was worth around Rs.2.5 to Rs.3 lacs. They demanded Rs.3 lacs as ransom but he expressed his inability to pay that amount. He was threatened that, in case money was not arranged, he would be killed. Eventually they obtained phone number of his brother-in-law Rajinder (PW-3). Thereafter, the accused Udhal Singh went

outside the room and made a call to Rajinder Singh (PW-3). PW-2 revealed that, during day time, he was kept in a pit/gadaa, around 4-5 feet deep and equally wide, covered by a wooden plank and, at night, this plank was removed to provide him food. This confinement was for three days till he was rescued on 28th February, 2006, at about 3.30 – 4.00 P.M., from Lag Garhi Village in Sikandra Rao Tehsil (U.P.). While the appellant Udhal was arrested, on the spot, two other accused managed to escape. PW2 had stated that along with Vinod, there were three other persons including the driver. He identified one of them as lame whose name was Subhash. As noticed above, Subhash was not arrested and has been declared as proclaimed offender. He did not, however, give the name of two others including the driver. He had not stated that Udhal was with them in the Qualis. He could not give registration number of the Qualis. In his examination in chief, PW2 had stated that the appellant Vinod was found arrested when he came to Delhi. This is a clear indication that appellant Vinod was not with the police team, which carried out the alleged rescue operation on 28th February, 2006 at village Lalgarhi, Sikandra Rao, U.P. PW2 has not stated that the appellant Vinod had come with the police team consisting of three officers.

10. Constable Ashok Kumar, Constable Bhagirath and SI H.R. Bainsla, who had appeared as PW8, PW10 and PW14, claimed that they

constituted a three member team who had interrogated appellant Vinod on 28th February, 2006, and thereafter the said appellant took them to the village Lalgarhi, P.S. Sikandra Rao, Distt. Hathras, U.P. and PW2 was rescued, and the other appellant Udhal arrested. In contra-distinction and contrary to what PW2 had stated, the three of them have averred that the appellant Vinod was with them and had taken them to the said village. However, like PW2, they had stated that the victim was found in a gadda and his hands were tied with the rope which was also seized. No public witness had joined the investigation. Police from Police Station, Sikandara Rao, Distt. Hathras, was also not contacted before, during or after the said rescue operation. The discrepancies between the statement of PW8, PW10 and PW14 and some other witnesses have been noticed below.

11. After the charge-sheet was filed and during the pendency of the trial, the Investigating Officer (PW14) recorded statements of Nain Singh r/o village Lalgarhi, Distt. Hathras, and filed supplementary charge-sheet enclosing therewith call details of mobile number 9871127652, on which call was made to PW3 and 9837945176, the number from which the alleged call was made for ransom on 27th February, 2006. These two call details were collectively marked Ex. PW14/D. The call details from these two numbers were not filed with the original charge-sheet and we also notice that the prosecution did not

produce any witness/authorised officer of the service providers namely Idea Cellular Limited or Bharti Airtel Limited to prove the call details. However, as Counsel for the appellants have not objected and have submitted that the call details support their innocence, we will advert to the same while dealing with the prosecution's evidence. Nain Singh, appeared as PW7 and had stated that he had a PCO shop and was using sim card with telephone number 9837945176. The said sim number was installed in his shop during the period 25th February, 2006 to 28th February, 2006, but he threw away the said sim in April, 2006, after he procured a new connection. PW7, testified that he knew Udhal Singh, the appellant, who belongs to Village Lalgarhi but he did not know Vinod, the other appellant present in the court.

12. Madan Gopal Jindal, who claimed that he was selling mobile phones and other connected items, appeared as PW5 and has averred that he had sold the mobile chip for telephone number 9871127652 to one Urmila. He had also sold one mobile phone on 18th February, 2006, to one Anurag vide bill No. 2953. In the cross-examination, he stated that chip was of Airtel company but he did not have photo copy of the form or identity papers given by Urmila. It is clear from his statement that mobile phone number 9871127652 was not purchased and was not issued in the name of Rajender, PW3. PW1's name is Urmila and she is the mother-in-law of Rajender. The prosecution's case is that PW3 had

purchased mobile sim in question in the name and with the identity of his mother-in-law. The said fact has not been established or proved but we will take into consideration, the said contention, while examining the inconsistencies and deviations in the statement of the witnesses.

