

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION**

**CRIMINAL APPEAL NO. 191 OF 2009**

Sudeb Manmohan Pal,  
Age : 25 years,  
Occ. : Construction Work (Supervision)  
R/at : Near Hanuman Temple,  
Mahul Gaon, Chembur, Mumbai - 400074. ... Appellant.

V/s.

The State of Maharashtra  
(Inspector of Police RCP Police Station,  
Mumbai.) ... Respondent.

Mrs. Nasreen Ayubi, Appointed Advocate for the Appellant.  
Mrs. S.D. Shinde, APP for the State.

**CORAM : P.V. HARDAS &  
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

**FEBRUARY 18, 2015.**

**ORAL JUDGMENT (PER P.V. HARDAS, J.) :-**

The Appellant, who stands convicted for offence punishable under Section 364-A of the Indian Penal Code and sentenced to imprisonment for life and to pay fine of Rs.1,000/- in default of which to undergo R.I. for one month,

by the Additional Sessions Judge, Greater Bombay, by Judgment dated 5.2.2009 in Sessions Case No.94 of 2008, by this Appeal questions the correctness of his conviction and sentence.

2. Facts in brief as are necessary for the decision of this Appeal may be stated thus.

PW-7 PSI Prabhakar Bhoir, who was attached to the R.C.F. Police Station and was on duty on 25.8.2007, recorded the report of PW-1 Parumita at about 4.00 a.m. at Exhibit 10. On the basis of the report of PW-1 Parumita, PW-7 PSI Bhoir registered an offence vide Crime No.132 of 2007 under Sections 363 and 385 of the Indian Penal Code. He recorded the statement of PW-3 Ashish Kumar and one Prosonjit Shankar, Deoprat Jana and thereafter, searched for the accused. The accused was not found and the investigation was then transferred to PW-9 PSI Baban Kute.

PW-9 PSI Baban Kute, who was also attached to the R.C.F. Police Station was entrusted with the investigation of Crime No.132 of 2007. He was informed by PW-10 PI

Gangadhar Sonawane about the registration of the offence and was also directed to arrange for a raid. According to PW-9 PSI Baban Kute, different teams were prepared and proceeded from the Police Station in plain clothes. The first team was led by PW-10 PI Sonawane while second and third team was led by PSI Jadhav and PSI Gokhale respectively. API Phadke from the Crime Branch had also accompanied the team. PW-2 Pradeep was proceeding ahead while the Police were following him. PW-2 Pradeep telephoned and informed them that instead of the Kurla Station, Pradeep had been called near the Swastik Park. The Police team was following PW-2 Pradeep. At about 11.00 a.m. the Police Officers were standing near the gate of Swastik Chamber and watching the movements of PW-2 Pradeep. PW-2 Pradeep proceeded through the main gate of Swastik Chamber and noticed a man with a small girl and PW-2 Pradeep went near that person. The Police therefore confirmed that the person carrying the small girl was the accused. Accordingly, PW-10 PI Sonawane, signaled all the team members. A lady constable in the team took custody of the child. Two panch witnesses were called and in the presence of panchas, the search of the accused was taken.

During the personal search of the accused, a plastic bag containing cash of Rs.20,000/-, a wallet containing cash of Rs.75/- and the Credit Cards of different banks was found. In the shirt pocket, 2 mobiles one of Reliance and the other of Classic Company were found. A shoulder bag was found with him which contained his clothes. The articles were accordingly seized and sealed with the labels of the signature of panchas. A panchnama to that effect was drawn at Exhibit 16.

The Appellant/Accused alongwith the girl was then brought to the Police Station and was arrested under arrest panchnama at Exhibit 23.

3. PW-10 PI Gangadhar Sonawane, who was also investigating Crime No.132 of 2007 collected the printouts from the Airtel and Reliance Company and searched for the rickshaw driver but the rickshaw driver could not be found as he was out of station. Further to the completion of investigation, PW-10 PI Sonawane filed a charge-sheet against the Appellant.

4. On the case being committed to the Court of Sessions, Trial Court vide Exhibit 4 framed charge against the Appellant for offence punishable under Section 364-A of the Indian Penal Code. The Appellant denied his guilt and claimed to be tried. Prosecution in support of its case examined 10 witnesses. The defence of the Appellant is of denial. The Trial Court upon appreciation of the evidence convicted and sentenced the Appellant as afore-stated.

