

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

% *Judgment reserved on :06.05.2014*
Judgment delivered on :12.05.2014.

+ CRL.A. 477/2003

KANTA PRASAD Appellant

Through Appellant with his counsel Mr.
R.P. Luthra, Adv.

versus

THE STATE Respondent

Through Ms. Fizani Hussain, APP

+ CRL.A. 33/2004

JAI PARKASH @ GUDDU Appellant

Through Appellant with his counsel Mr.
R.P. Luthra, Adv.

versus

THE STATE OF NCT DELHI Respondent

Through Ms. Fizani Hussain, APP

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There were six persons who were charge-sheeted in the present
FIR. There are two appellants before this Court. Jai Parkash @ Guddu

and Kanta Prasad. They had both been convicted under Section 363 and 366 read with Section 120 B of the IPC and each of them had been sentenced to undergo RI for a period of 10 years and to pay a fine of Rs.5,000/- in default of payment of fine to under RI for 2 years for each of the offences under Section 366 & Section 120-B of the IPC. No separate sentence had been awarded to them for the offence under Section 363 of the IPC.

2 Nominal rolls of the appellants have been requisitioned. They reflect that as on the date the appellant Jai Parkash was granted bail he had suffered incarceration of about 5½ years; Kanta Prasad had suffered incarceration of about 5½ months only.

3 The version of the prosecution was unfolded in the complaint of Girender Singh (PW-18) the father of two victims namely 'R' examined as PW-1 and 'S' examined as PW-6. This complaint had been made on 11.01.1996 alleging that his daughters had gone to school on 10.01.1996 but had not returned back till 11.1.1996 on which date this complaint was lodged. PW-18 (complainant) had learnt that Ram Sagar and Mukesh living in their locality were also found missing and he suspected their role in the missing of his daughters. The victims were

finally recovered after about six months in August, 1996.

4 The statement of the victims was recorded under Section 164 of the Cr.P.C. by Mr.Sanjay Sharma learned M.M. examined as PW-12 which was one day after the date of their recovery on an application filed by the investigation officer on 12.8.1996.

5 On oath PW-1 (R) had detailed the incident. She had deposed that on 10.01.1996 she along with her sister 'S' (PW-6) was going to the school where outside the school at about 7.15 a.m. accused Mukesh, Ram Sagar, Jai Parkash, Dinesh and Sunil were present; Dinesh who was her cousin gave them some 'prasad' and after consuming the 'prasad' her sister 'S' (PW-6) became unconscious. The accused persons took the victims to Shahdara Mandi on a rickshaw and from there they boarded a bus. At the bus stand Guddu @ Jai Parkash had handed over a paper containing the address of Raj Bahadur (PW-7) in Fazilka to Ram Sagar asking Ram Sagar and Mukesh to take both the sisters namely PW-6 and PW-1 to Fazilka. Further role attributed to Guddu @ Jai Parkash being that he along with Dinesh and Bhure had handed over a sum of Rs.200/- to Ram Sagar and Mukesh as expenses; stating that further money would be sent to them at Fazilka. Further

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deposition of PW-1 is that on reaching Fazilka Raj Bahadur (PW-7) and Pravesh (PW-8) did not allow the accused persons to stay with them. Accordingly, Mukesh and Ram Sagar took PW-1 and PW-6 to Ferozabad where Ram Sagar kept PW-1 in a separate room and Mukesh kept PW-6 in another room. At Feroz Pur Ram Sagar and Mukesh were plying their rickshaws to earn their livelihood. PW-1 and PW-6 stayed there for one month. Thereafter Mukesh and Kanta Prasad (father of Mukesh) took PW-6 to Jeera. Further deposition of PW-1 that during her stay with Ram Sagar he used to forcibly rape her and established physical relations with her against her wishes. He also tried to sell her 2-3 times. At that point of time PW-1 along with Shanker (who was then landlord at Ferozabad) went to Jalandhar and from Jalandhar with the help of Shanker she wrote a letter (Ex.PW-1/A) to her parents. At that point of time PW-1 was also pregnant. Police were informed; they came in search of PW-1. Address of PW-6 who was living at Jeera had also become known to Shanker. PW-6 was recovered from there.

6 This was the gist of the version of PW-1. She was subjected to a lengthy cross-examination. She stuck to her stand; she reiterated that Dinesh her distant cousin had offered 'prasad' at the time when they

were going to school; on consuming this 'prasad' her sister had become unconscious; both the sisters were forcibly taken in a rickshaw and then by bus to Fazilka where they were not allowed to stay in the house of either PW-7 or PW-8; they were then taken to Feroz Pur where Ram Sagar kept PW-1 in a separate room and Mukesh kept Sangita (PW-6) in another room. After about one month Mukesh and his father Kanta Prasad took PW-6 to Jeera where she stayed for about six months, from where she was finally recovered. Version of PW-1 remained cogent, credible and coherent in her entire narration.

