

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

**% Reserved on: 19th November, 2015
Date of Decision : 7th December, 2015**

+ CRL.A. 180/2000

LALTA PRASAD Appellant

Through: Mr. Biswajit Kumar Patra, Adv.

versus

STATE Respondent

Through: Mr. Varun Goswami, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant stood trial (in sessions case no.103/1996) in the court of Additional Sessions Judge, Delhi, on the charge that he, in furtherance of intention shared with three others (including co-accused Ramdin son of Shobha Ram), had kidnapped two minor sons of the first informant Ram Gopal Sharma (PW7) at about 08:00 AM on 19.11.1993, on way between their residence WZ-81, Guru Nanak Nagar and MCD Primary School, Keshopur, within the jurisdiction of police station Tilak Nagar and, thereafter, kept them in detention till 08.12.1993, threatening to cause their death, thereby giving rise to apprehension in the mind of their father in order to compel him to pay ransom demanded in the sum of Rs.3 lakh and thereby having

committed the offence punishable under Section 364-A read with Section 34 of Indian Penal Code, 1860 (“IPC”). Two of the said accomplices were never arrested, while Ramdin son of Shobha Ram died midway the trial on 18.11.1996.

2. By judgment dated 04.10.1999, the trial court found the appellant guilty, as charged and, thus, convicted him. By order dated 07.10.1999, imprisonment for life with fine of Rs.10,000/- was awarded as sentence, with benefit of Section 428 of the Code of Criminal Procedure, 1973 (“Cr.P.C”).

3. This appeal was presented seeking to assail the aforementioned judgment and order on sentence. On his application, the sentence was suspended and the appellant was released on bail, pending consideration of the appeal by order dated 06.08.2002, modified by order dated 26.02.2003.

4. When the appeal came up for hearing, in its turn, neither the appellant nor his counsel would appear. Processes issued including to the surety could not secure his presence. Against this backdrop, suitable directions were given by order dated 29.10.2015 for open ended non-bailable warrant to be issued for arrest and production of the appellant. On our request, Delhi High Court Legal Services Committee has appointed Mr. Biswajit Kumar Patra, as *amicus curiae* to assist the court on behalf of the appellant.

5. We have heard arguments and have gone through the record in entirety.

6. The two children whose kidnapping for ransom is the subject matter of the case at hand were examined at the trial as PW1 and PW2. At the time of the alleged incident, they were 8 years and 5 years old respectively. They were living at the relevant point of time under the care and custody of their father Ram Gopal Sharma (PW7). Their paternal grandmother (i.e. mother of Ram Gopal Sharma) Anar Kali (PW6) also lived under the same roof. It is she who had taken the children to their school on the morning of 19.11.1993, immediately whereafter the children went missing. The appellant is close relative of the family, he being brother of Anar Kali (PW6). Pertinent to note here that the evidence adduced during the trial brought out, and the appellant would not deny, that on account of close relationship, he had been visiting the family and was well known by face and name to the children (PW1 and PW2) as well.

7. There is substantial evidence brought on record to prove that the children (PW1 and PW2) were kidnapped sometime around 08:00 AM on 19.11.1993, after their grandmother (PW6) had left them at their school (MCD Primary School, Keshopur), not far from their residence (WZ-81, Guru Nanak Nagar), both falling within the jurisdiction of police station Tilak Nagar. That day being declared a holiday, and the school was closed, had escaped the notice of the family, in general, and of the grandmother (PW6), in particular. She seems to have escorted the children upto the school in routine and left them in the company of other school children playing in the area and, thereafter, returned home. Since the children did not return, their father (PW7) went to enquire and found it to be a closed day. Since he could not locate the

children, he went to the local police post (Tilak Vihar) and lodged missing report (DD no.15). Efforts made to trace out the children over next five days did not bear fruit. Thus, on the statement (Ex.PW7/A) of the father (PW7) recorded, as per his endorsement (Ex.PW10/A) by SI Ram Kanwar in the police station on 24.11.1993, the first information report ("FIR") was registered on 24.11.1993. Since the first informant (PW7) had expressed suspicion, in his complaint (Ex.PW7/A), that his children had been kidnapped by some unknown person, the case was registered for investigation into offence under Section 363 IPC.

