

\$~3

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

DECIDED ON : 27th FEBRUARY, 2012

+ **CRL.L.P. 567/2011, CRL.M.A.18815/2011**

STATE

..... Petitioner

Through : Mr. Rajesh Mahajan, ASC.

versus

RAKESH & ORS

..... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

S.RAVINDRA BHAT, J. (OPEN COURT)

1. Through this petition the Petitioner/State seeks leave to appeal against the impugned judgment and order of the Ld.Addl.Sessions Judge dated 09.04.2010 in SC No.32/2010 by which the Respondents were acquitted of the charge of having committed offence punishable under Sections 120B/363/364A/365/344 IPC.

2. Prosecution had alleged that Himanshu, a young boy aged about 2-1/2 years, and son of the informant PW-1 Sarvesh, was playing outside his house on 02.03.2007. The parents later noticed that he did not return home around 3.00 P.M. PW-1 Sarvesh, the father of Himanshu searched, but could not find him. Therefore, he went to the police station and lodged a report which became bedrock of the case. It was alleged that for a considerable

period there was no movement in the case when on 20.03.2007 the photocopy of a handwritten note was thrown outside the house of the abducted boy's parents demanding a ransom of ₹30,00,000/-. This was handed over to the police by PW-1. PW-1 Sarvesh further stated that on 01.04.2007, he received a ransom call on his mobile phone, which was followed by another call and similar calls were received subsequently on 03.04.2007 and 05.04.2007. It was alleged by the prosecution that the police acting on the basis of the mobile phone call details procured during the course of investigation went to village Dehliya Pooth, Aliganj, Etah, UP on 17.04.2007 to the house of Amar Singh at about 12.10 P.M. They claimed to have arrested the accused Deepu, Rakesh, Raj Kishore, Mahesh and Jitender. It was alleged that Himanshu was recovered from their custody from the premises of the said Amar Singh. The accused were interrogated and other accused were also arrested. After conclusion of investigation, the accused were charged for committing the offences. Three accused were discharged; one was juvenile and therefore, referred to the competent authority in that regard i.e. the Juvenile Justice Board. Some accused were declared as proclaimed offenders and one of them was subsequently arrested and made to stand trial by separate proceedings.

3. After considering the evidence led by the prosecution in the form of testimonies of witnesses as well as the documentary evidence, the Trial Court concluded that the case made out against the accused had not been proved beyond reasonable doubt. They were accordingly acquitted.

4. Ld. Addl. Standing Counsel urged that the Trial Court fell into error in not giving any weightage to the testimony of PW-1, the father who truthfully recounted the recovery of his son on 17.04.2007, from Amar Singh's

premises and the involvement and role of the Respondents/accused. It was urged that even though some of the witnesses did not support the prosecution story, the testimony of PW-1 was corroborated by PW-5, PW-6 and PW-8, the police witness (whose account of the sequence of events, the timing, involvement of the accused, were corroborated). It was submitted that having regard to these and the most important circumstance i.e. recovery of the minor boy Himanshu, the Trial Court should not have proceeded to acquit the Respondents.

5. In the present case, we notice that the prosecution had relied upon the eye witnesses' testimony of PW-1, PW-3 and PW-4, who were allegedly eye witnesses to the entire sequence of events which took place on 17.04.2007 i.e. the recovery of the missing boy. The prosecution claimed that a break through took place after the calls were traced and the place where the boy was detained was ascertained on that basis. However, we notice from the record that these calls recorded during the investigation were neither proved nor produced before the Court. Even if, this Court were to ignore that aspect, since investigation took place - the Court cannot ignore the inter se contradictions between the eye witnesses. The extracts of the Trial Court's observation in this regard as under :

"....12. PW-3 Lala Ram Mishra has not supported the prosecution case . He has stated that on 17.4.07 he was present at his home. He came to know that 4-5 persons of the village had been apprehended by the police. He reached near the car of the police and saw that all the accused persons were seated inside the car. He was informed by the police that these persons were involved in a case of kidnapping. He came to know that a boy was kidnapped. However, he he had not seen that boy at the spot. He was not present with the police party during raid. Some persons had managed to escape. However, they had not

escaped within his view. He did not know their names. Police requested him to sign some papers. He signed some papers at the instance of police.

He admitted that the arrest memos of accused persons Ex. PW3/A, Ex. PW3/B, Ex. PW3/C, Ex. PW3/D and Ex. PW3/E bear his signature at point A and seizure memo of boy Himanshu Ex. PW1/C also bears his signature at point B. However, he stated that the seizure memo had not been prepared in his presence and he had signed on a blank paper. He had heard that a boy was recovered. He had not attended the raid conducted by the police.