7 PW-1's statement was corroborated by statement of her sister 'S' who was examined as PW-6. She has deposed on the same lines as PW-1. She had deposed that after Dinesh had given both the sisters some 'prasad' to eat; they were then taken to a bus stand where Ram Sagar, Mukesh and Guddu @ Jai Parkash and Bhure were all present; they were asked to board a bus; Ram Sagar stayed in a separate room with Rekha and Mukesh used to forcibly commit rape upon PW-6 against her wishes. Initially they were taken to Fazilka but thereafter they went to Ferozpur where she was kept for one month. One month later Mukesh and his father Kanta Prasad took her to Jeera; her sister

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stayed back at Ferozpur; PW-6 was kept in Jeera for six months. She had heard Kanta Prasad telling Mukesh that he had asked for Rs.15,000/- from PW-6's father; Mukesh had also told PW-6 that he was taking revenge on behalf of his father.

8 This witness was also cross-examined at length but she stuck to her stand; she reiterated her statement which she made on oath in her examination-in-chief.

9 Both the victims PW-1 and PW-6 were medically examined by their respective doctors. Dr. Vinita PW-2 had examined Rekha confirming the fact that she was pregnant. Dr.Poonam Yadav had medically examined PW-6. She had also confirmed the fact that PW-6 was pregnant at the time of her examination.

10 The father of the victims was Girender Singh examined as PW-18. He had lodged the missing report about the missing of his daughters as both his daughters did not return from school on 10.01.1996; he lodged the missing report on 11.01.1996. He suspected role of Ram Sagar and Mukesh as they were also living in the same locality and were also found missing from that date. PW-18 had further deposed that

Kanta Prasad who was the father of Mukesh (a tantrik) had once treated

his daughter-in-law (wife of the son of the complainant namely Usha); Kanta Prasad had misbehaved with his daughter-in-law pursuant to which Kanta Prasad was beaten by his son Mukesh (son of the complainant); this was the bone of contention for Mukesh (son of Kanta Prasad) and Kanta Prasad to have kidnapped his daughters.

11 This version of PW-18 has been corroborated in the testimony of PW-6 which has been noted supra and wherein PW-6 has confirmed that she had been told by Mukesh that he was taking revenge on behalf of his father (Kanta Prasad).

12 The son and the daughter-in-law of PW-18 had also been brought into the witness box; they have been examined as PW-14 (Mukesh) and PW-15 (Usha). PW-14 the son of PW-18 had on oath deposed that his wife had been treated by Kanta Prasad as Kanta Prasad was a Tantrik and he had tried to misbehave with his wife pursuant to which he had beaten Kanta Prasad. Statement of PW-15 Usha (wife of PW-14) had also corroborated this version.

13 Thus the versions of PW-1, PW-6, PW-18, PW-14, and PW-15 are all corroborative of the fact that Kanta Prasad had once treated the daughter-in-law of PW-18 when he tried to misbehave with her; he had

been beaten up by PW-14 which was a grudge which Kanta Prasad was nursing against the family of PW-18 and he had taken revenge through his son Mukesh by kidnapping the daughters of PW-18.

14 Further part of the deposition of PW-18 reveals that after the complaint was made by him he had handed over a letter Ex.PW-18/A to the police which was purportedly written by Kanta Prasad making a demand of Rs.15,000/- each from PW-18 for the return of his daughters. This letter (PW-18/A) has been vehemently highlighted by learned counsel for the appellants to support a submission that the report of the FSL is negatived qua the hand writing in this letter and this scientific evidence negatives the version of the prosecution that this letter is in the hand writing of accused Kanta Prasad. However the buck does not stop here. In the statement of the accused Kanta Prasad recorded under Section 313 Cr.P.C. on a specific question put to him about Ex.PW-18/A; he admitted that this letter had been written by him although it was stated that the police had asked him to write this letter.

15 The trial judge had examined this position and had noted that this lame explanation that he was asked to write this letter by the police is clearly belied. This was evident from narration given in the letter

which was admittedly in the hand writing of Kanta Prasad and wherein a demand of Rs.15,000/- each for the return of PW-1 and PW-6 had been made from PW-18 also reciting the place where the money was to be forwarded in order that the girls could be returned back to PW-18. In this background, the trial Judge rightly concluded that it was difficult to believe the argument now propounded by the learned defence counsel that this letter had been written under pressure.

