

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

% *Date of decision: August 25, 2014*

+ **CRL.A. 826/2014**

DEVI RAM

..... Appellant

Represented by: Mr.M.L.Yadav, Adv.

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The appellant Devi Ram is convicted for the offences punishable under Section 364A/302/201 IPC as per the impugned judgment dated March 12, 2014 and directed to undergo rigorous imprisonment for life and to pay a fine of ₹ 1000/-on both the counts i.e. Section 364A and 302 IPC. He has also been directed to undergo rigorous imprisonment for 7 years and to pay a fine of ₹1000/- for offence punishable under Section 201 IPC vide the order dated March 26, 2014.

2. Devi Ram assails the judgment on the ground that the testimony of witnesses does not show that the deceased was last seen with Devi Ram. The dead body was recovered from the drain on January 15, 2011 in a highly decomposed condition and thus no proper identification of the dead body could be carried out. No calls from the appellant to the father of the

deceased have been proved. The voice demanding ransom call has not been identified to be that of Devi Ram. There was no proof that Devi Ram stayed in the house where it is alleged that the child was kept for 2 days. No material has been placed to show that the deceased and Devi Ram were related to each other. Though no defence evidence has been led, however Devi Ram's case is of false implication and in question to answer 'Do you want to say anything else?' he replied:

"Ans. I had come to Delhi in December along with Pop Singh who is my bua's son. From there Police picked me. I was told that I will be freed within 2-3 days but I was falsely implicated in this case. I was not knowing Banwari Lal and Chetan before the incident. I am innocent and falsely implicated in this case."

3. We have heard learned counsel for the parties and perused the record. The investigation was set into motion on a complaint lodged by Smt. Savitri Devi PW-1 the mother of the deceased Chetan on January 04, 2011 recorded vide DD No.45B wherein she stated that her son Chetan aged 8 years had gone out to play at 7.00 PM on January 03, 2011 but when she looked for him at 9.00 O'clock he was not found. She searched for him, however he was not traceable. She gave the description of his body and the dress he was wearing. On the basis of this complaint FIR under Section 363 IPC was registered, wireless messages flashed, hue and cry notices published and other necessary formalities were carried out.

4. Later, Banwari Lal PW-9 the father of Chetan informed the investigating officer on January 13, 2011 that he received a ransom call for paying ₹ 40,000/- from phone No. 9012628183 on which Banwari Lal without informing the Police had gone to Meerut with ₹ 40,000/- on January 10, 2011, however he could not trace his son nor anybody who wanted to

take the money. On the basis of this statement Section 364A IPC was added and call details of phone No. 9012628183 were collected. The mobile number was kept under observation and it was found that IMEI no.358993014882880 on which mobile number 9012628183 was working had earlier been activated on 9811445740, which was in often contact with mobile number 9818132472. When both the numbers were informed to Banwari Lal he had no clue about the number 9811445740 but he stated that mobile number 9818132472 belonged to one Pop Singh, son of Ram Bharose, R/o of B-18/252 Jhuggi, Indira Camp, Kalyan Puri who was related to him from his village as nephew. Enquiries were made from Pop Singh who informed that mobile phone number 9811445740 belonged to Devi Ram, son of Ganga Ram. The mobile phone number was found to be issued in the name of Bantu Kumar, son of Ganga Ram. Consequently, Devi Ram was arrested and pursuant to his disclosure statement he pointed out the place where he had thrown the dead body, on which FIR No. 16/2011 under Section 302/201 IPC had already been registered at Police Station Sadar Bazar, Meerut.

5. To prove its case the prosecution examined PW-19 Megh Nad at whose house Devi Ram had kept Chetan for 2-3 days. Megh Nad deposed that in the last winter in January he was residing as tenant in East Kailash Nagar, Nauchandi Meerut. He used to work in power loom. Devi Ram used to reside in the room adjoining his room. On January 6th or 7th, 2011 Devi Ram had brought a boy aged about 10-12 years in his room. The boy's name was Chetan and Devi Ram told him that Chetan was his cousin (son of younger brother of his father). For 2-3 days Chetan stayed in his room, since Devi Ram was not having bedding in his room. He further stated that

most of the time he used to remain outside in connection with his job and after about 2 days when he returned to his room he found only Devi Ram present and Chetan was not present. On asking Devi Ram about the whereabouts of Chetan, Devi Ram stated that his uncle had taken away Chetan. After 2 days even Devi Ram ran away from the place. On January 17 or 18, 2011 when Police brought Devi Ram to the house he got to know that Chetan had been murdered. This witness Megh Nad has been mainly cross-examined on the ground that he has not been able to prove any rent agreement to the Police, however in his cross-examination it has been elicited that on January 10, 2011 he had lastly seen the boy Chetan in his room and Chetan was happy who played the whole day and stated that Devi Ram was his brother.

