

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

+ CRL.M.C. No.2685/2011

% Judgment reserved on : 13th December, 2011
Judgment delivered on: 27th March, 2012

BHARAT JHAMB & ORS Petitioners
Through : Mr.K.K. Sud, Senior Advocate.
with Ms.Kanupriya, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through : Ms. Rajdipa Behura, APP.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, the petitioners have sought to quash the FIR No.76/2008 registered at police station, Saket under Sections 364A/120B/368/201/ 387/386/511 of the Indian Penal Code, 1860 on the complaint of petitioner No.9.

2. The facts in brief of the present case are that on 20.11.2008, petitioner No.9 Rohit Khandelwal, appeared in the police station mentioned above and got registered his complaint, regarding kidnapping, to the duty officer, wherein it is stated that Smt.Kulwant Kuar Verma/petitioner No.10, wife of late Shri Charanjeet Verma who

is his mother-in-law, living at D-144, First Floor Saket, New Delhi - 110017. She has two daughters and one son namely Arjun Verma, who is aged about 14 years and studies in 09th standard, at Gyan Bharti School, Saket, New Delhi. On 20.11.2008, as per his daily routine, he alongwith his class mate namely Ankit, left his house for school at about 7.45AM. At about 09:45AM, class teacher of Arjun made phone call at his house and she told to the mother of Arjun that he did not reach to the school and Ankit has informed that at the school gate of school, three persons were in silver colour Hundai Getz car, who asked Arjun that if he is brother of Sapna. On saying, yes, by Arjun, they asked him to show the way to his house. All the above said three persons made Arjun to sit in their car and drive away the said car. Arjun did not return to his house. No visitor came to the house and Arjun did not reach at the School. At the same time, mother of Arjun told him about this and he immediately came to the police station. He suspected that above named persons kidnapped Arjun by false impression. Therefore, sought legal action against them.

3. On the basis of the above statement, offence under Section 363 the Indian Penal Code, 1860 was registered vide aforementioned FIR. Investigation of the case was assigned to SI Gagan Bhaskar. PCR informed regarding kidnapping and W.T.message was transmitted to South District Control Room.

4. During investigation proceedings, SI Sahib recorded statement of Smt.Kulwant Kaur and Ankit who supported the kidnapping of Arjun Verma. Smt.Kulwant Kuar received a threatening phone call

from mobile phone No.9718127227 at her mobile phone No.9910304609 and they made Arjun talk on phone. The persons who made phone call stated that they kidnapped Arjun. They also made a demand of ransom to the tune of ₹30.00 Lacs for release him and further threatened to kill Arjun Verma, if not paid the aforementioned amount. The section 364A of the Indian Penal Code, 1860 was also added during the investigation in the present case. SI Sahib inspected the place of occurrence on the identification of Ankit and prepared the site map of the place of occurrence. Efforts were made to search the kidnapped child and the accused persons.

5. Smt. Kulwant Kuar Verma, mother of the victim was continuously receiving threatening calls from mobile No.9718127227 on her mobile phone. Therefore, she was advised to record the threatening calls. Accordingly, calls were recorded after taking permission of the competent authority. Both phones were put on observation and recorded on logger system. Kidnappers repeatedly made threatening calls to the mother of victim and made demand of ransom. After repeated requests of Smt.Kulwant Kaur, kidnappers released the victim at night but demand of ransom continued. In the night of 20-21.11.2008 they left Arjun Verma at Okhla Tehkhand park, New Delhi, where at late night he was noticed in School dress by a public person namely Partap Singh s/o D-37, Tehkhand Village, New Delhi and made phone call at his residence and informed, accordingly, thereafter, left him at his house. He was taken into custody through memo. Statement of the victim Arjun Verma, regarding the kidnapping and his medical examination was got conducted form AIIMS.

Thereafter, he was handed over to Smt.Kulwant Kaur Verma, his mother.

6. Kidnapped child, Arjun Verma stated that four unknown boys on the pretext of asking address of his house made him to sit in their Hyundai Getz car. After taking a long drive they closed him inside a small room and in his presence threatened to his mother on phone and made demand of ransom amount.

7. Further investigation of this case, was handed over to Inspector Ishwar Singh. During the investigation, Arjun Verma made identification of the plot near village Sukhrali and Sector 17 Gurgaon, Haryana and stated that he was confined at the places mentioned above. It was came to light that said plot belongs to one Sh.Suresh Ahlawat, which was taken by accused persons on rent, few days ago.