13. This brings us to the testimony of PW6, Vinod Chaudhary, the guard of the company, where the appellant Vinod and PW2 Ravi were working. He had stated that both of them were used to work as Safai Karamchari and on 25th February, 2006, Ravi had left the company at 4.30 PM. At that time, he had seen him with Vinod, at the gate. The appellant Vinod had not come to the duty on 25th February, 2006. He proved on record the attendance sheet which was marked as PW6/A. The said attendance sheet is for the period upto 28th February, 2006, and records that 26th February, 2006 was Sunday (a non working day) and appellant Vinod and PW2 had not attended work on 27th and 28th February, 2006. The appellant Vinod had not also attended the work on 25th February, 2006. PW2 had attended the work on 25th February, 2006 from 0740 to 1630 Hrs. The discrepancy in the attendance sheet and the statement of PW8 Const. Ashok Kumar that they had collected the attendance-sheet on 27th February, 2006, which was seized by the Investigating Officer vide Ex. PW8/C, has been dealt with separately. What is important and relevant is the following statement made by PW6 in his cross-examination:-

“The IO came in our office on 27.2.2006 in between 2 to 5 p.m. along with Vinod Kumar and Ravi. On the said date i.e. 27.2.2006, I identified Ravi and Vinod in my office. Except Ravi, Vinod as well as IO there was no other person. IO did not record my statement in this case. It is wrong to suggest that I am deposing falsely.”

14. The Additional Public Prosecutor did not call for and ask for re-examination of PW6, inspite of his aforesaid statement.

Doubts, inconsistencies and infirmities in the prosecution's version and evidence

15. PW6, as noticed above, in his cross-examination had clearly stated that appellant Vinod, PW2, along with the investigating officer had visited him in the company's office on 27th February, 2006, between 2 to 5 PM. PW6 was not re-examined by the Public Prosecutor. The statement of PW6 is contrary to the prosecution's version including the statement of PW2, the alleged victim, PW8, PW10 and PW14, that PW2 was rescued on 28th February, 2006 from village Lalgari, Distt. Hathras.

16. Normally statement of victim, as in the present case, PW2 should be relied. However, in the present case, PW2 in his examination in chief has averred and stated that the appellant Vinod was found to be arrested when he came to Delhi after he was rescued. The public prosecutor did not ask for clarification of the said aspect and PW2 was not declared hostile. Thus PW2, the victim had not supported the prosecution version including the statement of raiding team consisting of three police

officers i.e. PW8, PW10 and PW14, that appellant Vinod had taken them to the place where PW2 was detained in Village Lalgarhi, Distt. Hathras.

17. The Police Officers from the local police station namely P.S., Sikandara Rao, Distt. Hatharas did not join the said raid. The presence of the Delhi Police Team was not recorded in the said police station before or after the occurrence.

18. PW2, after the rescue, was not medically examined. As per PW2 and the police team – PW8, PW10 and PW14, the victim had been kept in a gadda for 3 days and his hands were tied behind his back with a rope. He was only allowed to come out at night time. A person kept in the said condition would have suffered trauma, anxiety and shown signs of stress. As per some of the witnesses, pit/gadda was about 4-5 ft. deep and was covered with wooden plank. It would be difficult for a person to stand in the said gadda. It is not understood why and for what reasons no medical examination of PW2 was undertaken. The rope etc. would have left the mark or abrasions on the hands of PW2, but there was no such allegation.

19. PW4 Ram Babu, in his cross-examination had stated that Vinod was available in Delhi from 25th to 27th February, 2006. PW3, Rajender had also stated that he had contacted the appellant Vinod on 26th February, 2006. He had gone to the house of Vinod and his brother Manoj. PW3 and PW4 had further stated that they had gone to the

company and spoken to the guard posted there and had come to know that PW2 Ravi had gone with the appellant Vinod and his brother Manoj. Thus, the appellant Vinod was aware on 26th February, 2006, that he was the prime suspect and his involvement was being raised and questioned. The alleged phone call for ransom was made thereafter, on the next day i.e. on 27th February, 2006. PW2 in his cross-examination, had admitted that he did not know telephone number of his brother-in-law Rajender (PW3). He could recollect only first two digit i.e. 98 and not the subsequent digits of the mobile number. However, he had stated that the number was written on a paper which was lying in his purse, and taken by unidentified accused Subhash, who is a proclaimed offender. He has further stated that the telephone call for ransom was made to his brother-in-law PW3, from outside the room where he was detained. This is contrary to the prosecution's case and statement of PW7 Nain Singh that ransom call was made from his booth/PCO.

20. PW2 had further stated that the persons who had detailed him and had claimed ransom did not know his and his family's financial worth and capacity. They were not aware whether his mother or he owned any house and what was the value of the said house. Apparently, neither PW2 nor his mother PW1 were in possession of any mobile phone. PW2 was working as sweeper and was not a person of means and wealth. PW2 claimed that he had told the kidnappers that the value of

his house may be Rs.2.5 to 3.0 lacs. Thereafter, kidnappers demanded ransom of Rs.3.0 lacs from him and then from his brother-in-law. PW2 was working as a sweeper and was clearly not a man of means or a person with money.