6. The prosecution has also examined PW-3 Panmesh Mittal, son of Suresh Chand Mittal, the owner of the premises where Megh Nad and Devi Ram were residing. However, according to Panmesh Mittal he had another tenant Vinod. This witness had no personal knowledge about Devi Ram staying in the premises and his testimony is on the basis of what was told to him by Megh Nad and Vinod thus hearsay.

7. Vinod PW-10 has deposed that he was staying in a room at Nauchandi East Kalyan Nagar, Meerut in a property owned by Panmesh Mittal. He was taking care of property and rented the rooms to the workers. About 1 year back Devi Ram came to him for taking a room on rent. Though Devi Ram stated that he was working nearby but he did not give the complete address. Vinod gave him a room on monthly rent of ₹ 600/-. He stayed in the room only for 8 days and thereafter left the room. After 2 months of the vacation of room he again came along with a child and remained there for 4-5 days.

This witness identified the photograph of the child as that of Chetan who had stayed with Devi Ram in the compound.

8. Thus, from the testimony of Vinod and Megh Nad it is proved that Chetan was last seen after going missing on January 03, 2011 residing with Devi Ram for 2-3 days by both of them and lastly till January 10, 2011.

9. The post-mortem of Chetan was done by Dr.Raj Kumar PW-8 who in internal examination found that suture of skull loose, membrane of brain became decomposed, brain liquefied. On internal examination of thorax, it was found all ribs were fractured 2 to 5 on both sides. Plura was decomposed blood present in chest cavity on both sides. Ecchymosis was present beneath the neck and chest muscles. Both lungs had soften and decomposed. Pericardium was decomposed. On cutting the heart, it was found empty in both sides. Blood vessels were decomposed. On internal examination of abdomen membrane and peritoneum were decomposed.

10. Dr. Raj Kumar exhibited his post-mortem report vide Ex.PW-8/A and opined the cause of death due to traumatic and asphyxia as a result of injuries present over the body. He also opined that time since death was 4-5 days. The post-mortem was conducted on January 18, 2011 at 3.00 PM and thus death might have taken place somewhere around January 13, 2011.

11. Learned counsel for the appellant has assailed the last seen evidence on two counts that soon before death Devi Ram was not seen in the company of Chetan, Chetan's body has not been identified properly and that no reliance can be placed on the testimony of Megh Nad and Vinod as they have not produced any rent agreement. The identification of the dead body of Chetan was done by Banwari Lal, his father. He also identified the clothes of the deceased that he was wearing at the time of his kidnapping as

Ex.P1. In the entire cross-examination there is no cross-examination to the affect that Banwari Lal identified the dead body wrongly. This witness not having been confronted on this position the plea now being taken cannot be raised. As regards non-availability of rent agreement with Megh Nad and Vinod it is a matter of common knowledge that small tenanted premises are let out generally without rent agreements. By and large people do not enter into rent agreement and without there being anything else elicited in the cross-examination merely on account of absence of rent agreement the testimonies of the two witnesses Megh Nad and Vinod cannot be discarded.

12. Since we find the testimony of Megh Nad and Vinod reliable, it is proved by the prosecution that after kidnapping Chetan on January 03, 2011 and before his death on or around January 13, 2011, he was in the company of Devi Ram and hence the onus shifts on Devi Ram under Section 106 of Evidence Act to explain how he came in possession of the minor child during the period when he was missing and now his death took place. Further, Devi Ram pointed out the drain near Vaishali Road Workshop where he had thrown the dead body pursuant to the disclosure statement Ex.PW-22/G. It is only thereafter it was revealed that a dead body had been recovered from the said place on the basis of which FIR No. 16/11 was registered at PS Sadar Bazar, Meerut and the dead body has been preserved in Medical College, Meerut. On this Banwari Lal along with the Police officials went to the hospital where the dead body was kept and identified the same to be of his son master Chetan. This discovery of fact leading to the tracing of dead body is admissible against Devi Ram under Section 27 of the Evidence Act.

13. Even in the absence of prosecution having established that Devi Ram

made ransom calls by using mobile numbers 9012628183 or 9811445740 to Banwari Lal, the circumstances as noted above are sufficient to hold Devi Ram guilty of offences punishable under Sections 364A/302/201 IPC. Consequently, we uphold the judgment of conviction and order on sentence. Appeal is dismissed. The appellant who is in custody will suffer the remaining sentence.

14. T.C.R. be returned.

15. 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 25, 2014
‘ga’