

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

% *Judgment Reserved on: August 13, 2014*
Judgment Delivered on: August 19, 2014

+ **CRL.A.376/2013**

MADHUKAR SINGH Appellant
Represented by: Mr.A.K.Trivedi and Mr.Avinash
Trivedi, Advocates
versus

STATE OF NCT OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP for State
with Insp.Manjeet Tomar and SI
Harbir Singh (Crime Branch).

+ **CRL.A.127/2013**

ARSHAD @ AMAN Appellant
Represented by: Mr.K.Singhal and Mr.Prabhat
Kaushik, Advocates
versus

STATE OF NCT OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP for State
with Insp.Manjeet Tomar and SI
Harbir Singh (Crime Branch).

+ **CRL.A.504/2013**

SAJID ABBAS Appellant
Represented by: Mr.Bhupesh Narula, Advocate
versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Represented by: Mr.Varun Goswami, APP for State
with Insp.Manjeet Tomar and SI
Harbir Singh (Crime Branch).

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CRL.A.1239/2013

STATE

.....Appellant

Represented by: Mr.Bhupesh Narula, Amicus Curiae
and Mr.Prabhat Kaushik, Advocate

versus

DURGA SINGH @ KAKA

..... Respondent

Represented by: Mr.Varun Goswami, APP for State
with Insp.Manjeet Tomar and SI
Harbir Singh (Crime Branch).

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Arshad @ Aman, Madhukar Singh and Sajid Abbas @ John assail the judgment dated October 16, 2012 convicting them for offences punishable under Sections 363/364A/347/34 IPC and Madhukar Singh for offence under Section 212 IPC as well. They also challenge the impugned order dated November 27, 2012 whereby they have been directed to undergo imprisonment for life and a fine of ₹10,000/- each and in default of payment of fine to undergo simple imprisonment for 6 months each for offence punishable under Section 364A/34 IPC; rigorous imprisonment for a period of 5 years each and a fine of ₹3000/- each and in default of payment of fine to undergo simple imprisonment for 3 months for offence punishable under Section 363/34 IPC; rigorous imprisonment for a period of 3 years each and a fine of ₹5000/- each and in default of payment of fine to undergo simple

imprisonment for 3 months each for offence punishable under Section 347/34 IPC. Madhukar Singh has been directed to undergo rigorous imprisonment for 3 years and to pay a fine of ₹10,000/- and in default of payment of fine to undergo simple imprisonment for 3 months for offence punishable under Section 212 IPC.

2. Even the State had also sought a leave to appeal against the acquittal of Durga Singh @ Kakaji which was granted and thus the said appeal has also been heard. The State is aggrieved by the acquittal of Durga Singh of all the charges framed against him.

3. Learned counsels for Arshad, Madhukar and Sajid assail the impugned judgment on the ground that there is no evidence to connect the appellants with the alleged offence. Nargis Begum PW-3 the mother of Naushad admits that there was enmity between her husband and Arshad's family. Nargis Begum does not support the prosecution version that the phone was taped and conversations were recorded. Further despite stating that the conversation was recorded no sample voices of the appellants were taken and sent to CFSL to match the voices in the tape-recorded conversation. The call details of the mobile phone of Dilshad Beg PW-2 father of Naushad and the phone numbers from which the calls were allegedly received have not been exhibited and deliberately so as the same would show that there were frequent calls in between the numbers and thus could not be ransom calls. The phones on which recording were done were neither seized nor sent to CFSL for analysis. Though it is alleged that the recovery of the child was made from District Motihari, Bihar, however neither the Police officers of Bihar were witnesses to recovery nor members of the raiding party. No DD entry showing that the investigating officer of

the Delhi Police had gone to Bihar has been exhibited, neither any ticket nor receipt of expenses of travel etc., have been proved to show that the investigating officer went to Patna to recover the child. The prosecution case does not inspire confidence and even taking the same as it is at best the child had gone with his cousin brother i.e. Arshad and due to enmity later he has been falsely implicated.

