IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 488 of 2014

Reserved on: August 12, 2014
Decision on: August 25, 2014

RAJESH RISHI DEV ..... Appellant
Through: Mr. Anwesh Madhukar, Advocate.

versus

STATE (GNCT of DELHI) ..... Respondent
Through: Ms. Isha Khanna, APP.

WITH

CRL.A. 440 of 2014

PANKAJ BHAGAT ..... Appellant
Through: Mr. Pramod Kumar Dubey, Ms. Pinky Dubey, Mr. Shiv Chopra, Mr. Pulkit Misra and Ms. Namita Wali, Advocates.

versus

STATE (GNCT of DELHI) ..... Respondent
Through: Ms. Isha Khanna, APP with SI Jatinder Kumar, PS: Mahendra Park, Delhi.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
25.08.2014

1. These appeals are directed against the impugned judgment dated 2nd January 2014 passed by the learned Additional Sessions Judge ('ASJ')

convicting the Appellants for the offence under Sections 363 read with Section 365 read with Section 34 IPC and additionally convicting Appellant Raj Rishi Dev (Accused No.1)[A-1] for the offence under Section 368, as well as the order on sentence dated 15th January 2014 whereby the Appellants have been sentenced to undergo rigorous imprisonment (RI) for a period of seven years along with a fine of Rs. 10,000 and in default to undergo simple imprisonment (SI) for a period of one month.

2. The case of the prosecution is that the two Appellants, Rajesh Rishi Dev (A-1) and Pankaj Bhagat (A-2) along with Ram Kumar, (a juvenile who was tried separately), hatched a criminal conspiracy to kidnap Krishan @ Golu son of Ghanshyam Bhagat (PW-7) aged about three years. On 13th October 2012 the trio kidnapped Krishan @ Golu from the lawful guardianship of his parents and thereafter threatened to cause death or hurt to the child Krishan and demanded Rs. 1 crore for his release. The further case of the prosecution is that on 22nd October 2012 the Appellants along with Ram Kumar wrongly confined the child at Village Budhma, Police Station (PS) Madhepura, District Madhepura, Bihar.

3. On 31st October 2012 DD No. 31 PP was received by the police. Pursuant thereto, Head Constable (HC) Ram Lakhan (PW-14) and Constable Arvind (PW-3) reached the spot, i.e., House No. 88, Village Bharola, Delhi where PW-7 met them. PW-14 recorded the statement of PW-7 wherein he stated that his son Krishan had gone missing

since 6.30 pm. When PW-7 was searching for his son, one Rajender Bhagat (PW-11) informed him that he had seen A-2 with Krishan while crossing the GTK Road. PW-7 tried to contact A-2 on his mobile phone but his phone was switched off. Since PW-7 had become suspicious of A-2 who was residing in his neighbourhood, he decided to report the matter to the police.

4. ASI Jaivir Singh (PW-15) was handed over the investigation of the case and was directed to go to Bihar for search of the kidnapped child. He and Constable Bhagwan Singh (PW-17) reached Khagaria on 21st October 2012 but were unable to trace the child. On 22nd October 2012, they reached Village Utesera, District Saharsa and searched the residence of A-2 but the child was not found there. Thereafter they reached Village Simri where Kameshwar Bhagat (PW-12), the father of Ghanshyam Bhagat (PW-7) met them. PW-12 told them that the kidnapped child was kept near Madhepura. PW-15 along with PW-12 and Prayag Bhagat (PW-13) went to Police Chowki Bharrai where Chowki Incharge Sub Inspector Anuj Kumar Singh (PW-16) met them. Thereafter all of them reached Village Budhma where at the instance of the secret informer, A-1 was apprehended near the Budhma Railway Station. During interrogation, A-1 is stated to have disclosed that the kidnapped child was kept at his house. A police party then reached the house of A-1 where the child was found in the lap of co-accused Ram Kumar. PW-12 identified the child and a recovery memo was prepared (Ex. PW12/A).

5. Meanwhile PW-16 received a secret information that A-2 had come to the house of A-1. The police party then reached there and arrested A-2 from there under arrest Memo (Ex. PW12/D). The disclosure statement of A-2 was recorded (Ex. PW-15/B) and one mobile phone with double *sim* was recovered from his possession. Co-accused Ram Kumar was also arrested under arrest Memo (Ex. PW15/C) and his version was recorded under Ex. PW15/D. The three arrested persons were produced before the CJM, Madhepura on 23rd October 2012 and a transit remand was obtained. Thereafter the police party returned to Delhi with the kidnapped child.

