

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

+ **Crl. Appeal No. 853/2012**

% **Reserved on: 31st August, 2012**
Date of Decision: 28th September, 2012

VISHAL Appellant

Through Mr. M.L. Yadav, Advocate.

Versus

STATE Respondent

Through Ms. Richa Kapoor, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.P. GARG

SANJIV KHANNA, J.

The appellant Vishal impugns judgment dated 29th February, 2012, whereby he was convicted for kidnapping of Sukh Dayal for ransom, under Section 364A/34 of the Indian Penal Code 1860 (IPC). He has been sentenced to life imprisonment and fine of Rs.1000/-, in default he shall undergo simple imprisonment for one month.

2. The appellant was initially tried along with co-accused Amar Mishra, Ravi @ Titu, Rajender @ Pappu, Satbir and Mukesh. However, the appellant absconded and was declared proclaimed offender vide order dated 6th September, 2006. Till then 33 prosecution witnesses had been recorded by the Trial Court. By judgment dated 27th February, 2009, Amar Mishra, Satbir, Ravi, Rajender and Mukesh were convicted for offences punishable under Section 364A/34 IPC. Besides this, Satbir was also convicted under Section 25 of the Arms Act, 1959. The trial Court, however, acquitted the two brothers Rajesh and Rocky Khanna. Appeals filed by Amar Mishra, Ravi, Rajender and Mukesh have been dismissed by this court vide decision dated

23rd September, 2011. Appeal filed by Satbir, however, was allowed and his conviction and sentence has been set aside.

3. Appellant herein, Vishal was arrested on 8th January, 2012 and thereafter testimony of Inspector Om Prakash (PW34), ASI Bali Ram (PW35) and HC Sukhvinder Singh (PW36) were recorded.

4. In brief, the prosecution case is that one Sukh Dayal, who had appeared as PW-2, was abducted from Punjabi Bagh, New Delhi on 16th July, 1994. Under threat of injury, he was taken to Loni, U.P. and then to Ajit Nagar, Gandhi Nagar in a car and was kept in illegal detention, against his will. On 17th July, 1994, Ram Lal Malik (PW-1), brother of the victim lodged a complaint (Ex. PW1/A) with the police and FIR No. 378/94, P.S. Kashmere Gate was registered under Section 364A/34 IPC. The FIR mentioned that PW-1 had received ransom calls for release of PW-2. Telephone calls of PW-1 and his family members were monitored by the police. Eventually on the basis of tip-off, Amar and Rajender were ambushed on 19th July, 1994, outside Ritz Cinema, at around 1.10 AM. After a shooting incident, the two accused were overpowered and apprehended. On interrogation, they made disclosure statements (Ex. PW18/A and PW18/B) which led the police parties to the place where PW-2 was confined i.e. House No. 4225, Second Floor, Ajit Nagar, Gandhi Nagar. The said rescue operation was conducted at around 3.00 AM, the same night. Vishal, the appellant herein, was nabbed by the police on the spot and arrested. After completing investigation, challan was filed under Section 364A/34 IPC against Vishal and others.

5. Prosecution has examined 36 witnesses but the prosecution case is primarily based upon the testimony of (PW1) Ram Lal, (PW2) Sukh Dayal and (PW6) Khem Chand and the police officers who had participated in the rescue operation.

6. Ram Lal (PW1) had deposed that, on 16th July, 1994, he and his daughter had received ransom call demanding Rs.20,00,000/-, for the release of Sukh Dayal. He searched for his brother Sukh Dayal (PW2) but without success. Ultimately he filed a complaint with police (Ex. PW1/A), in the early

morning of 17th July, 1994. He had also handed over 7 audio cassettes (Ex. PW1/1 to PW1/7) recording of conversation in which demand of ransom was raised. He also visited police station on 20th July, 1994. At this stage, we may notice that in the appeals preferred by Amar Mishra, Ravi, Rajender and Mukesh, a Division Bench of this Court after examining the law and legal position in *Mahavir Prasad Verma v. Surinder Kaur*, AIR 1982 SC 1043, *R.M. Malkani v. State of Maharashtra*, AIR 1973 SC 157, *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, AIR 1975 SC 1788 and *Ram Singh vs. Col. Ram Singh* AIR 1986 SC 3, has observed and held that the pre-conditions essential for tape recordings to be admissible as evidence, were not satisfied. Respectfully following the said judgment, we are not inclined to take into account the tape recordings of the conversations. However, this does not disturb or affect the statement made by PW-1 regarding the ransom calls, which were received, and kidnapping of Sukh Dayal (PW2).