8. Finding sufficient evidence against the accused persons, namely Dilip, Ramesh, Piyush Jain, Rohit Chopra, Bharat Jhamb, and Praveen - were arrested, who made their disclosure statement about their role in the crime.

9. During investigation it is revealed that Bharat Jhamb is uncle of Arjun Verma and he had dispute on property issue with Ms.Kulwant Kaur Verma, due to which Bharat Jhamb developed enmity with the family of Mrs.Kulwant Verma. The petitioner No.1 and co-accused Piyush Jain, Rohit Chjopra and Praveen are friends. Petitioner No.1/Bharat Jhamb for taking revenge, in connivance with Parveen, Rohit Chopra and Piyush Jain hatched the conspiracy to kidnap Arjun Verma. As there was need of more persons to kidnap Arjun, therefore,

Praveen also involved other co-accused namely Dilip, Sanjay and Devender @ Bhola in the conspiracy. Dilip, Sanjay, Devender @ Bhola charged ₹40,000/- each from Bharat and got arranged some constructed portion of a plot to his above named accomplices, near Sector - 17, Sukhraali Village on rent, so that, the child after kidnapping may be kept saved. Sanjay and Davender @ Bhola and Dilip alongwith Bharat, Rohit and Piyush also made earlier unsuccessful efforts to kidnap Arjun.

10. It is further revealed that on 20.11.2008, petitioners / accused persons namely Bharat Jhamb, Rohit, Piyush and Dilip came in Hundai Getz car to kidnap Arjun. On the way, co-accused Ramesh who works as electrician with Dilip was called and asked to arrange fake number plate of registration No.HR-26-AB-1551. As Bharat was known to Arjun, he left the said car near PVR. Other occupants with Ramesh made to sit Arjun in said car on the pretext of telling the address. At that time, accused Piyush Jain was driving the car and accused Rohit was sitting on the front seat besides Piyush. In rear seat, Ramesh and Dilip were sitting and who made Arjun to sit on the rear seat.

11. During the process of kidnapping, accused Rohit Chopra and Piyush procured two mobile numbers i.e. 9718127227 and 9711732727 on the fake documents of one Manoranjan Ghadhei. First mobile connection was used for making calls to the mother of the victim. It was disclosed by the accused persons that mobile phone and sim card were thrown after breaking the same. Despite every possible efforts, same could not be recovered.

12. Accused Praveen Kumar joined the other accused persons after kidnapping the boy. Accused Piyush Jain got recovered his car used in the crime. The judicial TIP of petitioners namely Rohit Chopra, Piyush Jain, Praveen Kumar and Dilip and Ramesh were got done; out of which accused Ramesh was identified by victim and rest of them refused to participate in the TIP.

13. During further investigation, accused Sanjay and Davender @ Bhola were also arrested who were found involved in the conspiracy but both of them were not involved in execution of the offence. Both of them reached at the place of confinement after kidnapping of Arjun and due to fear of their arrest, they asked other accused persons to release the child and both above named closed the child Arjun Verma in Indigo car of Sunil @ Gaithal and left him at Okhla. Sunil @ Gaithal was searched, but could not be traced out. The said indigo car No.DL-1YA- 6295 was seized and later on released to its owner on *superdari*.

14. Accused Sanjay and Devender @ Bhola denied their judicial TIP, who have been duly identified by victim at the time of police custody remand in the Court.

15. During investigation specimen writing of accused Piyush Jain was taken and sent for comparison on CAF to the FSL Rohini, the result thereof is awaited. On receipt of same, will be annexed to the case file.

16. After completing the investigation, Section 386/511 and 387 the Indian Penal Code, 1860 were added in the present case. Finally, the

charge-sheet under Section 364A/120B/387/386/201/511 the Indian Penal Code, 1860 was filed against the accused persons.

17. Instant petition has been filed by accused persons i.e. petitioner Nos.1 to 8, Rohit Khandelwal/ complainant and petitioner No.10/Smt.Kulwant Kuar Verma, mother of the victim.

18. It is submitted that the petitioner Nos.1, 9 & 10 are family members and very closely related to each other. They were sharing good relations since their child hood. However, some property related dispute crept between the families turned into unpleasant relations for some time.