4. Learned APP assails the judgment to the extent of acquittal of Durga Singh on the ground that merely because Durga Singh was not arrested from the spot from where the child was recovered and was arrested later on, he has been acquitted. Naushad the victim had duly identified Durga Singh as the person in whose house he was kept for two days.

5. We have heard learned counsel for the parties and perused the records. The investigation in the case was set into motion on the complaint of Dilshad Beg vide DD No.15B on October 18, 2004 Ex.PW-4/A informing that his son Naushad aged 6 years was missing since October 17, 2004 from 5.30 PM. SI Mamur Khan PW-8 flashed messages and sent hue and cry notices. On October 22, 2004 Dilshad Beg informed that somebody had taken away their son after enticing him. Thus, on the basis of endorsement on DD No.15B FIR No. 918/2004 was registered at PS Uttam Nagar under Section 363 IPC. On the same day Dilshad Beg informed that he had received a ransom call and on the said basis Section 364A IPC was added. On October 23, 2004 the investigation was handed over to SI Ramesh Singh PW-13.

6. PW-13 Insp. Ramesh Singh deposed that he along with the staff went in search of the kidnapped child and to verify the mobile phone 9835465800 from which the ransom call was received by Dilshad. The mobile phone

was purchased in the name of one Sanjay Singh, son of late Shri R.D. Singh, resident of Gahai Dhaka, East Champaran. The ID proof of mobile was sent to Reliance Company Patna. He went to Patna and collected the photocopy of subscriber enrolment form. He came back to Delhi on November 01, 2004, however could not get any clue of the child. On November 17, 2004 the investigation of the case was transferred to Crime Branch.

7. SI Harbir Singh PW-16 who took over the investigation proved that he made a written request to the SHO Madan Prasad of Madhubani vide Ex.PW-16/A. He further deposed that on November 16, 2004 he went to the house of Dilshad Beg to made enquiries. During enquiries Dilshad Beg disclosed that his nephew namely Arshad was also missing for the last many days and had not joined in the Eid festival that year. He also informed that Arshad had written some telephone numbers on the wall behind the door situated in the house of his brother Salim. He noted numbers 9835417528 and 9835217520 and two land line numbers written on the wall. On checking the call details of Dilshad Beg i.e. phone number 9810490975 he found calls being made from mobile no. 9835465800 and 9835233507. After discussion with the senior officers he went to Motihari Bihar with a team. They reached there on November 18, 2004 at 6.00 PM in vehicle no. DL 1 CJ 0516 along with driver ASI Rajender Singh. However, due to Chhath Pooja there was lot of crowd. He along with Ct. Prahlad from his team went to village Jogaharia and he asked Ct. Prahlad to talk to the local people in their own language. On enquiry it was revealed that in the house of Madhukar one child was confined. He contacted the SP Motihari and took the assistance of local Police and went to PS Madhubani where he met SHO Madan Prasad PW-14 and gave a written request Ex.PW-16/A.

8. The raiding party along with Dilshad and local assistance of SHO PS Madhubani conducted a raid on the house of Madhukar. The house was found guarded by Sanjay Singh and Shiv Shankar. On seeing the Police party they ran away. SHO Madan Prasad knocked the door, as it was not opened and thus the door was broken open. Before they broke the door they heard the crying of a child and when they peeped inside they saw a child inside the toilet. The child disclosed his name as Naushad Beg and his residential address. They entered the house. Madhukar opened fire at them. But the Desi Katta did not fire. Arshad and Sajid John were also present in the house. Sajid John was holding the child and was having a single barrel gun with him and Arshad a double barrel gun. SHO Madan Prasad took the child from Sajid John and handed over the custody to Dilshad and made them sit in Qualis. On search two country-made pistols and two live cartridges were recovered from the house of Madhukar. Thus, a separate case under Section 25 Arms Act was registered at PS Madhubani. Arshad, Madhukar and Sajid were arrested and brought to Delhi. Custody of child was handed over to Dilshad vide memo Ex.PW-2/A. The disclosure statements were recorded, however pursuant to the disclosure no recoveries were made. SI Harbir Singh also took two audio cassettes from Dilshad Beg regarding the conversation of threatening and ransom calls and transcript of audio cassettes were got prepared. Subsequently, Durga Singh was also arrested. Nothing has been elicited in the cross-examination of SI Harbir Singh except that Durga Singh was not present at the place where the child was recovered.