5. We have heard Mrs. Nasreen Ayubi, learned Counsel appointed for the Appellant and the learned APP and in order to effectively deal with the submissions advanced before us by the learned Counsel for the parties, it would be useful to refer to the evidence of the prosecution witnesses.

6. Prosecution has examined PW-1 Parumita, who deposes that she was residing alongwith her husband PW-2 Pradeep and her 11 months' old daughter Sneha. According to her, PW-2 Pradeep was a goldsmith, who was carrying on his business from his residential house. According to PW-1 Parumita, on 24.8.2007 at about 7.00 p.m. one boy had come

to their house and had placed an order for a silver bracelet weighing 40 grams. The said boy had given advance of Rs.500/-. PW-2 Pradeep had informed the said boy to collect the bracelet on the next day. On the next day, the said boy again came to their house at about 7.00 p.m. PW-2 Pradeep was not present in the house and PW-1 Parumita therefore told him to come after half an hour. In the meantime, the said boy started playing with the 11 months' old daughter Sneha. The said boy who has been identified as the Appellant, took Sneha in his arms. PW-1 Parumita took back her daughter from the Appellant but Sneha started crying. The Appellant told Parumita that he would take Sneha for a stroll so that she would calm down. The Appellant therefore took Sneha alongwith him. Parumita waited for some time but the Appellant did not return. The boys who were residing in the nearby area also used to take the daughter of Parumita for a stroll. Parumita therefore asked one Prosanjit as to where her daughter was as the Appellant had taken her daughter. Prosanjit accordingly informed PW-1 Parumita that her daughter had been taken by one Sudeb Pal. Parumita noticed PW-3 Ashish Kumar was coming near her house and therefore,

she questioned Ashish Kumar if he had seen daughter of Parumita. Ashish Kumar accordingly informed Parumita that he had seen her daughter near the bus stand alongwith Sudeb Pal. Parumita therefore requested Ashish Kumar to search for her daughter. Parumita informed the entire incident on phone. After PW-2 Pradeep returned from the market, Parumita and PW-2 Pradeep searched for Sneha in the entire area of Mahul Gaon. PW-2 Pradeep and the other residents of the area continued their search. PW-1 Parumita remained at home and received a call on the land-line from a mobile. The number of which was 9380066314. The caller inquired if it was the house of Tulsi Jewellers. Parumita asked as to who the caller was. The caller informed Parumita that her daughter was in the custody of the caller and the caller demanded Rs.1.00 lakh by next day evening if Parumita wanted her daughter back. Parumita was further informed that if she informed the Police, her daughter would be harmed. Parumita asked the caller as to how she would contact him and the caller person calling Parumita informed her that Parumita should arrange the money and thereafter, he would himself contact her. Parumita accordingly informed her husband and thereafter

went to the R.C.F. Police Station and lodged her report at Exhibit 10. She has identified the Appellant to be the same person who had kidnapped her daughter.

7. In cross-examination an omission is elicited that she had not stated in her report that she had telephoned her husband and informed him that Sneha had been kidnapped. She has admitted that PW-2 Pradeep returned home within about 45 minutes of Sneha being kidnapped. She has admitted that she had not lodged any report till her husband had returned home. She has admitted that the family possesses one mobile phone which is in the name of PW-2 Pradeep. An admission is elicited in the cross-examination that Prosonjit knew the Appellant and this was disclosed to PW-1 Parumita by Prosonjit. She has admitted that she had received the telephone call from the Appellant between 9.30 p.m. to 10.00 p.m. and after receipt of the said telephone call, she had informed PW-2 Pradeep. After arrival of Pradeep, they had gone to the R.C.F. Police Station and had lodged the complaint. She has admitted that after she had received a telephone call from the Appellant, she was convinced that the

Appellant had kidnapped her daughter. An omission is also elicited that she had not stated that when the Appellant had telephoned her, the Appellant had inquired whether it was the residence of Tulsi Jewellers. She has admitted that initially she did not know as to who had telephoned on the land-line.

8. The evidence of PW-1 Parumita stands substantially corroborated by the testimony of PW-2 Pradeep, father of Sneha. PW-2 Pradeep deposes that he is a goldsmith and works from his residence. According to him, the Appellant had come to his house on 24.8.2007 at about 7.00 p.m. and had placed an order for a silver bracelet weighing 40 grams. The Appellant had also given advance of Rs.500/-. Pradeep informed the Appellant that the bracelet would be ready on the next day. On 25.8.2007, PW-2 Pradeep had gone to Bhuleshwar and when he returned home at 8.00 p.m. he was informed by his wife Parumita that the Appellant had taken Sneha and had not returned. Pradeep alongwith the neighbours started searching for Sneha but could not find her. While he was searching, he received a telephone call from Parumita, who informed him that the person who had

kidnapped Sneha had called her on the land-line and had demanded a ransom of Rs.1.00 lakh. Pradeep therefore returned home and alongwith PW-1 Parumita and other residents of the locality went to the Police Station at about 12.00 mid-night and lodged his report.