19. Mr.K.K.Sud, learned Senior Advocate appearing on behalf of the petitioners submitted that the alleged incident in the FIR was only a childish act of petitioner No.1 who was unhappy over the property dispute which resolved in a very discriminatory manner and raw deal for father of petitioner No.1 under pressure of elders in the family due to sympathy for Smt.Kulwant Kaur Verma being a widow. It is further submitted that parties have resolved their all disputes; therefore, filed a joint petition and have also filed their affidavits.

20. Learned counsel further submitted that petitioner No.1 Bharat Jhamb on the date of occurrence, was just 21 years, 10 months and was pursuing his studies as well as helping his father in the business. He is the only son of his father apart from two other sisters. He has a clean antecedents, therefore, it is submitted that when the petitioners were sharing good family relations, since beginning, and there was a strong bond between themselves. Petitioner Nos.1, 9 & 10, however, had

some property division and disputes, which resulted in compromise on 07.11.2006. Petitioner No.10 is a widow lady and had got a son i.e. victim Arjun Verma, in adoption by her real sister namely Smt.Jaspal Kaur. The civil suit bearing No.887/2006 tilted as Kulwant Verma vs. Krishan Lal & Ors was compromised as per joint application dated 07.11.2006 before learned Civil Judge at Tis Hazari Courts, Delhi. The copies thereof are annexed as Annexure-4 collectively.

21. Prior to settlement, parties to the civil suit lived together in the property D-144, Saket, New Delhi for about 23 years. The father in law of petitioner No.10/ i.e. grand father of victim Arjun - Mr.Lajpat Rai Jhamb s/o Shri Issar Dass Jham aged about 88 years old is a brother of petitioner Nos.1's father and he stayed with his brother at ground floor of said property. The father in law of petitioner No.10 is staying with his brother Mr.Krishan Lal Jhamb at Gurgaon.

22. It is further submitted that petitioner No.10 is a daughter of Smt.Laxmi Devi who is sister of Sh.Lajpat Ram Jhamb (father in law of petitioner No.10 and grandfather of victim) and Shri Kishan Lal Jhamb (father of petitioner No.1). That marriage of first cousins took place which was within the prohibited degree but with the approval of the entire family and relatives. To explain, son of Shri Lajpat Rai Jham - late Shri Charanjeet Verma got married to daughter of Smt.Laxmi Devi - Smt.Kulwant Kaur (Petitioner No.10) who was the first cousin.

23. Further, Smt.Kulwant Kuar and smt.Jaspal Kaur are real sisters and daughters of Smt.Laxmi Devi. Petitioner No.10 adopted son of

Jaspal Kaur, namely Arjun Verma, the victim, who was son of Smt.Jaspal Kaur and her husband Shri Paramjeet Singh. Thus victim and petitioner No.1 are the first cousins and families had most happy relationship and lived in same house i.e. D-144, Saket New Delhi for about 23 years.

24. It is further submitted that petitioner No.1 and his family share good relations with petitioner No.10 and Arjun Verma and Smt.Jaspal Kaur (natural mother of Arjun Verma) with entire family and living in strong and bonded relations. The families got traumatised due to such childish act of petitioner No.1 and affected the entire family ties and bonds. However, condoned the childish prank since it was a reaction to childish talks of younger cousin i.e. Arjun Verma. The families want to end each and every issue between them and undertook to live with peace and harmony forever. They had always and will always provide full support to each other in every circumstance.

25. Learned Senior counsel for petitioners has pointed out that petitioner No.1 when applied for the bail, the matter of FIR being resolved was appreciated by the coordinate bench of this Court, which after hearing the complainant was pleased to observe that the family have amicably settled the matter and there is no objection, if the bail application is allowed.

26. He relied upon the judgment of this Court in **Basara v. State : 2007 (98) DRJ 381** wherein coordinate bench of this Court while quashing the FIR under Section 307/34 the Indian Penal Code, 1860 observed as under:-

“14. In the present case since the parties have amicably compromised the subject matter of FIR in question among themselves, no useful purpose is likely to be served by continuing with the aforementioned criminal case registered against the petitioners. Petitioners and complainant are residents of same locality. Peace has been brought in the locality with the intervention of the well wishers of the locality. When there is peace in locality, there will be peace in the town. When there is peace in town, there will be peace in city. When there is peace in city, there will be peace in State. When there is peace in State, there will be peace in country. It is therefore in the interest of the society that permission to quash the FIR in question is granted by this Court. Moreover, since petitioners and complainant are resident of same locality, continuation of criminal proceedings will only revive the bitter memories of the past and may lead to further enmity between them.”

