

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &  
HARYANA, AT CHANDIGARH**

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Criminal Appeal-D - 619-DB of 2003

Date of Decision: May 14, 2015

Roshan Lal

--- Appellant

Versus

State of Punjab

---Respondent

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**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN**

**HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

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Present: Shri Kanwal Goyal, Advocate for the appellant

Shri S.S. Dhaliwal, Additional Advocate General, Punjab  
for the respondent-State.

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1. *Whether Reporters of local papers may be allowed to see the Judgment?*  
*Yes/No*
2. To be referred to the Reporter or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

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**MAHAVIRS. CHAUHAN, J.**

Himanshu, a six years old UKG student of Green Land Senior Secondary School, Ludhiana, left for his school as usual at or around 07.30 a.m. on June 12, 2002 but did not return home. His father, Rajesh Kumar Singla (the complainant) (PW4), who was running a hosiery unit, vainly searched for him. At or around 04.00 p.m. he received a phone call. The caller told him that his son was in his custody and would be released only after an amount of Rs. 10,00,000/- was paid to him. The caller also warned the complainant that if the police was informed, the boy would be done to death. Complainant recognized caller's voice as that of Roshan Lal (the

appellant) who had been working in his factory and had left the job. He immediately rushed to Police Station, Salem Tabri. On his statement a daily diary report, Exhibit PA/1, was recorded at 05.15 p.m. on June 12, 2002 and based thereon First Information Report (FIR), Exhibit PA/2, was recorded. At or around 09.00 p.m. on that very day, complainant received another phone call from the appellant asking him to reach Bahadurke Road alongwith the demanded amount of money. The caller also repeated the threat that if the matter was reported to the police, the child would be killed. Complainant again went to the police station where higher police officers had already arrived and a raid was planned. A bag carrying bundles of papers tagged like currency notes was prepared and was handed over to the complainant. Six police parties of police personnel in civil clothes were formed. A police party headed by ASI Darshan Singh (PW3) followed the complainant and other parties followed that party.

02. On reaching Bahadurke Road, appellant was seen standing near a wall and catching hold of the child from his neck. He even tried to strangle his neck on seeing the police party approaching him after having been identified by Rajesh Kumar Singla. The police party was successful in rescuing the child. Appellant, however, escaped taking benefit of darkness. Child was handed over to complainant's brother, Shovan Kumar Singla (PW2).

03. A few police officials were sent to, and had cordoned off, the area where house of the appellant was situated. Appellant was seen running away in a vacant plot and was apprehended. He was formally arrested vide memorandum, Exhibit PB. Frisking of his person yielded a mobile phone

without sim and an amount of Rs. 50/-.

04. On being interrogated while in police custody, appellant suffered a disclosure statement, Exhibit PD, and pursuant thereto led the police party to his house and got recovered a school bag containing books (Exhibit P2), lunch box (Exhibit P1) and school uniform (Exhibit P3) of Himanshu. During further interrogation he suffered another disclosure statement, Exhibit PH, and in pursuance of it got recovered a bicycle (Exhibit P7).

05. After the investigation was complete, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (for short, “the Code”) was prepared and presented before the learned Area Magistrate.

05. On hearing the prosecution and the defence and appraisal of the materials placed before him, learned Additional Sessions Judge, Ludhiana (here-in-after referred to as “the trial court”) found a prima facie case punishable under Sections 364-A and 387 of the Indian Penal Code, 1860 (here-in-after referred to as “the IPC”) to be made out against the appellant and charged him accordingly.

06. Appellant pleaded not guilty to the charge and claimed to be tried.

07. During trial Rajesh Kumar Singla (PW1) retold the entire prosecution version on oath while his brother Shovan Kumar Singla (PW2) supported him, almost verbatim. Mrs. Baldeep Pandher (PW6), Principal of Green Land Senior Secondary School, Ludhiana, placed on record copies of registration form, admission form, birth certificate, and attendance register

pertaining to Himanshu as Exhibits PW6/A, PW6/B, PW6/C and PW6/D, respectively. Inspector Mukhwinder Singh (PW7), ASI Darshan Singh (PW3), SI Rajesh Kumar (PW4), and ASI Amrik Singh (PW5) deposed with regard to recovery of the child, his belongings and appellant's bicycle and various other phases and facets of investigation.