8. The evidence adduced by the prosecution, particularly through the mouth-piece of the first informant Ram Gopal Sharma (PW7), and investigating officer SI Ram Kanwar (PW10), shows that investigation over the next few days did not evince any clue. On 02.12.1993, the first input came when Ram Gopal Sharma (PW7) received a letter, by post, making ransom demand of Rs.3 lakh for the children to be returned alive. The said letter of demand (Ex.PW7/A-1) has been proved by the complainant (PW7).

9. The ransom demand letter (Ex.PW7/A-1) is a handwritten letter on postal stationary (Inland) addressed to the complainant (PW7) by his short name "Gopal Sharma", dispatched and delivered at his address (i.e. House WZ-81A, Guru Nanak Nagar, Sahibpura, Tilak Nagar, New Delhi-18). It has been signed by its author, apparently using pseudonym of "Amir Singh". The person sending the letter informed the recipient (PW7) that his children were with him and if he wanted back, he should not discuss the matter with any one or else the

children would be killed. The demand was made for money, minimum in the sum of Rs.3 lakh, and the person bringing the amount and seeking to get the children back, was not to be accompanied by more than 2-3 persons. The sender of ransom demand insisted that the recipient must contact the sender (described as Thakur Amir Solanki) by 5th (December) at a place known as Kyuni Jadai located along the road connecting Ganjdundwara and Kadar Ganj.

10. The ransom demand letter (Ex.PW7/A-1) was taken over formally by the IO (PW10) vide seizure memo (Ex.PW7/C) on 02.12.1993 from Ram Gopal Sharma (PW7). This letter received through postal-transit revealed to the investigating officer (PW10) the connection of area falling within the jurisdiction of police station Sidhpura in District Etah (Uttar Pradesh). PW10 (the IO) and PW7 (father of the kidnapped children), accompanied by other police staff visited area in question from 03.12.1993 till 06.12.1993 but with no results.

11. The above visit to the area, indicated by the ransom demand letter, was followed by another visit on 08.12.1993 of the IO (PW10), again accompanied by the first informant (PW7), the police team including Constable Babu Lal (PW3). During this visit, the police and the first informant came across the appellant, coming out of the village Pithanpur. The sighting of the appellant in the area aroused the suspicion of Ram Gopal Sharma (PW7) who accordingly informed the investigating officer (PW10). Thus, the appellant was stopped, detained and questioned by PW10 sometime around 07:30 AM on

08.12.1993, in village Pithanpur falling within the jurisdiction of police station Sidhpura, Uttar Pradesh.

12. It is the case of the prosecution that the interrogation of the appellant brought out certain disclosures which were reduced into writing (Ex.PW3/A), in the wake of which the appellant led the investigating officer to a sugarcane field in the area adjoining Barola in District Etah, Uttar Pradesh at the end of which the children were found, kept in detention and in secrecy, amongst bushes (of *Sarkanda*). At the time of being discovered, the children were found to be in custody of three persons including Ramdin (since deceased).

13. The investigating officer (PW10) recorded formal proceedings respecting the recovery of the children at the instance of the appellant vide pointing out and recovery memo (Ex.PW3/B), attested by PW3, PW7 and another police official Constable Surat Singh. After the recovery of the kidnapped children on 08.12.1993, the investigating officer enlarged the scope of investigation by adding offences punishable under Sections 364/365/384/506/34 IPC and arrested the appellant, after personal search (vide Ex.PW3/C). He had taken care of lodging DD no.9 (Ex.PW8/A) in police station Sidhpura (Etah) at 06:35 AM on 08.12.1993 recording departure for investigation, and DD no.23 (Ex.PW8/B) again in the said police station Sidhpura (Etah) at 02:05 PM on 08.12.1993, to bring on record the recovery of the children in the aforementioned circumstances and the arrest of the appellant. Concededly, neither the children nor the arrested appellant were produced before the local authorities before being brought to Delhi and produced before the jurisdictional metropolitan magistrate.

14. By the time the kidnapped children were recovered in District Etah, Uttar Pradesh on 08.12.1993, another ransom demand letter (Ex.PW7/A-2) had been received by post at the residential address of the first informant (PW7). This second ransom demand letter was handed over to PW7 by his wife (Kusumlata Sharma) and he, in turn, passed on the same to the investigating officer on 09.12.1993, when it was seized vide formal memo (Ex.PW7/D).