27. Mr.Sud, has also relied upon the decision rendered by this Court in CrI.M.C.No.2572/2011 on 09.08.2011 wherein proceedings under Section 365/342/506/376/34 the Indian Penal Code, 1860 were quashed.

28. To sum up he also relied upon decision of the Apex Court in **Mrs.Shanuntala Sawhney v. Mrs.Kaushalya Sawhney & Ors** 1980(1) SCC 63 wherein it has been held as under :-

“The sublime element which we adverted to in the beginning consists in the optimistic endeavour to bring parties together so that the litigation may not cut them asunder, especially when they are sisters. The purpose of law and justice (dharma) is promotion of cohesion and not production of

*fission. From this angle, as the arguments proceeded and the legal tempers flared up, we suggested that instead of escalating estrangement the parties may as well compose themselves and their quarrels and re-establish their sisterly relations making a somewhat amicable adjustment of the lis before us. Viewing the case from this perspective of tranquillity versus turbulence, but making it perfectly plain that suggestions from the court towards this end will not affect its unbiased adjudicatory duty in case it became necessary, we ventured tentative solutions. Counsel took up the suggestion in the proper spirit and we must record our admiration for the strenuous effort made by the young lawyer Shri M. L. Varma who did his best and successfully persuaded his client who had won in the High Court to come down to a compromise. We need hardly say that such a seasoned and senior counsel like Shri Lal Narain Sinha could be counted upon to aid in the process, and he did. **The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship or reunion.** In the present case, counsel today put in a joint statement(1) signed by the parties setting down the terms on which they have agreed. We consider it a success of the finer human spirit over its baser tendency for conflict.”*

29. On the other hand, Ms.Rajdipa Behura, learned APP has strongly opposed the quashing of the FIR and proceedings related thereto in the instant case because of the fact that petitioner in joint petition sought indulgence of this Court to quash the FIR on the basis that petitioner No.1 seeks a lasting relationship with the family members of the victim being a member of the family himself.

30. She asserted that petitioner Nos.2 to 8 who are the co-accused and not related to any of the families of petitioner No.1 though they are friends of co-accused/ petitioner No.1 Bharat Jhamb, who were involved in the crime. The offence committed by the accused persons are creating serious dimensions among the people and creating panic for securing release of arrested associates. Therefore, no leniency should be given in awarding sentence to the petitioners/accused persons being the family member or the close friends of the family members.

31. She has further submitted that the offence committed by accused persons are of criminal conspiracy, causing disappearance of evidence of offence or giving false information to screen offender, kidnapping for ransom, wrongfully concealing or keeping confinement, kidnapped or abducted person, extortion by putting a person in fear of death or grievous hurt and putting person in fear of death or of grievous hurt in order to commit extortion which are non-compoundable in nature. Thus, the accused persons have kidnapped the victim for ransom in a preplanning conspiracy and this shows the criminal intent of accused persons.

32. To strengthen her contentions, she relied upon the decision of the Apex Court in *Akram Khan v. State of West Bengal* decided in *Crl.A.2248/2011* vide its order dated *05.12.2011* wherein it was held that Section 364A had been introduced in the Indian Penal Code, 1860 by virtue of the Amendment Act 42 of 1993. The statement of objects and reasons is as follows:

“22) It is relevant to point out that Section 364A had been introduced in the IPC by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:-

‘Statement of Objects and Reasons.--

Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973.’

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. Therefore, we are of the view that in those cases whoever kidnaps or abducts young children for ransom, no leniency be shown in awarding sentence, on the other hand, it must be dealt with in the harshest possible manner and an obligation rests on the courts as well.”

33. I have heard Id. Counsel for parties.
34. It is revealed from the discussion that petitioner no. 7 Sanjay,

petitioner no. 8 Devender @ Bhola and petitioner no. 5 Dalip, petitioner no. 2 Rohit Chopra and petitioner no. 3 Piyush Jain, on instruction of petitioner no. 1 (main accused) had hatched conspiracy earlier and also made unsuccessful attempt to kidnap Arjun.

