

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

Reserved on : January 16, 2013
Pronounced on : January 21, 2013

+ CRL.REV.P. 55/2007

D.K.CHAKRABORTY Petitioner

Through: Mr.P.N.Bhan, Advocate

versus

S.P.ROY CHAUDHARY & ANR. Respondents

Through: Mr. Diwan Singh Chauhan,
Advocate for respondent/accused
Mr. Sunil Sharma, Additional
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Acquittal of respondent – accused for the offence of kidnapping for ransom is under challenge in this revision petition by the Complainant/first informant. The factual matrix of this case as noted in the impugned order is as under:-

“Brief facts of the prosecution case are that on 11.05.1995 Shri D.K. Chakarvorty lodged a report Ex.PW 1/A at P.S. Rajender Nagar regarding the kidnapping of his wife and demand of money by accused. On the said complaint, a case U/s 365 IPC was got registered which was investigated by SI Inder Singh. During Investigation, I.O. visited the house of complainant, inspected the spot, prepared the site plan and recorded the statement of witnesses U/s 161

Cr.P.C. Thereafter on 12.05.1995. I.O. alongwith other police officials and son of the complainant Kaushik Chakarvorty went to Calcutta and got recovered Smt. Manju from the house of accused Shiv Prasad Rao Chaudhary. Accused Shiv Prasad Rao Chaudhary was arrested and was produced in the concerned court at Calcutta and after taking transit remand, he was brought to Delhi. I.O. also produced Smt. Manju before the court of Ld. M.M. where she got recorded her statement U/s 164 Cr. P.C. After completion of the necessary investigation, challan against the accused was filed in the court of Ld. MM. Since the offence punishable U/s 364A/365 IPC was exclusively triable by the court of Ld. Sessions Judge, Ld. MM committed the case of the court of Ld. District & Sessions Judge and thereafter the case was assigned to the court of Sh.L.D. Mual, the then Ld.ASJ and lastly this was transferred to this court for trial.”

2. After recording evidence, verdict of acquittal has been recorded by the Trial Court while holding as under:-

“I have also carefully gone through the evidence of PW2 Kaushik Chakravarthy & PW 4 Smt. Manju Chakravorthy. The conduct of these witnesses are also quite unnatural and their testimonies also suffers from serious infirmities. PW 4 Manju Chakarvorthy who is the victim was stated in his cross-examination that when the accused had come to their house on 7.5.1995, her daughters namely Sumita and Nandita were present and none else was present in the house whereas PW 2 Kaushik Chakarvarthy who is the son of the victim was contradicted her by stating that when accused visited their house on 7.5.1995, his mother, his maternal grandmother, elder sister and himself were present in the house. Further PW 2 Kaushik Chakaravarthy in his examination in chief has stated that when they reached the house of accused at Calcutta, his mother was found sitting in a

dark room and she was very frightened. He has denied the suggestion of Ld. Counsel for the accused that his mother and the wife of the accused were viewing a bangla film on the TV in the room. On the other hand PW 5 SI Haramba Mahta who also visited the house of accused alongwith Delhi Police officials, has admitted it to be correct that when they reached the house of accused, Manju Chakaravarthy and other occupants of the house were watching the TV and further that the door of the room in which Manju Chakaravarthy was sitting, was open. It is highly improbable that a person after kidnapping a lady would keep her in his own house and that too alongwith his family members and himself would go to the office. It has come in the testimonies of witnesses that accused Shiv Prasad Rao Choudhary was working as an agent of the complainant D.K.Chakaravorty. It is also admitted by complainant that he had taken a loan from the accused and they were on visiting terms prior to the registration of the case. Therefore, the story put forward by the accused that complainant wanted to usurp his money and a false case was got registered him, cannot be ruled out. The story of the prosecution that accused kidnapped the wife of complainant and kept her in his house seems to be highly improbable. It has come on record that the house of the accused is situated in a thickly populated area. Further, it has also come in the cross-examination of PW Manju Chakaravarthy that during her stay in the house of accused, she occasionally used to visit temple. From the above fact it is clear that she was free to move anywhere and she was having ample opportunity to inform the passerby while visiting the temple and to the residents of the locality to inform about her alleged kidnapping by the accused but the silence of the victim on this aspect creates a serious doubt in the prosecution story and an inference can be drawn that she herself visited the house of accused and was living there with her own