9. Before proceeding with further a word needs to be recorded for the conduct of SI Mamur Khan Retd., Insp. Ramesh Singh and SI Harbir Singh.

Though as per the case diaries SI Mamur Khan recorded the statement of Dilshad Beg on October 22, 2004 regarding the ransom call and added 364A IPC, however when he appeared in the witness box he just stated that after registration of FIR on the next day he handed over the investigation to the Crime Branch. Even Inspector Ramesh Singh who took over the investigation made no efforts to collect the tape-recorded CDs of the ransom calls. Though SI Harbir Singh later collected the said tapes, however he made no efforts to take the voice samples of the accused and send the same for voice spectrography analysis thus resulting in the loss of valuable evidence.

10. Thus, in the absence of any scientific analysis of the audiotapes got done with the voice samples of the appellants, the case of the prosecution rest on the testimony of Naushad PW-1. Pursuant to the Naushad being brought to Delhi, his statement under Section 164 Cr.P.C. was recorded by Shri Kamaljeet Arora PW-10 the then learned Metropolitan Magistrate. Naushad deposed before the Court in sync with his statement recorded under Section 164 Cr.P.C. He stated that Arshad Bhaya came to him while he was playing in Gali No.7 and called him from the corner of the Gali. He went to him on which he asked whether he would like to go along with him. Naushad accompanied Arshad who took him to the main road where his two friends Sanjay Bhaiya and John Bhaiya were also present. He knew both of them as they had met him at the house of his uncle. John Bhaiya gave him one Frooti for drinking and Sanjay Bhaiya a tablet. While he was walking on the road Arshad held his hand. He felt sleepy. When he gained consciousness, he found himself in a running train. In the train Sanjay Bhaiya gave one more Frooti. He again gave him something to eat and he

again slept. When he gained consciousness he was at the house of Kakaji where he was kept for two days and for most of the time he was in sleeping condition. Thereafter he was kept in a locked room in the house of Madhukar Bhaiya. They used to serve him meals once in a day and make him sleep. In that room Madhukar Bhaiya, Sanjay Bhaiya, John Bhaiya and Arshad @ Aman, Shiv Shankar and 2-3 other boys used to give him beatings. They used to say if his father did not pay them money, they would kill him. They also made him talk to his father on two occasions. They used to sing vulgar songs in the room. Once they had also put a revolver on his head and said that in case his father did not fulfil their demand of money, they would kill him. At the house of Madhukar when Police came he was locked in another room and Police personnel talked to him from the window where he was locked. He informed his name and thereafter the Police took him out of the room and caught Madhukar Bhaiya, Arshad Bhaiya and John Bhaiya. His father was standing outside the house of Madhukar. He was taken to the Police Station where his statement was recorded and he was medically examined. He identified Kakaji, Arshad, Madhukar and John Bhaiya. In cross-examination this witness reiterated that Arshad was his cousin i.e. son of his Tau. He did not know that Arshad had taken loan from his father. Nothing further has been elicited from this witness.

11. From the testimony of Naushad, the factum of his kidnapping by Arshad, Sanjay and John is thus proved. Sanjay is a proclaimed offender who is not before the Court. Naushad was kept in the house of Madhukar who was an active participant with the others and from the evidence on record the prosecution has proved beyond reasonable doubt the role of appellants Arshad, Madhukar and Sajid @ John in the kidnapping for

ransom, and confinement of Naushad.