16 In another part of his deposition PW-18 admitted that he had received a letter Ex.PW-1/A from his daughter PW-1 which had led the police personnel to reach the place at Jalandhar from where PW-1 was recovered; the recovery memo had been proved as Ex.PW-1/C. PW-1 had disclosed the address of PW-6 at Jeera from where she was recovered and recovery memo qua the recovery of PW-6 had been proved as Ex.PW-18/B. PW-18 had also been subjected to a lengthy cross-examination but he did not deviate from his stand. He denied the suggestion that he had falsely implicated Kanta Prasad only because he is the father of Mukesh and he has no other role to play.

17 In the course of investigation another letter had surfaced. This letter was purportedly bearing the address of PW-7 at Fazilka, Punjab

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where as per the version of the prosecution Ram Sagar and Mukesh had been told by Jai Parkash @ Guddu to stay. In this context testimony of PW-7 is relevant. PW-7 had deposed that 4-5 months prior to 11.6.1996 (which would be approximate time of incident) Ram Sagar and Mukesh had come to his house with two girl 'S' and "R" stating they had been sent by Guddu and they should be permitted to stay there for 7-8 days. PW-7, however, did not permit them to stay there. Further deposition of PW-7 being that after two months of this incident which was sometime in March Guddu and Kanta Prasad came to his house and they enquired from him regarding two boys and two girls.

18 This statement of PW-7 has been corroborated by PW-8 (Parvesh) who was also a resident of Fazilka. He has also reiterated that in the month of January, 1996 Mukesh and Ram Sagar had come with two girls to stay at his house but did not permit them to stay in his house.

19 Ex.PW-7/A becomes relevant as this bore the address of PW-7 and was admittedly in the hand writing of Jai Prakash @ Guddu. Not only has this factual position been admitted by Jai Parkash @ Guddu in his statement recorded under Section 313 Cr.P.C. when a specific query had been put to him qua this letter Ex.PW-7/A (wherein he had admitted

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that this was in his hand writing); even the scientific evidence on this score i.e. the report of the FSL (Ex.PW-27/A) which was proved through PW-27 (Deepa Verma) on the examination of the specimen and the questioned handwriting of Jai Parkash @ Guddu opined that Ex.PW-7/A was in the handwriting of Jai Parkash. PW-1 had also stated that Jai Parkash @ Guddu had asked Mukesh and Ram Sagar to take PW-1 and PW-6 at this address.

20 The investigating officer Inspector Preet Singh was examined as PW-26. He had recorded the statement of the victims. He had seized Ex.PW-7/A as also the letter Ex. PW-1/A as also the documents Ex. PW-18/A; all have been discussed supra.

21 The documents about the date of birth of the victims had also been collected; PW-16 (Omwati Goel) TGT, working in Government Sr. Secondary School has brought the record containing the date of birth of both PW-1 and PW-6. PW-16 had deposed that as per the record PW-1 was born on 10.01.1982 and PW-6 was born on 15.02.1983 meaning thereby on the date of the incident which was in January 1996 PW-1 was aged about 14 years and PW-6 was aged about 13 years. In the lengthy cross-examination of PW-16 it had been admitted that this

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date of birth is as per the record which she had brought from the school. No suggestion has been given to this witness that this date of birth is incorrect. There is no dispute that a radiological examination of the victims had also been conducted through Dr.Raj Pal (PW-4) but the trial judge had rightly relied upon legal proposition as emanating in the ratio of the judgment of the Apex Court in AIR 1989 SC 1329 Bhoop Ram Vs. State of U.P. (para 26 of the impugned judgment) holding that the ossification report would pale into insignificance as the date of birth of the prosecutrix has been established through their school record which was a cogent evidence establishing the factum that both the victims were minors on the date of the offence.

22 On behalf of the appellants arguments have been addressed in detail. Written submissions have also been filed.

23 It is stated that no role is attributed to Kanta Prasad at all except for the fact that he is the father of Mukesh and for this reason alone he has been roped in. Submission being that even in the statements of the victims recorded under Section 164 of the Cr.P.C. (which was their first statement recorded after their recovery) neither of them had attributed any role to Kanta Prasad and in fact this part of their statements under CrI.A. Nos. 477/2003 and 33/2004

