

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

Judgment Reserved on: October 13, 2014

% *Judgment Delivered on: October 16, 2014*

+ **CRL.A.528/2014**

MOHD MAJID

..... Appellant

Represented by: Mr.K.Singhal, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP
for the State.

AND

+ **CRL.A.686/2014**

RAJ KUMAR

..... Appellant

Represented by: Ms.Suman Arora, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Mohd.Majid and Raj Kumar are convicted for the offence punishable under Sections 364A/34 IPC for the kidnapping of Deepak Singhal and directed to undergo imprisonment for life and to pay a fine of ₹10,000/- each and in default of payment for fine to further undergo Simple Imprisonment for six months. Besides the appellants two more accused were involved i.e. Sagar and Yusuf who were declared proclaimed offenders and are thus not

before this Court.

2. Learned counsels for the appellants assail the impugned judgment on the ground that the appellants have been falsely implicated as Raj Kumar was the contractor in the factory of Deepak and Suresh Singhal and to avoid making payment that was due this false case was foisted on them. The versions of Deepak Singhal, his father Suresh Singhal and cousin Ashish Singhal are contradictory to each other and not corroborated by the telephonic call records exhibited by the prosecution. Even accepting the prosecution case at best offence of extortion would be made out and not one of kidnapping for ransom. The alleged seizure of money is all planted and the defence evidence in this regard has been ignored. Despite the car number having come to the knowledge of the police officers immediately after the incident however, no steps were taken to trace the same. No wireless message was flashed and in a very unusual manner the said car was found parked in the nearby area. The arrest and the alleged recovery at the instance of the appellants are highly doubtful. Even as per the prosecution witnesses, Raj Kumar was arrested on March 02, 2014 in early morning along with his brother and his arrest has been wrongly shown to be on March 04, 2012 thus discrediting the recovery made at his instance. No public witness was joined at the time of alleged recovery. Majid was allegedly arrested near the metro station however, the time of his arrest is shrouded with mystery. Some of the witnesses have stated that he was arrested at 10.30 PM and others have stated that he was arrested at 10.20 AM. Further no public witness was associated despite the availability of the metro staff and public witnesses. The key witnesses, that is Pankaj Mishra and Subodh, the Foreman and Security Guard have not been produced as

witnesses. No finger prints were lifted from the car, nor the car was got mechanically examined.

3. Mohd.Majid led no defence evidence and his plea in his statement under Section 313 Cr.P.C is that he was working in the factory of the complainant as labourer for about four months under Raj Kumar Contractor along with 11 labourers. Since there was conflict about the payment with the factory owner Deepak Singhal and his father for not making full payments in time an amount of ₹50-60 thousand was due towards the owner of the factory and thus he made a complaint to PS Bindapur but he was asked to intimate the Beat Official. He was lifted from his house and no recovery was made at his instance. Similar plea has been taken by Raj Kumar who has also led defence evidence. The three defence witnesses i.e. Smt.Chand Tara, Rajender, the mother and brother of Raj Kumar and Subhash his neighbour respectively have deposed about the apprehension of Raj Kumar and his brother Rajender on the morning of March 02, 2012.

4. The case of the prosecution rests on the testimony of Deepak Singhal, PW-1, the complainant victim himself, PW-2 Suresh Singhal his father and Ashish Singhal, PW-5 his cousin. Deepak Singhal deposed that on March 01, 2012 at about 10.00 PM he left for his house from the factory in his Honda City car bearing No.DL 4CAH 8519 of white colour. After travelling for some distance two persons asked for the lift of which Sagar was his employee earlier, however, he did not know the name of the other person. He made them sit in the car and reached near the fish market where Raj Kumar and Majid were also present who also asked for lift. He knew both of them as well, as they were earlier employed in the factory. They also boarded his car. When he reached at main Najafgarh Road, Sagar put a