08. In his statement recorded under Section 313 of the Code, appellant denied all the inculcating circumstances and came out with a plea that while working in complainant's factory he went on leave on June 08, 2002 as his wife was not well, but was fired from service and was not allowed to join his duty by the complainant after he returned from leave on June 09, 2002. When demanded his dues amounting to Rs.7060, complainant asked him to come on June 10, 2002 and then on June 12, 2002 in his office but ultimately refused to pay him the due amount. He returned home after telling the complainant and his brother Shovan Kumar Singla that he would approach Labour Court in the matter but the duo used their links in the police and got him picked up from his house and involved in the instant case.

09. Appellant examined Amarjit Singh (DW1) to say that the appellant was arrested in his presence by the police from his house on the night intervening June 12 & 13, 2002.

10. Learned trial court, on hearing the prosecution and the defence and appraisal of evidence found that the prosecution was able to fix appellant's guilt beyond reasonable doubt and, accordingly, vide judgment and order dated July 14, 2003, convicted and sentenced him as under:

| Sr.No. | Under Section (IPC) | Sentence          | Fine (Rs.) | In default |
|--------|---------------------|-------------------|------------|------------|
| 01.    | 364-A               | Life imprisonment | 5000/-     | 01 year    |
| 02.    | 387                 | 03 years (RI)     | 2000/-     | 03 months  |

Both the substantive sentences were ordered to run concurrently.

11. To challenge judgment/order dated July 14, 2003 and seek his acquittal, convict Roshan Lal has brought this appeal.

12. We have heard Shri Kanwal Goyal, Advocate appearing for the appellant and Shri S.S. Dhaliwal, Additional Advocate General, Punjab representing the respondent-State.

13. Shri Kanwal Goyal, Advocate has very fervently argued that impugned judgment/order cannot be allowed to sustain because the learned trial court has failed to take note of failure of the prosecution to bring on record call details of the phone(s) statedly used by the appellant to call the complainant and thereby connect the appellant with commission of the crime as also the defence version put up by the appellant in his statement recorded under Section 313 of the Code and statement of principal of Himanshu's school that he (the victim) had boarded a wrong bus. Driver of the school van has not been examined. According to him it has come in the evidence of PWs Rajesh Kumar Singla and Shovan Kumar Singla that the appellant, who used to deal with accounts of their hosiery unit running into thousands of rupees without giving a cause of complaint to them, has been their very faithful employee. Therefore, he cannot be believed to have kidnapped son of his employer for ransom. He has also submitted that it is quite improbable that the appellant could kidnap the child from in front of a few hundred students and security guards of the school and could escape

even though thirty-forty police personnel had, statedly, encircled him.

14. Shri S.S. Dhaliwal, on the other hand, has argued, with no less vigour, that in view of acquaintance of the appellant with the family of the victim, it was quite probable that Himanshu must have accompanied him without any resistance and without raising an alarm; non-examination of driver of the school van and non-proof of call details are inconsequential as case of the prosecution has been established in the evidence available on record; plea put up by the appellant in his statement under Section 313 of the Code was not put to the witnesses of the prosecution and, as such, cannot be looked into; and statement of witnesses of the prosecution about his faithfulness cannot be read to mean that the appellant did not kidnap the boy who, evidently, was found to be in appellant's custody and control when police reached Bahadurke Road.

15. Nothing more has been urged on either side.

16. Rajesh Kumar Singla, father of the victim has very emphatically and clearly stated that after vainly searching for his missing son when he returned home he received a phone call asking him to part with an amount of Rs. 10,00,000/- for release of his son and could recognize voice of the caller as that of the appellant, who had been working in his hosiery unit till a few days prior to the occurrence. Appellant's admission that he has been appellant's employee till June 08, 2002 and that of Rajesh Kumar Singla (PW1) and Shovan Kumar Singla (PW2) that the appellant had been working in their hosiery unit which was being run in their residential house and that he was their trusted worker coupled with the fact of the victim having been seen in the custody and control of the appellant by

PWs Rajesh Kumar Singla, Shovan Kumar Singla, ASI Darshan Singh, SI Rajesh Kumar and Inspector Mukhwinder Singh and recovery of school bag containing books (Exhibit P2), lunch box (Exhibit P1) and school uniform (Exhibit P3) of Himanshu at the instance of the appellant pursuant to his disclosure statement, Exhibit PD, render non examination of driver of the school van and non proof of call details of appellant's phone(s) inconsequential besides strengthening complainant's assertion that he could recognize appellant's voice on phone when he demanded Rs. 10,00,000/-in lieu of release of his son.