21. Telephone records of two telephone numbers 9871127652 and 9837945176, Ex. PW14/D, show that an incoming call was received from telephone number 9837945176 at 10.24 AM on 27th February, 2006. The call lasted for 255 seconds i.e. for more than 4 minutes. It was a long call, but the full details of the said conversation have not come out and stated. On the other hand, PW1, PW3 and PW4 had stated that call was received by PW3 at 11.00/11.30 AM. They have only referred to one or two lines which were spoken by the alleged kidnappers stating that the person they were looking for was with them and a demand of Rs.3 lacs was made.

22.. As per the police, call to the Police Central Room was made by PW1 at 2.00 PM i.e. after a gap of about 4 and a half hours after the call was received from the kidnappers at 10.24 AM on 27th February, 2006. It is difficult to believe and accept that after receiving the ransom call as stated PW1, PW3 and PW4, they would have waited for 4/5 hours and would not have called up the police immediately.

23. As per the call details, Ex. PW14/D, another call was made from 9837945176 to telephone number 9871127652 at 2.24 PM on 27th

February, 2006. The call was for 50 seconds i.e. slightly less than a minute. PW1, PW3 and PW4, had not mentioned or stated anything about this call. They had not averred on the conversation which took place. The police version is also completely silent on this aspect. The prosecution version with regard to the ransom, remains rather ambiguous and doubtful.

24. The FIR in question was registered at 8.10 PM on 27th February, 2006. By that time, the second call and conversation had taken place on 2.24 PM. There is no mention about the said conversation in the FIR or in the statement of PW1 which was recorded at 7.30 PM on the same day.

25. As per the prosecution version, complaint was made on telephone number 100 at 2.00 PM on 27th February, 2006 from telephone number 9871127652. However, this is not recorded in the call details of the said telephone number Ex. PW14/D. As per the call details no call, incoming or outgoing, was received or made from or on telephone number 9871127652 on 27th February, 2006, between 1024 and 1424 Hrs. when the two incoming calls were received from 9837945176.

26. The police officers including the Investigating Officer did not claim or state that they had made any call to telephone number 9837945176. It is difficult to accept that the investigating officer would not have tried to verify the number or the user from which the call for

ransom was made. No attempt was made to locate the place from where the call was made.

27. As noticed above, PW8 had stated that the attendance-sheet was seized by the Investigating Officer vide Ex. PW8/C on 27th February, 2006. The seizure record is dated 27th February, 2006, but the attendance sheet also includes attendance of 28th February, 2006. PW6, the guard had also stated that the Investigating Officer, along with appellant Vinod, the victim PW2, had come to the office on 27th February, 2006, between 2 – 5 PM. Ex. PW8/D shows that the seizure of the attendance sheet was made on 27th February, 2006, and thus the Investigating Officer had visited the office of the company on the said date and spoken to PW6. However, from the attendance sheet which has been placed on record, it appears, that this was not the attendance sheet which was collected on 27th February, 2006. This is clear as the date 28th February, 2006 and the absence of the appellant Vinod and PW2 on the said date is recorded therein.

28. The Qualis, allegedly used for kidnapping, has also not been recovered. No details and identity of two others in Qualis has been established. No disclosure is attributed to the appellants on the said aspects.

29. In view of the aforesaid, one gets an uneasy feeling that there is something more to the entire episode and that full and true facts have not

been investigated and brought on record. Ravi certainly remained outside and did not come back home, at least till 27th February, 2006. He may have remained in an undesirable company, during this period, or may have overindulged himself or indulged in wrongful activities. It is possible, he may have incurred some expenses or over indulged himself and there may be a call demanding money etc. on that account.

30. Supreme Court in case of *Kalu @ Amit v. State of Haryana* 2012

(7) SCALE 40 has observed that:

“The court must not get influence by the remissness or inefficiency of the Investigating Agency and acquit the accused if the core of the prosecution case is undented and established. That will be putting a premium on inefficiency at the cost of cause of justice. We find that in the instant case, the core of the prosecution case or the substratum of the prosecution case has remained intact.”

Thus, what is important is that the prosecution should be able to prove the charges against the appellants and the core of the case should not dented. After scrupulous examination of these statements, it can be seen that there are blatant gaps, in the prosecution case, which remain unanswered. Palpably full and true facts have not been placed on record and, one gets a feeling that they are being concealed from the court. The police investigation, to the say the least, remains unsatisfactory and, as reflected in the police statements, they have failed to reach the substratum of this case. Superficial manner of the investigation reflects that no attempt has been made to the find out the exact truth.

31. Keeping in view the aforesaid facts, we feel that prosecution has not been able to prove and establish the case. In the light of these observations, the appellants are entitled to benefit of doubt for the offence of Kidnapping for ransom under Section 364A IPC and are acquitted. They should be released, if not required by law to be detained in any other case. Appeals are disposed off accordingly.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(S. P. GARG)
JUDGE

December 03rd, 2012
kkb