knife on his back and the person who was not known to him put pistol on his head. They directed him to move forward and threatened to shoot him if he did not follow the directions. They took him towards Bahadurgarh side. Thereafter Sagar talked to his father Suresh Kumar from Deepak's mobile phone, demanded ₹15 lakhs from him and said that otherwise his son would be killed. His father was not having ₹15 lakhs but agreed to pay ₹8 lakhs. Thus his father was asked to come to Dwarka in Vardhman Market at about 1.00 AM. His father came with ₹8 lakhs. On the way Raj Kumar got down from the car near pillar No.750 to collect his bike. After reaching Vardhman Market the said three persons got down from the car, snatched the bag from his father and then ran away towards Dwarka. They also took away his mobile phone as well as his valet which was containing his driving license, RC of the car and ₹7-8 thousand cash. The police tried to trace and finally reached him and recorded his statement as Ex.PW-1/A. In cross-examination he denied the suggestion that any complaint was lodged by Raj Kumar and Sagar against him for not paying the wages to his labour. He also denied the suggestion that being afraid of any future complaint by Raj Kumar he falsely implicated him in this case. He however, stated that accused Raj Kumar and Majid played no role after sitting in his car except threatening to kill him. He also clarified that Raj Kumar and Majid were not having any kind of weapon with them. He stated that during this period the accused persons made 5-7 calls to his father from his mobile phone and were making inquires from his father about the arrangement of the money or else they would kill him after taking him to Meerut. He clarified that Raj Kumar got down from the car near metro pillar No.750, from where it took 5-7 minutes to reach the place where the money was transacted.

5. Suresh Kumar Singhal, father of Deepak deposed in sync with Deepak that his son was looking after the factory where they have deployed labour on contract basis. He deposed that at 9.00 PM he went to the house from the factory however, his son was in the factory. At about 10.20 PM he made a call on the mobile phone No.9818150580 of his son Deepak to inquire as to why he had not reached home. He called thrice and then the phone was attended by Deepak who told him “*papa mujhe bacha lo, mujhe kidnap kar liya hai, yeh log mujhe goli maar denge*”. Thereafter some unknown person talked to him from the mobile phone of Deepak and asked him to arrange ₹25 lakhs otherwise they would kill his son. They asked him to arrange the money within one hour and at about 11.15 PM he again received a phone call from the mobile phone of his son. The caller stated that if he was not able to arrange ₹25 lakhs he should arrange ₹15 lakhs. When Suresh Singhal expressed his inability to arrange even ₹15 lakhs the amount was reduced to ₹8 lakhs and he was told that the place would be informed after one hour. After one hour he received a call from the mobile phone of his son and the person asked him to meet him with ₹8 lakhs in Vardhman Market, Sector-23, Dwarka at about 1.00 AM (in night).

6. Considering the safety of his son Suresh did not inform the police and at about 1.00 AM (night) he reached Vardhman Market along with ₹8 lakhs. The amount comprised of four bundles of currency notes of ₹1,000/- and eight bundles of currency notes of ₹500/- (Each bundle was containing 100 currency notes) and were kept in a black colour polythene. At about 1.30 AM he received a call and the said person called him at mother dairy booth. When he reached there on foot one person aged about 25-26 years in muffled face came there and took the said bag from him. After some time

his son Deepak came and informed that he had been abducted by the factory workers Raj Kumar, Majid and Sagar with their associates. He further informed that after receiving his call he informed his brother Bajrang Lal Singhal in this regard on his mobile phone and the said call was attended by his nephew Ashish. In the cross-examination he clarified that this amount was arranged by him from the cash in hand of the factory account. He denied the suggestion that an amount of ₹50-60 thousand was due on their part towards Raj Kumar and to avoid the said payment a false case has been foisted against the accused persons or that Raj Kumar had lodged a complaint to the police station for the said dispute.

7. The version of Deepak Singhal and Suresh Singhal is corroborated by Ashish Singhal, son of Bajranj Singhal, the nephew of Suresh Singhal, PW-5, who deposed that at about 10.30 PM on the intervening night of March 1st/2nd, 2012 he received a call from his uncle Suresh Singhal informing that his cousin Deepak had been abducted and a ransom of ₹15 lakhs had been demanded. He went to the house of his uncle. After his reaching his uncle's house another call was received and after negotiations the amount was settled to ₹10 lakhs and finally to ₹8 lakhs. His uncle Suresh along with the settled amount went in a Swift Desire car and he went in his Ritz car. He parked his car near metro station Dwarka Mod because the place where the amount was to be given was Vardhman Plaza, Dwarka, Sector-3. After some time he saw a Honda City car of Deepak crossing Dwarka Mod. A PCR gypsy was parked there and he immediately rushed towards the PCR and informed the PCR official about the abduction of his brother in the Honda City Car. They made him sit in the PCR and followed. The PCR officers flashed the message through wireless also. They followed

the car for some distance but thereafter the Honda City car disappeared. They kept searching for the Honda City Car and after five minutes a message was received on wireless that Honda City car was found near Vardhman Plaza. They immediately reached the spot where two-three other PCR vans had already arrived. The cousin brother Deepak was in Honda City car who told that the kidnappers were four in number and out of them two were his employees. The only aspect in the cross-examination of this witness is that he did not inform the PCR before seeing the car of Deepak and that the police gypsy and car of Deepak was parked near DPS School at a distance of about 15 yards.