9. Pradeep further deposes that on 26.8.2007 he had received a telephone call at about 8.00 a.m. and the person calling him had disclosed that Pradeep should bring Rs.1.00 lakh at the Vashi Railway Station. Pradeep informed this to the Police and then started for Vashi Railway Station at about 10.00 a.m. While Pradeep was travelling in the auto rickshaw, he received a telephone call and the Appellant asked him to come near Swastik Chamber. Pradeep had received a call on his mobile since he had given his mobile number to the Appellant in the morning. Pradeep accordingly went to the Swastik Chamber and noticed the Appellant standing there cradling daughter of Pradeep. Pradeep alighted from the auto-rickshaw and went towards him. The Appellant then took him behind a small shop. Pradeep took his daughter from the custody of the Appellant and handed him over Rs.20,000/-.

While the Appellant was counting the currency notes, the Police arrived there and arrested him. According to Pradeep, he had informed the Police that Pradeep was called at the Swastik Chamber instead of the Vashi Railway Station. Pradeep thereafter went to the R.C.F. Police Station where his statement was recorded.

10. In cross-examination he has admitted that normally he gives the copy of the order to the customer but since the accused was in a hurry, he had not taken the copy of the order. He has admitted that he had not prepared the order placed by the accused. He has also admitted that he had not asked the accused his name and address. He has admitted that he had kept the bracelet ready but the bracelet was at Bhuleshwar. He has admitted that on his return from Bhuleshwar he had learnt that his daughter had been kidnapped. He has admitted that he had seen the accused for the first time when the accused had come to his shop 8 days prior to the incident to inquire if PW-2 Pradeep had prepared the bracelet. He has admitted that after making an inquiry about the accused, he had found his room but the room was

locked. He has admitted that when he was searching for his daughter in the Chembur area, PW-1 Parumita was at the residence. An omission has been elicited that he had not stated in his previous statement that he alongwith the neighbours had searched for his daughter till about 10.00 p.m. and that he had received a call from his wife informing him that PW-1 Parumita had received a telephone call from the accused. Omission has been elicited that he had not stated that after alighting from the auto-rickshaw, the accused had taken him behind a small shop and that PW-1 Parumita had taken his daughter from the accused and had handed over Rs.20,000/- to him. He has admitted that Rs.20,000/- comprises of 36 currency notes of Rs.500/- and 2 currency notes of Rs.1000/- each. Omission has been elicited that he had not stated in his previous statement that he had informed the Police that he was called at the Vashi Railway station and that the Police had informed him that PW-2 Pradeep should go in an auto-rickshaw and the Police would follow him.

11. Prosecution has examined PW-3 Ashish Kumar, who deposes that he was residing near the house of PW-1

Parumita. He has admitted that PW-1 Parumita and PW-2 Pradeep were acquainted with him. He further deposes that on 25.8.2007 he had noticed the Appellant alongwith the daughter of PW-2 Pradeep at the bus stop. PW-3 Ashish Kumar further deposes that he had questioned the Appellant as to where he was taking the girl and the Appellant had informed him that he was taking Sneha for a stroll. He further deposes that PW-1 Parumita had inquired from him if he had seen Sneha and Ashish Kumar had accordingly informed PW-1 Parumita that he had seen her daughter alongwith the Appellant. He has further deposed that the Appellant was acquainted with his friend Prosonjit and that Ashish Kumar had seen the Appellant once or twice with Prosonjit. In cross-examination an omission is elicited that he had not stated in his previous statement that he had informed PW-1 Parumita that he had seen daughter of Parumita at the bus stop. Omission is also elicited that he had not stated that he knew the Appellant as Ashish Kumar had seen the Appellant in the company of one Prosonjit.