7. Sukh Dayal (PW-2), the victim himself had deposed that on 16th July, 1994 at about 8.00 – 8.30 PM, when he was going towards his house, he was forcibly taken into a car by the accused Amar Mishra, Rajender, Mukesh and Ravi. He was taken to some village in Loni and then Gandhi Nagar, Shahdara, till he was rescued by the police, in the early morning on 20th July, 1994. He had further stated that Vishal and Ravi @Titu were apprehended by the police from the house at Gandhi Nagar, Shahdara. He denied the suggestion that he had not been kidnapped. We are not placing reliance on the statement of PW-2 in the cross-examination by the counsel for the accused Ravi, Rajender and Satbir, where PW-2 had stated that Vishal, along with Mukesh, had put knives on his neck and chest in the car, as the said fact was not stated by the PW-2 in his statement to the police. What is material and relevant is the statement that the appellant was present in the house at Gandhi Nagar at 3.00 A.M., where PW-2 was kept in captivity. Vishal was arrested in the operation conducted by the police, when PW-2 was rescued. Khem Chand (PW6) had stated that one Sukh Dayal Malik had come with Pappu,

Ravi and Amar for purchase of a plot. Next day again he came with other persons which included the appellant Vishal. He did not identify Vishal physically or by face as he had very weak eye-sight but he knew his name.

8. Inspector P.C. Mann (PW-18) had conducted the said raid in the intervening night of 19th – 20th July, 1994 at House No. 4225, Ajit Nagar, Gandhi Nagar, Shahdara, Delhi. He has deposed that they had arrested Amar Mishra and Rajender near Ritz Cinema. On the basis of disclosure statements made by Amar Mishra and Rajender (Ex. PW18/A and PW18/B respectively), they came to know that the victim was held as captive in the aforesaid house. They went to the second floor of the house as pointed out by Amar Mishra and Rajender. Sukh Dayal (PW-2) was found in a corner of a room on the 2nd floor and three accused including appellant were also found present in the same room. The three accused were guarding and doing surveillance. Two glasses, one plastic bottle of mineral water, one half of 3 x rum and some pieces of bidies and cigarettes were taken into possession. One plastic hand bag of Sukh Dayal was also taken into possession vide Ex. PW18/C. PW-18 identified the said articles PW3/1 to 7.

9. Inspector S.B. Yadav appeared as PW-19. He was part of the team which proceeded to Gandhi Nagar house and had gone to the second floor to rescue PW-2. He has also stated that appellant Vishal was present in the room and was guarding and doing surveillance of Sukh Dayal. After Sukh Dayal was freed he was brought to the police station. The appellant Vishal was arrested and his personal search memo was PW 19/D. In the cross-examination, he denied that Vishal was not present in the room or was not guarding or doing surveillance of Sukh Dayal.

10. SI Raj Singh (PW-33) has deposed on similar lines and had stated that he was member of the raiding party which had gone to House No. 4225, Ajit Nagar, Gandhi Nagar, with accused Amar Mishra and Rajender, who had been earlier apprehended. These two accused were left on the ground floor, in custody of two constables, and they went upstairs and rescued Sukh Dayal. The appellant Vishal was present in the room near Sukh Dayal. Sukh Dayal

was finally released from the custody of kidnappers, which included Vishal. Vishal was arrested at the spot and brought to the police station.

11. HC Sukhvinder Singh (PW-36) had stated the facts relating to arrest of the appellant, after he was declared a proclaimed offender vide order dated 6th September, 2006, passed by the trial court. On the information given by the secret informers, the appellant was arrested in front of a vegetable shop, Indira Market at about 4.15 PM on 8th January, 2012. The arrest memo was marked as Ex. PW36/A. Thereafter, the appellant was produced in the court.

12. We do not think that TIP of the appellant Vishal was required as Vishal had been arrested from the spot itself i.e the house in question and was taken to the police station along with victim Sukh Dayal, PW-2. There is ample evidence to conclude the same and this fact has been proved beyond doubt. The fact that no public witness was with the police team, for the 3.00 A.M. raid at the house, is only natural considering the swiftness and secret manner in which the rescue operation was undertaken.

13. We have also examined the statement of appellant under Section 313 Cr.P.C. The appellant had denied his presence at the location. He has further stated that he did not know Sukh Dayal and the police picked him from his house. He also claims that did not know the co-accused.

14. To prove an offence under Section 364A of the IPC, the following ingredients have to be satisfied:-

- (i) The accused must have kidnapped, abducted or detained any person
- (ii) He must have kept such person in custody or detention
- (iii) Abduction or kidnapping or detention must have been for ransom.