Section 164 Cr.P.C. had been confronted to both PW-1 and PW-6 who have admitted Kanta Prasad did not figure in their first statement. Second submission qua the role of Kanta Prasad being that both PW-7 and PW-8 have admittedly stated that Kanta Prasad had come along with Guddu @ Jai Parkash looking for his son but that was just a innocent search and merely because he had gone to find out the fate of his son from PW-7 and PW-8 does not mean that he was involved in the crime in any manner. Last submission qua the role of Kanta Prasad being that Ex.PW-18/A although admitted to be in the hand writing of Kanta Prasad but it was got written by the police under pressure and this has been the stand of Kanta Prasad even in his statement under Section 313 Cr.P.C. Thus on no count can the conviction of Kanta Prasad be sustained; he is entitled to an acquittal. Qua the role of Jai Parkash @ Guddu, it has been pointed out that his role is also minimal; attention has been drawn to the version of PW-1 and PW-6 wherein in one part of their cross-examination they had stated that they did not know Jai Parkash; submission being that this part of the cross-examination of PW-1 and PW-6 cannot be ignored and Jai Parkash @ Guddu has also been falsely roped in. On the quantum of sentence it is pointed out that

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that out of 10 years RI which has been imposed upon Jai Parkash which is on the higher pedestal he has already undergone 5½ years and even if this court is not inclined to interfere in his conviction his sentence be reduced to the period already undergone by him.

24 Arguments have been refuted by learned public prosecutor. It is pointed out that on no count does the impugned judgment call for any interference. It is submitted that the conspiracy all of the accused persons to commit the crime is writ large and the trial judge has appreciated the evidence in its correct perspective.

25 Arguments have been heard. Record has been perused.

26 PW-1 and PW-6 were the star witnesses of the prosecution. Their narration has been discussed supra. They have on oath supported the version given by their father (PW-18) in his complaint and who had reported the missing of his daughters one day after they had not returned from school which was 11.01.1996. In his first complaint he had suspected the role of Ram Sagar and Mukesh as they were living in the same locality and were also found missing since that date. The victims were recovered after six months i.e. in the month of August, 1996 pursuant to a letter received by PW-18 written by PW-1 the residence of

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Shanker at Jalandhar and which had led the police party to Jalandhar where the recovery of PW-1 had been effected from the house of Shanker (PW-7) and thereafter recovery of PW-6 was made from Jeera. Although in the statement recorded under Section 164 of the Cr.P.C. PW-1 and PW-6 had both not mentioned the name of Kanta Prasad but otherwise they had been consistent in their depositions on oath. They had reiterated that Ram Sagar and Mukesh had taken both the victims to Fazilka at the house of PW-7; this was after Dinesh their cousin had given them some 'prasad' to eat pursuant to which PW-1 became unconscious; PW-6 was semiconscious; they were also asked to board a bus; at that point of time co-accused Jai Parkash was also present. It has also come in evidence that Jai Parkash @ Guddu is a distance cousin of the victims and even on specific query put to Jai Parkash during the court hearing he admitted this fact; thus the submission of the learned defencen counsel on this score that Jai Parkash @ Guddu was not known to the victims and TIP not having been conducted of Jai Parkash is an argument bereft of any force.

27 Further deposition of PW-1 and PW-6 being that Jai Parkash had given a sum of Rs.200/- to Ram Sagar and Mukesh as interim expense

and promised to pay further money once they reached Fazilka. PW-7 and PW-8 have confirmed the fact that in January 1996 Ram Sagar and Mukesh had come with two girls namely 'R' and 'S' seeking permission to live in their house for 7-8 days but since they were with two girls they were not permitted to live in their house. It has also been proved in evidence that a slip of paper Ex.PW-7/A containing the address of PW-7 has been handed over by Jai Parkash to Ram Sagar to enable them to reach the house of PW-7. This document is admittedly in the handwriting of Jai Parkash and this has been admitted not only by Jai Parkash in his version under Section 313 Cr.P.C. but has also been established by scientific evidence i.e. through the report of the FSL proved as Ex.PW-27/A.

28 PW-7 and PW-8 had further deposed that Jai Parkash @ Guddu along with Kanta Prasad had come looking for both Ram Sagar and Mukesh and the two victim girls to their houses.

29 In the statements of the victims recorded under Section 164 of the Cr.P.C. the name of Kanta Prasad did not figure. Both of them while giving their separate statement before the M.M. (PW-12) had stated that after they had remained in Firozpur for one month PW-6 was taken by

Mukesh to Jeera where she stayed for another six months but PW-1 was left behind with Ram Sagar. On oath in court both victims had stated that when PW-6 was taken by Mukesh to Jeera it was in the company of the father of Mukesh namely Kanta Prasad. Even presuming that this argument of the learned defence counsel is accepted and this court takes the view that there is no evidence that Kanta Prasad accompanied his son Mukesh at that point of time when PW-6 was shifted from Firozpur to Jeera this by itself would not be sufficient to rule out the complete complicity of Kanta Prasad.