12. Prosecution has examined PW-4 Meena, a owner of the Public Call Office, who deposes that on 26.8.2007 one person had come to her shop alongwith a small girl and had telephoned. That person had purchased one ice-cream and thereafter, had gone away. The same person had again come at about 10.30 or 10.45 a.m. She has identified the Appellant as the same person. In cross-examination, omission has been elicited that she had not stated in her previous statement that the Appellant had purchased ice-cream. She has also admitted that she was not acquainted with the Appellant earlier and had seen the Appellant for the first time when the Appellant had come to her shop for making a telephone call.

13. In our opinion, no reliance can be placed on the testimony of this witness as the Appellant was not acquainted with her and no test identification parade had been held to corroborate her identification of the Appellant in the Court.

14. Prosecution has also examined PW-5 Ashok, a panch witness in respect of the seizure of the mobile phones and the cash of Rs.20,000/- from the possession of the

accused. He has also deposed about the accused being arrested under the arrest panchnama. Prosecution has also examined PW-6 Ramesh, who claims that he had taken the Appellant in the auto-rickshaw to the Jama Sweet Mart. The Appellant was then carrying the daughter of PW-2 Pradeep. According to him, he had informed the persons who had gathered at the house of PW-2 Pradeep that he had reached the Appellant alongwith the daughter of PW-2 Pradeep at the Jama Sweet Mart. In cross-examination he has admitted that immediately after the incident, he had gone to his native place and returned back some time in February. He has also admitted that he was not acquainted with the Appellant and had seen the Appellant for the first time on the day of the incident.

In our opinion, no reliance can be placed on the testimony of PW-6 Ramesh. Test identification parade had not been conducted and therefore, the identification of the Appellant by this witness for the first time in Court cannot assist the prosecution. Moreover, there is enormous delay in the recording of the statement of this witness.

15. Mrs. Nasreen Ayubi, learned Counsel appointed for the Appellant has urged before us that there are variations in the testimony of PW-1 Parumita and PW-2 Pradeep in respect of the kidnapping and the search launched by them for tracing the whereabouts of the missing child. It is also urged before us that there is no evidence that the Appellant had demanded the ransom and in fact the Appellant may have accepted Rs.20,000/- as a refund for Rs.20,000/- given by the Appellant to PW-2 Pradeep. The learned APP has supported the findings arrived at by the Trial Court.

16. It is true that there are slight variations in the testimony of PW-1 Parumita and PW-2 Pradeep. Certain omissions have also been elicited in the testimony of these witnesses. Even if the omissions are left out of consideration, the core of the testimony of these witnesses remains intact. The evidence of these two witnesses therefore establishes that the Appellant had placed an order with PW-2 Pradeep for preparation of a bracelet of silver weighing 40 grams. The Appellant had also given an advance of Rs.500/-. On the day

of the incident the Appellant had come to collect the aforesaid bracelet but the Appellant was asked to wait for some time as PW-2 Pradeep was unavailable. The daughter of PW-1 Parumita who was then aged 11 months was taken by the Appellant as she was crying. The Appellant informed Parumita that he was taking Sneha for a stroll and would return shortly. The Appellant was seen with Sneha at the bus stop by PW-3 Ashish Kumar, who had accordingly informed Parumita despite searching for the Appellant, the Appellant was not found and therefore, a report was lodged. Thus, it is apparent that the Appellant had kidnapped Sneha from the custody of PW-1 Parumita. Parumita had thereafter received a telephone call from the Appellant demanding ransom. The Appellant was ultimately caught raid-handed with the daughter of PW-1 Parumita in his custody. On search of the Appellant, an amount of Rs.20,000/- was also found. The defence of the Appellant in the cross-examination was that he had given an advance of Rs.20,000/- to PW-2 Pradeep for preparation of an ornament which was refunded to him by the Appellant. The aforesaid defence is not taken by the Appellant in his statement recorded under Section 313 of the Code of Criminal

Procedure. The defence of the Appellant had been denied by PW-2 Pradeep. The Appellant had offered no explanation whatsoever as to how the daughter of PW-1 Parumita and PW-2 Pradeep was found in his custody when he was apprehended by the Police. The telephone call made by the Appellant demanding ransom and his subsequent arrest establishes beyond reasonable doubt the offence punishable under Section 364-A of the Indian Penal Code. We thus find that the prosecution has proved the offence against the Appellant beyond reasonable doubt. In our opinion, the present Appeal is sans merit and therefore, deserves to be dismissed.

17. Accordingly, we dismiss this Appeal confirming the conviction and sentence of the Appellant.

18. Fees payable to the learned Counsel appointed for the Appellant is quantified at Rs.5,000/-.

**(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)**