13. PW-4 Subhash Chand residents of Village Dahlia Pooth District Etah has also not supported the prosecution case and has stated that on 17.4.07 he came to know that police had reached the village. The accused persons was sitting inside the police vehicle. Later on he came to know from the villagers that police had arrested the accused persons in case a of kidnapping. However, he had not seen the kidnapped person. He did not even try to see inside the other vehicles as to who were there in those vehicles. Police obtained his signatures on some blank papers. In his cross examination he has stated that the recovery of the child or any other proceeding did not take place in his presence. Nothing was written on documents Ex. PW-3/A to Ex. PW-3/E. When he signed those documents they were blank. PW-5 HC Sohan Pal at one place has stated that the secret informer met the IO in Aliganj and from Aliganj they proceeded to the house of Amar Singh. While at another place he has stated that they directly reached Etah without any stop. PW-5 has further stated that SHO M.S Shekawat was with them and two teams were made by him. The team in which he was a member was headed by Inspector B.P.Sharma. There are no reasons disclosed as to why the SHO M. Shekawat and Inspector B.P.Sharma have not been cited as prosecution witnesses in this case. Though they were heading two respective teams. It has also been contended by counsel of the accused that no site plan of place has been prepared from where the child was recovered. No photograph of the place was taken from where the recovery was effected.

14. There are other contradictions as well. PW-6 HC Jagmal

Singh has stated that the distance between village Dahlia Pooth and local police station was about 3-4 km. Whereas PW-1 Sarvesh has stated the distance to be 8 to 10 km. PW-5 HC Sohan Pal has stated that statement of 2-3 villagers were taken by the IO. While PW-6 HC Jagmal Singh has stated that villagers were asked to join the raid but they refused. It has been contended by counsel for accused that ransom note is only a photocopy, not verified by Forensic Science Laboratory. Therefore no reliance can be placed on it and offence u/s 364 A is not attracted.

15. Relevant would it be to note that the disclosure statements Ex. PW-5/A of accused Raj Kumar, ExPW-5/B of accused Deepu, Ex.PW-5/C of accused Jitender, Ex.PW-5/D of accused Mahesh and Ex.PW5/E of accused Raj Kishore are complete confessional statements recording events in the past tense including the fact that when the statement was made the child had already been recovered. Having perused the confessional statements, styled by the prosecution as disclosure statements it is apparent that it was recorded subsequent to the recovery of the child. All disclosure statements are recorded in the same fashion. For examples in disclosure statement Ex. PW5/C it is recorded that at about 12 O clock, "Your team conducted a raid at the house of Amar Singh in village Dahlia Pooth and apprehended me, Deepu, Raj Kishore, Mahesh and Rakesh along with child. While other accused Amar Singh, Bablu, Rajesh, Kaptan Singh, Surender and Ashok scaled the wall and absconded." The disclosure statements are narratives of past events. Obviously, no recovery has been made pursuant to any disclosure statement made by the accused persons. The most incriminating evidence sought to be proved by the prosecution has fallen. I have to hold that the prosecution has miserably failed to prove that Himanshu was recovered pursuant to the disclosure statement made by accused persons. The investigation has been carried out with remissness. I find it strange that why IO did not obtain the call records from service provider. Though PW-1 Sarvesh father of the child Himanshu received many ransom calls from the accused persons and the details were provided to the I.O.

16. The script in the disclosure statement is not a pre-script but it is a post-script of events which had already transpired. Thus, the question of a new fact not being in the knowledge of the police being discovered by the police for the first time after the disclosure statements were recorded does not arise. No part of the disclosure statements is admissible under section 27 of the Evidence Act. I place reliance upon CA no. 793/2004 Devesh Kumar Vs State.

17. In view of the aforementioned deficiencies in the case of the prosecution the prosecution story becomes doubtful. It is a settled law that where the case of the prosecution had substantially fallen, remnants of what is perceived to be not tainted is not sufficient to sustain a conviction, for the reason it may be difficult to demolish each and every piece of evidence led by the prosecution. When the main pillars of the case of the prosecution have fallen, it would be futile to look to the pillars which stand and try and ascertain whether the structure can be salvaged....”

6. The Ld. Addl.Standing Counsel argued that even though the independent witnesses turned hostile in this case, the testimony of PW-1 has to be accepted since it was dully corroborated by the other police witnesses. This Court is of the opinion that such an approach would be incorrect. The entire case of the prosecution is that the raiding party which went on 17.04.2007 to the place where the boy was detained, was accompanied by PW-1; and the surrounding circumstances were said to have witnessed by the independent witnesses PW-3 and PW-4. However, the latter contradicted the prosecution evidence and resiled from their statements recorded under Section 161 Cr.P.C entirely. In this situation, the Court was left only with the testimony of PW-1. This Court is not persuaded that this testimony was

corroborated by the depositions of police witnesses. After having relied upon the testimonies of independent witnesses, it would be unsafe for the Court to call back police witnesses on a vital circumstance such as an involvement of the accused since the prosecution's specific case was that a large number of abductors and kidnappers were involved.

7. The prosecution's inability to produce the proof of the call records to establish the link between the accused and the crime in this case is, in our opinion, a substantial omission which further undermines its case. It has been often stated that while considering petitions for leave to appeal against acquittal, the High Court has to be satisfied that there are substantial or compelling reasons for grant of such relief; these would include misappreciation of evidence or wrong appreciation of the applicable law or legal principles. We do not observe any such infirmity in the Trial Court's reasoning in the impugned judgment. The petition is accordingly dismissed.

S. RAVINDRA BHAT, J

S.P.GARG, J

FEBRUARY 27, 2012

tr