30 Testimony of PW-7 and PW-8 cannot be ignored. They have both on oath deposed that Kanta Prasad along with Jai Parkash had come their house looking for Mukesh and Ram Sagar as also the two girls i.e. PW-1 and PW-6. This testimony of PW-7 and PW-8 clearly establish that Kanta Prasad was well aware of the fact that his son Mukesh and Ram Sagar had eloped with these two girls and they were looking for shelter and that is why they had come looking for these persons at the house of PW-7. It was not an innocent search by Kanta Prasad as has been sought to be vehemently argued by learned counsel for the appellants. This is especially so keeping in view the letter
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Ex.PW-18/A which is a letter sent by post at the address of the complainant (PW-18) and received through the postal communication at the address of PW-18 and which letter clearly recites that a sum of Rs. 15,000/- for each girl was being demanded by Kanta Prasad from PW-18 for their release. This letter recited that a total sum of Rs.30,000/- has to be paid by PW-18 if he wants the release of his daughters; in case of non-payment of the money he will suffer dire consequences. The time and place of payment has also been indicated in this letter.

31 PW-18 on oath deposed that while he had gone in search of his daughters in the village after about 15 days/one month of their missing, a boy of his village had handed over a letter to him i.e. the in-land letter (Ex.PW-18/A) which was received by post; this boy has not been summoned as a witness but this does not wash away the letter Ex.PW-18/A which in normal course through a government postal communication had been received at the address of PW-18. Ex.PW-18/A recites the name and address of PW-18 in clear and categorical terms. That apart in the statement of the accused Kanta Prasad recorded under Section 313 Cr.P.C. he had admitted that his letter is in his hand writing. This admission cannot be lost sight of.

32 There is no doubt to the legal proposition that the prosecution has to stand on its own legs and has to prove all evidence but a admission made by the accused in the court of law before the Presiding Officer cannot be ignored. The submission of the learned defence counsel that the statement of the accused under Section 313 Cr.P.C. was qualified by a rider which had stated that this letter was written under pressure from the police was rightly rejected by the trial judge as the narration in this letter which is almost one full page reflects all details and facts which have been noted in the letter also detailing the subtle threat to the complainant and asking for Rs.15,000/- each for the return of two girls i.e. a total sum of Rs.30,000/-; as also the date and place when and where the money had to be brought Ex.PW-18/A in the handwriting of Kanta Prasad could not have been written under pressure. The gist of this letter does not suggest so.

33 Testimony of PW-14 and PW-15 is also relevant. This conforms to the testimony of PW-6 and PW-18 all of whom stated that Kanta Prasad once treated PW-15 and in the course of this treatment he had misbehaved with PW-15; then the husband of PW-15 who is PW-14 (son of complaint- PW-18) had beaten Kanta Prasad which was the

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cause of revenge which Kanta Prasad had against the family of PW-18 which had led him to take this revenge through his son Mukesh. PW-6 in fact had stated that she was told by Mukesh that he was taking revenge on behalf of his father. No cross-examination has been effected on any of these witnesses on this score to dent their credibility.

34 The victims were both minors on the date of the offence; this has also been established through version of PW-16.

35 Section 120 B of the IPC entails a conspiracy. A conspiracy as is well known is always hatched in secrecy. There may or may not be any overt act. In this case, the roles as have been described and proved through cogent evidence of both Jai Parkash @ Guddu and Kanta Prasad stand proved.

36 The impugned judgment convicting the appellant under Section 363 and 366 of the IPC does not call for any interference.

37 Section 363 of the IPC which deals with the offence of kidnapping entails punishment which may extend to 10 years; Section 366 of the IPC which is kidnapping for a purpose entails a punishment which may extend to 10 years in addition to fine. The maximum sentence of 10 years has been imposed upon the appellants. It has also

been pointed out learned counsel for the appellants that both the appellants have suffered a protracted trial; offence relates to the year 1996; i.e. almost two decades old. The appellants have become senior citizens during this period.

38 This Court accordingly thinks it fit to reduce the sentence which is reduced from RI 10 years to RI 5 years. The fine remains unaltered. Jai Parkash @ Guddu who has already undergone sentence of 5½ years as has been reflected by his nominal roll is released on the period of incarceration already suffered by him. Accused Kanta Prasad be taken into custody to serve his remaining sentence.

39 Appeals disposed off in the above terms.

INDERMEET KAUR, J

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