

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

CRA-S No. 1181-SB of 2010 (O&M)

Date of decision: - 03.09.2015

Dilbagh Rai

...Appellant

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Veneet Sharma, Advocate,  
for the appellant.

Mr. Varun Sharma, D.A.G., Punjab  
for the State.

Ms. Manjeet Kaur, Advocate  
for Mr. Karanjit Singh, Advocate  
for respondent No.2.

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**SHEKHER DHAWAN**

Present appeal against judgment of acquittal dated 04.02.2010, whereby respondent No.2 was acquitted of charges under Sections 364-A, 382 and 120-B IPC.

2. Relevant facts of the case that on 10.02.2008, Dilbagh Singh-complainant reported to the police that on 17.01.2008, his son Rajiv Pal had gone to railway station so as to go Delhi. At about 5.30 P.M., complainant received a telephonic call from his son that some unidentified persons abducted him and threatened to kill him. Rajiv Pal also informed that Gurvinder Singh @ Prince and two other persons would be coming to him and they be given

rupees one lac and jewellery. At about 8.30 P.M., Gurvinder Singh along with

two persons came to the house of complainant in Indica Car. Gurvinder Singh was calling the said two persons (co-accused) as Charanjit Singh and Mannu. Gurvinder Singh asked the complainant to hand-over rupees one lac and jewellery, if he wanted the safety of life of his son Rajiv Pal. Complainant gave rupees one lac in cash and one lady's necklace of gold weighing 2½ tolas to them. While leaving the said place, the accused threatened the complainant with dire consequences, in case the matter reported to the police or anybody. Because of fear, complainant could not inform the police. Thereafter, the matter was reported to the police and FIR was registered. Accused-Gurvinder Singh was arrested. During the period of police remand and as per disclosure statement dated 16.02.2008, one wrist watch and a ring of gold, which had fallen to his share, were kept concealed by him in residential house. Said articles were recovered from his possession. Gurvinder Singh also produced a photo copy of the paper containing certain telephone numbers and same was taken into police custody. The other co-accused could not be arrested and they were declared proclaimed offenders. During the trial, charge for commission of offences under Sections 383, 364-A and 120-B was framed but trial Magistrate after closing the prosecution witnesses, examined accused persons under Section 313 Cr.P.C. After considering the prosecution version and defence version and while disbelieving the testimony of both the material witnesses and giving benefit of doubt to the accused, acquitted-Gurvinder Singh, vide judgment dated 04.02.2010. The appellant is in appeal against the said judgment.

3. Learned counsel for the appellant contended that learned trial Judge has not appreciated the material and evidence available on file though the prosecution case was proved beyond doubt. Learned trial Judge merely

disbelieved the testimony of both the material witnesses on the ground that there were certain discrepancies on the minor points. Such discrepancies are bound to occur, if the testimony of witnesses recorded after lapse of considerable period. Learned trial Judge also wrongly formed the opinion that the delay in reporting the matter to the police was a factor and on that account prosecution witness could not be believed. The judgment of acquittal has been recorded merely on assumptions. So, judgment dated 04.02.2010 be set aside and accused be punished according to law.

4. Having considered the submissions made by learned counsel for the appellant and perusing the record, this Court is of the considered view that there were two material witnesses, namely, Dilbagh Singh-complainant and Rajiv Pal, victim of the case. However, learned trial Judge after closely scrutinizing the testimony of Rajiv Pal came to the conclusion that their testimony was quite contradictory to each other. Learned trial Judge rightly appreciated the evidence of PW1-Dilbagh Singh and PW2-Rajiv Pal, who were fully conversant with the facts of the case rather they are complainant and victim of the case. They must be aware of minute details of happening, if that had actually happened as per version of complainant-Dilbagh Singh and son Rajiv Pal. First version before the police was by way of Ex.DA and at that time, Rajiv Pal disclosed to the police that he had gone to Ambala for property dealings, where, one Bobby had sent two unidentified persons, who took him to Nilokheri in white Indica Car. From there, he was taken to a 'Chobara' in front of petrol pump, below which, there was a shop of mechanic, where, those unknown persons put pistol on his head and demanded rupees ten lacs and the matter was settled at rupees one lac and gold. Thereafter, he made a telephonic call to his father Dilbagh Singh. As per Rajiv Pal, he made call from his mobile

No. 9876813741. But when statement of Rajiv Pal under Section 161 Cr.P.C. recorded, he took different version that while he was going from Ambala Railway Station, Satnam Singh @ Satta alone picked him up in white Indica Car. Later on, when his statement was recorded in the Court as PW2, he deposed that he was going to Delhi in train Sachkhand Express but Satnam Singh @ Satta and one Bobby asked him on telephone to drop at Ambala as they wanted to show some property to Rajiv Pal. Then, Rajiv Pal alighted from the train at Ambala Cantt. Railway Station, from where, Satnam Singh @ Satta and Bobby, who were earlier known to Rajiv Pal, took Rajiv Pal in Indica Car to Nilokheri and detained him illegally in the office of Satnam Singh @ Satta, where, Satnam Singh @ Satta put a gun on his head and demanded ransom and also snatched his purse containing ₹6,500/-, driving licence, identified card, gold ring and mobile set. Gurvinder Singh, Charanjit Singh and Sonu were also present.

5. Testimony of PW1 Dilbagh Singh is also contradictory on the point as to how the payment of rupees of one lac was demanded and how the same was made because as per Rajiv Pal in Ex.DA, he had asked his father to send rupees one lac, gold etc. through Gurvinder Singh @ Prince. Thereafter, his father called Gurvinder Singh from his house and sent rupees one lac, gold necklace through Gurvinder Singh. Such contradictions in the statement of these witnesses certainly makes the prosecution case doubtful. Learned trial Judge rightly appreciated that it was not believable that when Gurvinder Singh was present at Nilokheri and Rajiv Pal had given telephonic call to his father at Amritsar, then how Gurvinder Singh reached within an hour from Nilokheri to Amritsar. If the entire statement of Rajiv Pal is taken into consideration, it is not clear whether Rajiv Pal was going to Ambala or he was going to Delhi and

then came back to Ambala. The other most important fact in the case is that as per Rajiv Pal he had made call from his mobile No.9876813741. The calls details were requisitioned during trial and as per record of 'AIRTEL' the said mobile number belonged to Sandeep Kumar of Mayur Nagar, Amritsar and not to the complainant. Learned trial Judge has also rightly appreciated that as remaining accused have not been arrested during the trial and they have been declared proclaimed offenders. So, there is absolutely no evidence about hatching of conspiracy with anybody else.

6. Even, delay in reporting the matter in such like cases is more relevant because the alleged occurrence had been taken place on 17.01.2008 and the matter was reported to the police on 10.02.2008. FIR was registered after lapse of 24 days. This fact attains much more importance in the light of the facts that Rajiv Pal, victim of the case was released by the accused persons on the same night. There was unreasonable and unexplained delay in reporting to the police on 17/18.01.2008. It is settled proposition of law that though delay in itself is not fatal for the prosecution, but delay certainly puts Court to caution to scrutinize the testimony of material witnesses with greater care and caution and delay becomes most relevant. Similarly in the case in hand, the delay having remained unexplained and the testimony of both the material witnesses i.e. complainant Dilbagh Singh and victim Rajiv Pal, being contradictory to each other, on almost all material points, makes the prosecution case highly doubtful. Learned trial Judge has rightly appreciated the evidence available on file and acquitted the accused. There is no scope for interference by way of present appeal against acquittal. The same being without any merit and stands dismissed.

September 02, 2015

**(SHEKHER DHAWAN)**  
Judge