(see *Malleshi v. State of Karnataka*, (2004) 8 SCC 95 and *Vishwanath Gupta v State of Uttaranchal* 2007 (11) SCC 633).

15. It is the obligation of the prosecution to prove the ingredients particularly use of force, threat to cause or reasonable apprehension to cause death or injury to the victim coupled with demand of ransom (see *Anil v Administration of Daman & Diu* 2006 (13) SCC 36). The term ransom

was examined in *Suman Sood v State of Rajasthan* 2007 (5) SCC 634, wherein it has been held:

“57. Before the above section is attracted and a person is convicted, the prosecution must prove the following ingredients;

(1) The accused must have kidnapped, abducted or detained any person;

(2) He must have kept such person under custody or detention; and

(3) Kidnapping, abduction or detention must have been for ransom. [see also *Malleshi v. State of Karnataka*, (2004) 8 SCC 95]

58. The term 'ransom' has not been defined in the Code.

59. As a noun, 'ransom' means "a sum of money demanded or paid for the release of a captive". As a verb, 'ransom' means "to obtain the release of (someone) by paying a ransom", "detain (someone) and demand a ransom for his release". "To hold someone to ransom" means "to hold someone captive and demand payment for his release". (Concise Oxford English Dictionary, 2002; p.1186).

60. Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secrete place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go between to collect the ransom is generally considered guilty of the crime.

61. According to Advanced Law Lexicon, (3rd Edn., p.3932); "Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize. It is also used to signify a sum of money paid for the pardoning of some great offence and or setting the offender who was imprisoned".

62. Stated simply, 'ransom' is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu.”

16. On the basis of evidence of PW-2, it is clear that he was kidnapped and then detained. PW-2 had also stated that he was forcefully put in a car and was shown knife and threatened. PW-1 has proved that the demand for ransom was made. In the present case, therefore, it is established that the kidnapping was for the purpose of ransom. This was the motive and object

behind the said kidnapping. In Malleshi's case (supra), it was observed as under:-

“In the instant case as the factual position found by the trial court and the High Court goes to show, the object of abduction was for ransom. This was clearly conveyed to the victim PW 2. He was even conveyed the amount to be paid. It cannot be laid down as a straitjacket formula that the demand for payments has to be made to a person who ultimately pays. By way of illustration it can be said that a rich businessman is abducted. He is told that for his release his family members have to pay a certain amount of money; but money actually belongs to the person abducted. The payment for release is made by the persons to whom the demand is made. The demand originally is made to the person abducted or kidnapped. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of the purview of Section 364-A. It has to be seen in such a case as to what was the object of kidnapping or abduction. The essence of abduction as noted above is causing to stay in isolation and demand for ransom. The demand in the present case has already been made by conveying it to the victim. In Netra Pal case the High Court noted that there was no demand to pay. The factual position in that case as noted above is that the victim was a child to whom no demand could have been made. In that background the High Court took the view that Section 364-A has no application as no demand had been communicated. The position factually is different here. Ultimately the question to be decided is “what was the intention? Was it demand of ransom?” There can be no definite manner in which demand is to be made. Who pays the ransom is not the determinative fact, as discussed supra.”

(see also *Vinod v State of Haryana* 2008 (2) SCC 246 and *P. Liaquat Ali Khan v State of AP* 2009 (12) SCC 707).

17. Similarly in *Shyam Babu vs. State of Haryana*, (2008) 15 SCC 418, it was held as under:-

“The wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international intergovernmental organisation or any person to pay a ransom, the offence is complete.”

18. In the present case, we are satisfied that the PW-2 was kidnapped for ransom and demand for ransom was made. He was detained and remained in the company of kidnappers, including the appellant, till he was rescued in the police raid. There is evidence to show, in the form of statement made by PW-2, that after kidnapping, he was threatened that he would be injured or killed and the conduct of the kidnappers was such which would result in a reasonable apprehension of evil consequence. Threats were also given and conveyed to PW1. There was reasonable apprehension about his life. The term 'injury' or 'threat to injury' has been given wide meaning by the courts

19. We may also note that in the present case Section 34 has been rightly invoked. The act of kidnapping in the present case was not possible by one person. It was a joint effort with common intention. Common intention of the appellant is proved and established by the appellant's presence at the spot i.e. the house in question when the police carried out rescue operation and succeeded in freeing PW-2 from the illegal custody.

20. In view of the above findings, we do not find any merit in this appeal and the conviction and sentence of the appellant under Section 364A/34 is maintained. The appeal is dismissed

**-sd-
(SANJIV KHANNA)
JUDGE**

**-sd-
(S. P. GARG)
JUDGE**

September 28th, 2012
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