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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 27th April, 2012

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CRL.L.P. 575/2011

CRL.M.A.19100/2011 & 19101/2011

STATE

....Petitioner

Through : Mr.Sanjay Lao, APP.

versus

TAPAN KUMAR MANDAL

....Respondent

Through : Mr.Tapan Kumar Mandal, Respondent
in person.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. The State has preferred the present petition for leave to appeal against the judgment dated 21.02.2011 of learned Additional Sessions Judge in SC No.226/2009 by which the Respondent Tapan Kumar Mandal was acquitted of the charge of committing the offence punishable under Section 368 IPC. The prosecution alleged that on 21.03.2008 at around 10.15 P.M. Akash @ Akku aged 9 years was kidnapped for ransom. During investigation, the child was recovered from the possession of Pardeep Dev and Vishnu Vishwas. They informed in their disclosure statements that after kidnapping, the child was kept at the house of the accused at Ward No.25, Professor Colony, PS Forbis Ganj, District Ahraria, Bihar. The police arrested the accused for harbouring the kidnappers and wrongfully concealing the kidnapped child at his house.

2. After appreciation of the evidence on record and considering the rival contentions of the parties, the Trial Court acquitted the Respondent. The kidnappers Pardeep Dev and Vishnu Vishwas were however, convicted for committing the crime under Section 120-B IPC, and Section 364-A IPC r/w Section 120-B IPC.

3. Learned APP argued that the Trial Court did not appreciate the evidence in its true and proper perspective. The victim Akash @ Akku categorically identified the Respondent in the Court as being the person in whose house he had been kept after kidnapping. The victim Akash had no ulterior motive to falsely implicate the accused. The victim's parents had no prior animosity with the accused. For these reasons, the Trial Court failed to appreciate that a criminal conspiracy had indeed been hatched by the Respondent with co-accused Pardeep Dev and Vishnu Vishwas and that he had facilitated the crime by concealing the child in his house.

4. We have considered the submissions and have scrutinized the Trial Court record. Admittedly, the accused was not charged for hatching a conspiracy with co-accused to kidnap the child for ransom. No role whatsoever was attributed to the Respondent in the kidnapping of the child. He never came to Delhi at the relevant time to assist co-accused and did not take the child to his house. He never made any telephone call to the family members of the child for ransom. The only allegations levelled against him are that he confined or concealed the victim-Akash after his kidnapping, at his house. In our considered view, the prosecution has failed to lead any definite evidence that the accused deliberately concealed or confined the child in his house, and he was aware that the co-accused had kidnapped Akash. Moreover, the victim was not recovered from his

house. It is alleged that the child was recovered from the custody of co-accused Pardeep Dev and Vishnu Vishwas when they were making a telephone call at an STD booth. The Respondent was not with them at that time. PW-8 (Sanjay Kumar) in his deposition before the Court did not testify that the accused had ever accompanied the co-accused or the victim when ransom demands were made from the STD Booth by both the co-accused Pradeep Dev and Vishnu Vishwas. Nothing emerges from the record as to for how many days the child was kept by the Respondent in his house. It is not certain if the child remained in his exclusive custody and that no one else had access to him. Admittedly, the Respondent's mother also used to reside in the house and it is not clear if she was ignorant about the presence of the child in the house. Respondent's involvement surfaced only in the disclosure statements of the co-accused and pursuant to that, he was arrested from his house. Apparently, the co-accused used to take the child with them as and when required.

5. In order to invoke Section 368 IPC, three ingredients must be proved i.e. (a) a person has been kidnapped or abducted; (b) the accused was knowing about that fact and (c) the accused must have concealed or confined such person. In the instant case, the prosecution failed to adduce reliable evidence to support an inference of the specific knowledge of the Respondent that the child brought to his house was kidnapped for ransom. PW-Akash, in his testimony, did not claim that he overheard any conversation whereby co-accused informed the Respondent about his kidnapping. Since the child used to be taken away by the co-accused, the alleged abductors, it cannot be inferred that the victim was wrongfully concealed or confined in the house by the Respondent. Primarily the act of

concealment refers to the withdrawal from the actual observation of others, by removal or otherwise, of the person kidnapped or abducted. Where an accused has no knowledge of the victim having been kidnapped or abducted, he does not render himself liable to punishment under Section 368 IPC.

6. The Trial Court made observations on the testimony of the kidnapped child showing his reluctance to identify the Respondent as the person in whose house he had been kept. The prosecution failed to produce convincing evidence that the accused had requisite knowledge about the kidnapping of the child and had deliberately assisted the co-accused in concealing or confining the child to accomplish the purpose for which he was kidnapped. Since the alleged kidnappers belonged to the same village as the Respondent, their mere visits along with the kidnapped child or the mere staying of the victim at the Respondent's house is not sufficient to attract Section 368 IPC. No belongings of the child were recovered from the Respondent's house to show that he had been kept there for a certain duration in his house.

7. To be successful in an appeal against an acquittal, the prosecution must establish substantial and compelling reasons, which by and large are confined to serious or grave mis-appreciation of evidence, wrong application of law or an approach which would lead to complete miscarriage of justice. In the present case, the Trial Court listed various grounds on which it acquitted the respondent/accused. All of them, to our mind, are reasonable and none of them can be termed as misapplication of law or wrongful appreciation of the evidence placed before the Court by the prosecution.

8. An appeal against an acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is cautious in taking away that right. The presumption of innocence of the accused is further strengthened by his acquittal after a full trial, which assumes vital importance in our jurisprudence. The Courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused should be adopted.

9. In the light of above discussion, we approve the findings of the Trial Court and find that the prosecution failed to prove circumstances beyond reasonable doubt.

10. Considering all the facts and circumstances of the case, we find no infirmity in the impugned judgment. The petition is unmerited and is consequently, dismissed.

11. Accordingly, CRL.M.A.19100/2011 & 19101/2011 also stand disposed of.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

April 27, 2012

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