6. The prosecution examined eighteen witnesses. In their statements under Section 313 Cr PC, both A-1 and A-2 claimed to have been falsely implicated. According to A-1, he belonged to Village Tiri, PS Vaidyanathpur, District Sahrsa, Bihar and on the date of arrest, he was on the way to his in-laws' house at Budhma. According to him, some police persons asked him outside his in-laws' house whether he could identify the house of Lakhiya Devi which he then identified. He claimed not to know A-2 or co-accused Ram Kumar. On his part, A-2 also stated that he had been falsely implicated. He stated that he was going to visit his relatives at Budhma when some police persons gathered there and after that he was asked to accompany the police party where he was arrested. He claimed not to know the other co-accused.

7. A-1 examined Rajender Sadha (DW-1) to prove that he resided in

Village Baijnathpur. He also stated that the in-laws of A-1 belonged to Village Budhma, PS Bharrai, District Madhepura and A-1 used to visit there. He was unable to specify the date on which A-1 visited his in-laws. Mr. Ram Prashad Rishi Dev (DW-2), the father in law of A-1 was next examined. He stated that A-1 was arrested when he had come to visit his in laws. However, DW-2 himself was not present in the village at that time. He was unable to state the date on which A-1 visited the village.

8. The trial Court, on an analysis of the evidence, came to the following conclusions:

(i) Both PWs 12 and 13 had identified A-1 from whose house the child had been recovered. A-2 was the child's maternal uncle and was identified without difficulty.

(ii) The birth certificate of the child (Ex. PW6/A) showed that on the date of his kidnapping, he was 2 years, 1 month and 24 days old. The DD entry No. 31PP dated 13th October 2012 (Ex. PW4/A) showed that at about 9.40 p.m. on 13th October 2012, an information had been received at the PCR from mobile phone No. 9990910353 that A-2 (Pankaj Bhagat) had taken the child away.

(iii) The evidence of PW-10 showed that A-2 had been standing near the house of PW-7 in the evening. PW-7 in fact made a call to the PCR from the mobile phone of PW-10.

(iv) PW-7, in his complaint, mentioned that Rajender Bhagat

(PW-11) had specifically mentioned about the child being last seen with A-2. Further when PW-7 called up mobile phone No. 9971292098, A-2 disconnected the call and switched off the phone. Although the evidence of PW-7 proved that A-2 had made calls demanding ransom of Rs. 2 lakhs, then Rs. 10 lakhs and ultimately Rs. 1 crore, he did not appear to have threatened to cause death or hurt to the child. Consequently while the offence of kidnapping of the child punishable under Section 363 read with Sections 365 and 34 IPC was proved, the offence under Section 364-A IPC was not proved.

(v) Mr. R.K. Singh, Nodal Officer, Bharti Airtel Ltd. (PW-5) proved that Mobile No. 9971292098 was issued in the name of Chinta Paswan (PW-9). The evidence of PW-9 showed that he had given his ID proof, i.e., an election ID card to A-2 for obtaining the SIM card for mobile phone No. 9971292098. The SIM of the said mobile number was proved to have been used by A-2.

(vi) PWs 12 and 13 and the police witness, PWs 15 and 17 proved that A-2 was carrying a mobile phone with dual SIM cards. The call detail records (CDRs) of the said mobile phone proved conversations between A-2 and PW7 as well as the location of A-2 at the time of his arrest. The trial Court rejected the submission of accused that the said mobile phone was planted on A-2.

(vii) It is only after A-1 made a disclosure statement that police

came to know that A-2 had brought the kidnapped child to the house of A-1 on 20th October 2012. This was corroborated by the CDRs. That portion of the statement of A-1 was, therefore, admissible in evidence. The testimonies of the public witnesses corroborated each other and were unable to be challenged in their cross-examination.

9. Consequently the trial Court convicted the Appellants for the offence under Section 363 r/w 365 IPC and additionally A-1 for the offence under Section 368 IPC and sentenced them in the manner as indicated hereinbefore.