will. It is also the case of prosecution that accused had kidnapped Smt. Manju Chakaravarthy on the pretext that she had been called by her husband to Yamuna Nagar for the purpose of signing some papers. It has come in the testimony of PW 4 Smt. Manju that on the way accused told her that they were going to Calcutta and not Yamuna Nagar. It is quite surprising that even thereafter she did not resist or tell any co-passengers that accused was taking her to Calcutta instead of Yamuna Nagar forcibly. This too creates a serious doubt in the case of prosecution. It is well settled that witnesses may lie, circumstances do not.”

3. Learned counsel for petitioner assails impugned order on the ground that the discrepancies pointed out by the Trial Court in the prosecution case are of minor nature and the victim (PW-4) had nowhere stated in her evidence that she has gone to any temple or she was free to move and infact, the version of victim (PW-4) of the respondent – accused taking her away on the pretext of going to Yamuna Nagar for signing some papers and then telling her that her husband would come to Calcutta and had confined her in his house in Calcutta stands firmly established from her evidence, which has been illegally ignored by the Trial Court. It is pointed out that the deposition of PW-2 – son of the victim corroborates her version and the plea of alibi raised by respondent – accused is patently fabricated and the same has been illegally relied upon by the Trial Court. It is also pointed out by petitioner’s counsel that the defence of respondent –accused of victim (PW-4) by herself going to the house of accused at Calcutta remains unsubstantiated.

4. Learned counsel for respondent – accused supports the

impugned order and submits that the respondent – accused has been falsely implicated in this case as husband (PW-1) of the victim (PW-4) owed money to respondent – accused and to avoid repayment of loan, this false case has been foisted upon respondent – accused. It is urged that the complainant party and the accused party had family and business relations and PW-4 had come to respondent – accused husband of her own and she was not confined nor any ransom was demanded and since prosecution case was not believable therefore respondent – accused has been rightly acquitted.

5. After having heard learned counsel for parties and upon perusal of the impugned order and the evidence on record, this Court finds that the shortcomings in the prosecution case pointed out by the Trial Court, as noted hereinabove, cannot be said to be minor one. It would be pertinent to note that PW-1 husband of victim (PW-4) has admitted in his evidence that he had taken loan from respondent –accused and it is not the case of PW-1 that he had repaid the loan amount prior to this incident. When PW-2 – son of the victim (PW-4) had gone with the police to the house of the respondent –accused, the victim (PW-4) was not found locked in any room but was found sitting in a room which had a curtain. Victim (PW-4) herself has admitted in her evidence that the families of the accused and the complainant were on visiting terms and she is no stranger to Calcutta where she had earlier lived. When confronted with the photographs of both families together, the victim (PW-4) tried to wriggle out by being unable to identify

the photographs.

6. In the aforementioned context, the deposition of police official (PW-5) of his finding the victim (PW-4) sitting with the family members of respondent –accused and watching TV in open, creates a reasonable doubt about veracity of the prosecution case.

7. Infact, the aforesaid shortcomings in the prosecution case probablises the defence of respondent –accused of husband – PW-1 of the victim (PW-4) owing ₹6 lacs to the respondent –accused and the deposition of DW-1 and DW-2 substantiates the plea of alibi taken by respondent –accused which demolishes the prosecution case.

8. After having perused the evidence on record, this Court is of the considered opinion that the Trial Court has rightly extended the benefit of doubt to respondent –accused. I find no perversity in the impugned order. Accordingly, I dismiss this revision petition.

(SUNIL GAUR)
Judge

JANUARY 21, 2013
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