17.           Contention of appellant's counsel that appellant could not kidnap the child from in front of hundreds of students and security guards of the school should not engage attention of this Court for long because it is admitted case on both the sides that the appellant was working in hosiery unit of the complainant which was being run in his house and as such used to visit complainant's house every day and being a trusted worker was, presumably, regularly interacting with members of complainant's family, including the minor victim. Such being the status of the appellant, the victim would have accompanied him without any demur and even the fellow students of the victim and security guards of the school would not have objected to the appellant taking the child along.

18.           With regard to the submission that the appellant could not escape from in front of thirty-forty police personnel who, as per case of the prosecution had encircled him, suffice it to say that the witnesses examined on behalf of the prosecution being ordinary mortals cannot be expected to narrate the incident in a parrot-like manner and seem to have introduced a

little exaggeration while describing the episode, otherwise, case of the prosecution, as spelt out by PWs ASI Darshan Singh, SI Rajesh Kumar and Inspector Mukhwinder Singh, is that on seeing the police parties approaching him, the appellant first attempted to strangle victim's neck but then escaped from the spot taking benefit of darkness. Site plan (Exhibit PM), of the place from where the victim was recovered-correctness whereof has not been challenged by the defence, does not show encirclement of the appellant by the police. Another circumstance that deserves to be highlighted is that the victim, who admittedly was of very tender age, was in custody of the appellant-who even attempted to kill him by strangulation, and prime concern of everybody present there, including the police cops, was safe release of the boy. The situation, presumably, dissuaded the police contingent from using any force against the appellant, including use of arms, and it facilitated the appellant's escape. Darkness also came to his rescue.

19. Be that as it may, from the evidence of PW6, Mrs. Baldeep Pandher and documents, Exhibits PW6/A to PW6/D, it is established that Himanshu, who was born on May 15, 1997, was studying in Green Land Senior Secondary School, Ludhiana and attended the school on June 12, 2002. In the depositions of PW1, Rajesh Kumar Singla and PW2, Shovan Kumar Singla it has come on record that Himanshu went to school at or around 07.30 a.m. on June 12, 2002 but did not return home; appellant, an ex-employee of the complainant and well acquainted with the family of the complainant, including the minor Himanshu, rang up the complainant at about 04.00 p.m. to say that Himanshu was in his custody and would be

released only after an amount of Rs. 10,00,000/- was delivered to him and intimating the police would result into the boy being slain. It has also come on record in the evidence of these witnesses that appellant again telephoned PW1, Rajesh Kumar Singla at about 09.00 p.m. to ask him to come to Bahadurke Road alongwith the demanded money and, ultimately, when the disclosed spot was visited by these witnesses under the cover of police personnel, the minor child was found to be in appellant's custody and the appellant, on seeing the policemen closing on to him, even attempted to kill him by strangulation but, ultimately, made good his escape leaving the child there. Not only have these witnesses braved very lengthy and probing cross examination but whatever is stated by them has been corroborated by other witnesses examined by the prosecution and recovery of school bag containing books (Exhibit P2), lunch box (Exhibit P1) and school uniform (Exhibit P3) of Himanshu at the instance of the appellant. Even plea put forth by the appellant in his statement under Section 313 of the Code that he was annoyed against the complainant as arrears of his wages were not paid to him, also supports prosecution story.

20. From the evidence available on record offences punishable under Sections 364-A and 387, IPC, are clearly made out.

21. Evidence of DW1, Amarjit Singh is hardly of any assistance to the appellant because after stating in his chief examination that police had picked up the appellant from his house at midnight, he has admitted in his cross examination that he was not present either at Bahadurke Road where the victim was found in the custody of the appellant or at the house of the appellant when he, according to him, was picked up by the police.

22. In view of what has been said in the preceding paragraphs, judgment/order dated July 14, 2003 cannot be interfered with. The appeal, therefore, fails and is dismissed.

23. Appellant's bail bonds are cancelled. He shall surrender before the concerned jail authorities/Chief Judicial Magistrate, Ludhiana forthwith failing which he shall be liable to be re-arrested and sent to jail to serve the unexpired portion of sentence awarded to him by the learned trial Court as affirmed by this Court.

**[T.P.S. Mann]**  
**Judge**

**[Mahavir S. Chauhan]**  
**Judge**

May 14, 2015  
adhikari