10. On behalf of the Appellants, it was submitted that PW-7, in his cross-examination, stated that he was unaware of the name of the person who told him that A-2 was standing near his house. He denied the suggestion that due to him having business transactions with A-2, disputes had arisen concerning accounts and therefore he had falsely implicated A-2. Thus, it was urged that the mobile phone belonging to PW-9 was planted on A-2 only to falsely implicate him in the case. It was next submitted that A-1 was not in any way involved in the case. He belonged to a different village and was only visiting his in-laws. No independent person was associated even from the area of arrest and recovery of the child. There was no arrival entry at the Bharrai Police Post. The pradhan/mukhiya of the village of either A-1 or A-2 were not associated with the investigation either. PW-17 could not recollect the name of the hotel in Khagaria where the police party

stayed. It was submitted that the trial Court appointed no experienced counsel as *amicus curiae* and this was evident from the fact that three public witnesses, i.e., PWs, 7, 9 and 11 were not subjected to any cross-examination whatsoever. It was submitted that the so called disclosure by A-1 was not admissible since the facts discovered were already known to the police even prior to his arrest.

11. The Court finds that the evidence of PW-7 has been clear, cogent and has remained unshaken. He stated that it was Rajender Bhagat (PW-11) who told him that he had seen A-2 last with the child near the Railway crossing. The evidence of PW-11 was corroborated by PW-7 in this regard. PW-11 knew A-2 as A-2 used to sell tomatoes in front of his shop. PW-11 also knew Ram Kumar, brother-in-law of A-2. He stated that after recharging his mobile phone when he was returning to his shop, he noticed A-2 and Ram Kumar coming from the side of Azadpur Mandi towards Adarsh Nagar and noticed the three year old Golu in the lap of A-2. He correctly identified A-2 in the Court. Nothing has come in the cross-examination of PW-11 to cast any doubts about his testimony. The evidence of last seen has been established by the prosecution beyond reasonable doubt. Therefore, the submission that A-2 was falsely implicated in the case does not hold.

12. Again the evidence of PW-9 is categorical that although the mobile phone was in his name it was used by A-2. The CDRs on the said phone have been proved by PW-5. They substantiate the calls

made by A-2 to PW-7 as well as the location of A-2 in Bihar at the relevant time. The minor inconsistencies in the versions of the public witnesses as regards what happened in Bihar when A-1 was arrested and the child recovered from his house, does not affect the credibility of these witnesses.

13. It was vehemently argued on behalf of A-1 that there was nothing to show that the house from where the child was recovered was owned by him. He was visiting the village where his in-laws were living. Also there was no connection established between A-1 on the one hand and A-2 and his brother in law Ram Kumar on the other.

14. The fact that the child was recovered from the house of A-1 is spoken to by PWs 12 and 13 and they have successfully withstood the test of cross-examination. A-1 was specifically put questions in his statement under Section 313 Cr PC in this regard. At least four questions, i.e., Question Nos. 6, 32, 36 and 47 were put to him about the child being recovered from his house. The prosecution evidence in this regard is clear and cogent and has been unshaken in the cross-examination.

15. The Court finds that the counsel for the appellants, in the trial court, chose not to cross-examine some of the witnesses like PWs 7, 9 and 11. However, the other public witnesses have been cross-examined at great length and it is not, therefore, possible to agree with

counsel for the Appellants that the appellants were deprived of an effective right of defence.

16. The Court is satisfied that the ingredients of Sections 363 and 365 IPC as regards both the accused and additionally the offence under Section 368 IPC against A-1 have been proved beyond reasonable doubt by the prosecution. The cumulative circumstances of the child being last seen with A-2 (a relative of PW-7), the child then being traced to Bihar and recovered from the house of A-1; his being found in the lap of co-accused Ram Kumar (a relative of A-2) and the location of A-1 and A-2 at the place of arrest by the police all have been proved beyond reasonable doubt by the prosecution.

17. Consequently, the Court affirms the judgment dated 2nd January 2014 passed by the trial Court convicting the Appellants in the manner indicated hereinbefore. As regards the sentence, the Court is of the view that given the seriousness of the crime where an infant child of two years has been kidnapped for ransom, the sentence of seven years' RI awarded to each of the accused along with the fine amounts and default sentences cannot be said to be disproportionate. Consequently, the order on sentence dated 15th January 2014 also does not warrant interference.

18. The appeals are dismissed, but in the circumstances with no order as to costs.

19. The trial Court record along with a copy of this order be sent to the trial court forthwith.

S. MURALIDHAR, J.

AUGUST 25, 2014
akg/rk