8. Version of Ashish is corroborated by the PCR call record Ex.PW-13/A which notes a self call informing that at 1.24.01 complaint of kidnapping, place Matiyala near Pillar No.722 SE, information-*Honda City 8519 ek admi ko utha kar le gaye hai*. Thereafter the PCR van reports at 1.34 minutes on September 02, 2012 that Honda City DL 4 CAH 8519 has been caught near DPS School, Sector-9. The PCR again reports at 1.27.24 hours that Deepak son of Suresh aged 25 years resident of B-107, Mohan Garden, Uttam Nagar was kidnapped around 10.00 PM while coming from Matiyala factory by his labourers Raj Kumar and Majid and had asked for ransom of ₹10 lakhs and at Sector-3 Vardhman Market ₹8 lakhs ransom has been taken. This PCR call also notes that brother of Deepak is with them who had given the information. HC Deepak appeared in the witness box and exhibited the PCR form Ex.PW-13/A with the notings as above and having broadcasted the information in the entire zone to make search of the above said car and to apprehend the accused persons. This witness has not been cross-examined on behalf of Raj Kumar and the suggestion given on behalf

of Majid is that the proceedings of 100 number call at PHQ were fabricated only to implicate the accused person which suggestion is denied.

9. Vishal Gaurav, Nodal Officer, Bharti Airtel Ltd., PW-4 appeared in the witness box and exhibited the call detail records of mobile No.9871534409 along with its Customer Application Form and the ID proof as Ex.PW-4/A and Ex.PW-4/B respectively. The said phone was issued in the name of Raj Kumar son of Shri Bhawani Prasad. He also exhibited the call records of mobile No.988150580 and the Customer Application Form along with the ID proof Ex.PW-4/C and Ex.PW-4/D which was in the name of Deepak Singhal son of Shri Suresh Singhal. He also exhibited the call detail record of mobile No.9810592708 along with Customer Application Form and the ID proof as Ex.PW-4/E and Ex.PW-4/F which was in the name of Suresh Kumar Singhal son of Shri Jot Ram. He exhibited the certificate under Section 65B of the Indian Evidence Act relating to these call records as Ex.PW-4/G. A perusal of the call records of Deepak Singhal and Suresh Singhal would corroborate their version that at 22.26 hours Suresh was present in the Cell ID Tower of Gulab Bagh, Uttam Nagar whereas Deepak was in Jharoda Kalan which position continued till 22.30 hours. At 23.59 hours Deepak's mobile phone was at village Kanjhawala and that of Suresh at Gulab Bagh, Uttam Nagar. At 00.21 hours Deepak's mobile was at Pooth Khurd and that of Suresh at Gulab Bagh, Uttam Nagar. From 00.52 hours to 1.35 hours mobile phone of Suresh was at Vardhman Market, Sector-23, Dwarka. Deepak's mobile at 00.52 hours was at Raj Park, Sultan Puri Road, at 01.19 hours at MRV Public School, Sector-3 and from 1.20 hours to 1.23 hours at Vardhman Market, Sector-3, Dwarka whereafter there were no calls from this number.