35. In the case in hand, petitioner no. 1 Bharat Jamb in connivance with his friends petitioner no. 2 Rohit Chopra, petitioner no. 3 Piyush Jain and petitioner no. 4 Parveen hatched conspiracy to kidnap Arjun. Thereafter, as there was need of more persons to execute the alleged act, petitioner no. 4 Parveen also involved petitioner no. 5 Dalip, petitioner no. 7 Sanjay and petitioner no. 8 Devender @ Bhola in the conspiracy.

36. It is pertinent to mention here that aforesaid accused persons / petitioners Dalip, Sanjay, Devender @ Bhola charged Rs.40,000/- each from petitioner no. 1 Bharat Jamb and got arranged some constructed portion of a plot at Sukhrali Village, near Sector - 17 at Gurgaon on rent for the purpose the kidnapped child may be kept therein.

37. Thereafter, they demanded hefty amount as ransom for his release.

38. The instant petition has been filed jointly by accused persons i.e. petitioners no. 1 to 8 and petitioner no. 9, Rohit Khandelwal / complainant and petitioner no. 10, Smt. Kulwant Kaur Verma, mother of the victim.

39. Mr. K.K. Sood, Id. Senior Advocate appearing on behalf of the petitioners submitted that petitioner no. 1, 9 & 10 are family members

and are very closely related to each other. They were sharing good relations since their childhood. However, some property related dispute crept between the families turned into unpleasant relations for some time.

40. It is further submitted that the alleged incident in the FIR was only a childish act of petitioner no. 1, who was unhappy over the property dispute, which resolved in a very discriminatory manner and raw deal for father of petitioner no. 1, under pressure of elders in the family due to some sympathy for Smt. Kulwant Kaur Verma, petitioner no. 10 (mother of the kidnapped boy) being a widow.'

41. It is further submitted that parties have resolved their all disputes, therefore, filed a joint petition and also filed their affidavits to this effect.

42. Ld. Counsel for petitioners has relied upon a judgment of this court in *Basara (Supra)*, whereby Coordinate Bench of this Court while quashing the FIR under Section 307/34 Indian Penal Code, 1860 observed that petitioners and complainant are residents of same locality. Peace has been brought in the locality with the intervention of the well-wisher of the locality. When there is a peace in the locality, there will be peace in the town. When there is a peace in the town, there will be peace in the City. When there is a peace in the City, there will be a peace in the State. When there is a peace in the State, there will be a peace in the Country.

43. The esteemed brother Judge as observed beautifully and when

there is similar occasion, the courts must remember the above beautiful wordings. However, the case in hand is of different kind and nature.

44. The offence committed by the accused persons in the present case are creating serious dimensions among the people, causing disappearance of evidence of offence or giving false information to screen offender, kidnapping for ransom, wrongfully concealing or keeping confinement, kidnapped or abducted person, extortion by putting a person in fear of death or grievous hurt in order to commit extortion not only in compoundable but in a case of very serious in nature.

45. I note petitioner no. 1 / main accused to execute his dirty plan, engaged in the conspiracy and further engaged other co-accused persons to execute the same and finally it is executed.

46. This type of offence not only created panic in the family of the victim, but also in the Society as well.

47. I am conscious, the witnesses may not support the prosecution case before the trial court, therefore, are chances of acquittal of petitioners / accused. But, chances of otherwise are also very strong in this case. The prosecution's evidence is going on. Let this case proceed further.

48. No doubt, this Court has quashed the FIR on compromise in an offence punishable under Section 307/308 and even in cases punishable under Section 376 IPC.

49. But, keeping the facts and circumstances of the instant case, I am of the considered view that the present case is of different kind, wherein the conscious of a prudent man can be pricked, the way petitioner no. 1 (main accused) had hatched a conspiracy and finally executed the same, in the manner as alleged in the case. More so, only petitioner no. 1 (main accused) is in the relations of the victim and none-else. Therefore, the sanctity and beauty of the judgment in case of ***Basara (Supra)*** has no relevance in the facts and circumstances of the instant case. Every case has its own facts and circumstances. But the facts of this case are very shocking. Therefore, no leniency or mercy can be shown in favour of petitioners / accused persons.

50. In view of the above, I am not inclined to quash FIR no. 76/2008 registered at PS-Saket, under Section 364A/120B/368/201/387/386/511IPC.

51. CrI. M.C. 2685/2011 is accordingly dismissed.

52. No order as to costs.

SURESH KAIT, J

MARCH 27, 2012

Mk/Jg