12. As regards Kakaji @ Durga Singh is concerned, the learned Trial Court acquitted him on the ground that he was not arrested from the spot. Even otherwise the role attributed to Durga Singh is that Naushad was kept in his house for two days. Naushad has not stated about the presence of Durga Singh @ Kakaji when he was kept at the house of Madhukar nor that he threatened to kill him or that demand of money was made when he was at the house of Durga Singh @ Kakaji. It is the case of the prosecution itself that Arshad is the cousin brother of Naushad and thus the factum of his kidnapping not being known to Durga Singh @ Kakaji where he was kept for two days cannot be ruled out. No overt act is attributed to Durga Singh with regard to demand of ransom or threatening at his house. Even as per Dilshad Beg though the child was missing since October 17, 2004 the first ransom call was received on October 22, 2004 i.e. after 4 days of the kidnapping when he was not in the house of Durga Singh @ Kakaji but that of Madhukar. Though we concur with the judgment of the learned Trial Court acquitting Durga Singh but for different reasons, as noted above.

13. The contention of learned counsels for the appellants that Bihar Police was not made a witness to the recoveries and they were not members of the raiding party is contrary to the record. PW-14 SI Madan Prasad Singh, SHO PS Madhuban, District Motihari, Bihar and PW-15 SI Sachidanand, PS Budha Colony, Patna have appeared in the witness box. SI Madan Prasad Singh was the SHO when the raiding party reached PS Madhuban on November 19, 2004 and sought his assistance. He has deposed that besides the raiding party of the Delhi Police, SI Thithar Shah, HC Rakesh Kumar Singh and HC Mahender Pratap from his Police Station had accompanied

them on the raid. They made efforts to join public persons however, there being Chhath festival on that day none agreed to join. He has deposed in sync with SI Harbir Singh, the Investigating Officer and also proved the recovery of the child Naushad from the room of Madhukar and the arrest of Arshad @ Aman, Madhukar and Sajid Abbas @ John from the spot. He has also deposed about the fire arms recovered from the room on the basis of which FIR No.146/2004 under Sections 25/26/35 Arms Act was registered at PS Madhuban. The prosecution has also proved the request for assistance made to SHO, PS Madhuban vide Ex.PW-16/A. This witness has corroborated the version of Naushad qua the raid and recovery.

14. The contention regarding telephone record is immaterial as neither the Trial Court nor this Court is relying upon the same since neither the call details were exhibited nor the voice samples of the accused have been taken to get the same identified from the tape recorded voice. However, we express our anguish on the non-collection of the scientific evidence of voice samples which would have been got tallied through CFSL analysis from the recorded conversation.

15. Emphasis has been laid by the learned counsels for the appellants that Nargis Begum admits enmity between the two families. Enmity is a double edged weapon which can be used both for implicating falsely and being a reason for commission of crime. In the present case in view of that fact that Naushad was missing for more than one month and was recovered from Patna which is corroborated from the independent evidence of the local police of PS Madhuban and Arshad was also missing at the same time, so much so, he missed the Eid festival, no case of false implication on the ground of enmity is made out. Merely because the medical of the child was

not conducted at Patna but was done at Delhi would not falsify the otherwise credible testimony of the witnesses.

16. Thus we find no infirmity in the impugned judgment convicting Arshad @ Aman, Madhukar Singh and Shajid Abbas @ John for the offence punishable under Sections 363/364A/347/34 IPC. Thus Crl.Appeal Nos.127/2013, 376/2013 and 504/2013 are dismissed. The sentence of imprisonment awarded is the minimum for offence punishable under Section 364A IPC. The order on sentence is also upheld. The appellants will suffer the remaining sentence.

17. As regards Crl.Appeal No.1239/2013 filed by the State against Durga Singh @ Kaka as noted above we find no ground to convict Durga Singh and the appeal is consequently dismissed.

18. T.C.R. be returned.

19. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 19, 2014
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