10. From the version of Deepak, Suresh and Ashish the factum of kidnapping of Deepak and demand of ransom is proved beyond reasonable doubt. However, as regards the presence involved in the offence are concerned even as per Deepak the role assigned to various persons are that in the first instance Sagar and one person whom he did not know took the lift. After they moved and reached the fish market, Raj Kumar and Majid who were present there also took the lift. When they reached near main Najafgarh Road, Sagar put a knife on his back and the person whom he did not know put pistol on his head. Sagar spoke to his father Suresh Kumar from Deepak's mobile phone and demanded ₹15 lakhs or they would kill him. The ransom was to be taken at Vardhman Market, Dwarka where Suresh Singhal was called at 1.00 AM. It is the case of Deepak himself that Raj Kumar got down from the car near Pillar No.750 to collect his bike before reaching Vardhman Market. Thus Raj Kumar was not even present when the ransom was collected. As per Deepak after reaching Vardhman Market, three persons i.e. Sagar, Yusuf, whose name he did not know and Majid got down from the car and snatched the bag from his father and ran towards Dwarka on foot. In the entire evidence there is no overt act attributed to Raj Kumar who took lift later on and got down before ransom amount was collected. Further it is the case of Raj Kumar which he has proved by leading defence evidence of his mother, brother and neighbour Smt.Chand Tara, Rajender and Subhash and he was apprehended on March 02, 2014 itself in the morning which fact is also deposed by Deepak, Suresh and Ashish. Deepak Singhal in his cross-examination has admitted that police had brought Raj Kumar at about 5.00-6.00 AM on March 02, 2012 in the Police Station. The mother and brother of Raj Kumar were also with the

police at that time. Suresh Kumar Singhal in his cross-examination admitted that when they reached the Police Station Raj Kumar was not present however, he was brought there after some time of their reaching the Police Station. Similarly, Ashish stated in cross-examination that when they reached the Police Station they came to know that Raj Kumar was apprehended by police and he was present in the Police Station. Thus contrary to the version of the Police Officers it is evident that Raj Kumar was apprehended on March 02, 2012 itself and thus the alleged recovery of currency notes of ₹1,12,500/- at the instance of Raj Kumar cannot be believed. In view of the evidence led against Raj Kumar by the prosecution we are of the opinion that he is entitled to the benefit of doubt.

11. As noted above, specific overt act is attributed to Majid, he was one of the persons along with the other two who had collected the ransom amount from Suresh Singhal. Further the discrepancy in his arrest is with regard to whether it was 10.20 AM or 10.30 PM however, it is not disputed that he was not arrested on March 05, 2012 and the same could even be a typographical error. This discrepancy being a minor in nature we are not inclined to grant benefit of doubt to Majid on this count. The non-production of the blood stained shirt of Deepak is not material as Sagar is not before us at the moment. Further even non-collecting fingerprints from the car would not dent the case of the prosecution. There was also no damage to the car to have got it mechanically examined. In cross-examination, Deepak has stated that Pankaj Mishra, Foreman of his factory and Subodh, Security Guard of another factory have seen Sagar and Yusuf while they were sitting in his car. Learned counsel thus says that these two material witnesses have not been examined. Prosecution is not required to

examine each and every witness during the sequence of events if it has sufficient witnesses to prove its case and it cannot be expected to meet every hypothesis put by the defence. Thus, we find no merit in the contention of learned counsel for Majid.

12. The overzealous prosecution has placed on record the call records of phones belonging to Raj Kumar, Majid and Sagar i.e. 9871534409, 9211991334 and 9210003216 respectively. The mobile phone bearing No.9871534409 has been proved to be in the name of Raj Kumar. However, the other two mobile numbers are not in the name of Majid and Sagar. On the basis of call records of these mobile numbers, the defence sought to contend that Raj Kumar, Majid and Sagar were talking to each other on these mobile phones and thus they cannot be present at the relevant time together in the car of Deepak. It is nowhere the case of Deepak, PW-1 that when he was kidnapped and the four of them were present in his car, Raj Kumar, Majid and Sagar were talking to each other on phone or were in possession of these phones. As noted above, the mobile phones attributed to Majid and Sagar were not even in their names and hence no adverse inference qua the prosecution case can be derived from the call details of these three mobile numbers as contended by the defence and in our opinion the learned Trial Court wrongly utilized the same as incriminating evidence.

13. Consequently, the judgment of conviction and order on sentence qua Majid is upheld. Raj Kumar is acquitted for offence punishable under Section 364A/34 IPC. Raj Kumar be released forthwith, if not required in any other case. Crl.Appeal No.686/2014 of Raj Kumar is allowed and Crl.Appeal No.528/2014 of Mohd.Majid is dismissed. Mohd.Majid will suffer the remaining sentence.

14. T.C.R. be returned.

15. Three copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the others to be handed over to the appellants.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 16, 2014
‘vn’