15. The contents of this second letter of demand of ransom (Ex.PW7/A-2) are similar to those of the first letter. Again, the letter was sent by post to the residential address of the first informant (PW7) describing him as “Gopal Sharma”. The sender of the letter had again used the fictitious name of “Amir Singh”. The demand of ransom money and the place where it was expected to be handed over were reiterated and it was insisted that the communications be responded to by the appointed date (05th December, 1993).

16. Since the children had been kidnapped on 19.11.1993 and had been recovered on 08.12.1993, the two letters making the ransom demand, having been received on 02.12.1993 and 08.12.1993 respectively, it can be safely concluded that they must have been put in postal-transit, one after the other, the first definitely before 02.12.1993 (the date of delivery) and second definitely before 05.12.1993 (the date specified).

17. The evidence on record brings out that after being brought to Delhi, the two children (PW1 and PW2) were taken before the Metropolitan Magistrate (PW9), with request for their statements under

Section 164 Cr.P.C to be recorded. PW9 has proved the proceedings (Ex.PW9/C & Ex.PW9/B respectively) recorded by her in this regard on 15.12.1993. The proceedings (Ex.PW9/C) containing the statement under Section 164 Cr.P.C. (Ex.PW1/A) of PW1 is quite detailed, in that the said child would not only describe at length the manner in which he and his younger sibling (PW2) were kidnapped from outside the school and thereafter the manner in which they were taken to District Etah, Uttar Pradesh and detained there till recovery as also about the identity of the appellant as one amongst the four kidnappers, he being closely acquainted with him. The statement (Ex.PW9/A) forming part of the proceedings (Ex.PW9/B) of the younger child (PW2), however, is sketchy, and quite naturally so, as he (PW2) was hardly 5 years old at the relevant point of time. We mention this fact to observe at this very stage that we are keeping aside the court testimony of PW2, concerning the identity of the appellant, as one of the kidnappers.

18. But the above state of things concerning the younger child (PW2) cannot affect the credibility of the elder child (PW1), who also had been kidnapped and detained with his junior sibling from 19.11.1993 to 08.12.1993. The evidence of the said child brings home, with sufficient clarity as to the details, the role and complicity of the appellant in the crime.

19. PW1 may have been a child aged 8 years at the time of being kidnapped but his examination under Section 164 Cr.P.C by the Metropolitan Magistrate (PW9) on 15.12.1993, immediately after he had been recovered, brought back to Delhi and restored to family, as

also his court testimony leave no room for doubt as to his competence to be a witness. His deposition shows that he had attained the requisite mental growth, not only to understand the questions put to him but also to give rational answers thereto. He was fully alive to the identity of the members of the family and those connected to it as also the circumstances in which he with his younger brother had been taken away. He positively identified the appellant as one amongst the four who had accosted him near the school in the early morning hours as also the mode of travel by which the group carried them along to Etah. He (PW1) also described at length the place and circumstances in which he and PW2 were kept in detention. He conceded that neither he nor his brother raised any alarm at the bus-stop of Tilak Nagar but explained that he had omitted to do so because the appellant was closely related, he being brother of his grandmother. He came out as a truthful witness as he confirmed even under cross-examination that he had not seen the appellant to be present, when the police had found him with his brother. He explained that the appellant would not stay with them in the fields. It is quite apparent that the appellant had other accomplice to take care of the responsibility of keeping watch over the children in detention. Noticeably, no efforts were made to discredit PW1. It was not even suggested to him under cross-examination that the appellant had had nothing to do with the kidnapping or that the witness was stating facts that may have been tutored to him.

20. On careful assessment of the evidence on record, we find that there is no reason why the evidence of PW1 should be disbelieved or not acted upon. His testimony is natural, forthright and inspires

confidence, all the more so as the evidence about the recovery provides due corroboration to it.

21. After the kidnapped children had been recovered, during the course of investigation, per the evidence of the IO (PW10), the first informant Ram Gopal Sharma (PW7) had handed over three more letters which were seized vide memo (Ex.PW7/B) on 03.01.1994. The three letters were proved at the trial as Ex.PW7/A-3 to Ex.PW7/A-5. According to the prosecution case, these letters had been earlier sent by the appellant to his sister Anar Kali (PW6) at the address of PW7. These three letters purport to have been sent by Lalta Prasad Sharma who would sign his name once in English and in the other two in Hindi. The manner in which the address has been indicated on these three letters, also written on postal stationary (Inland letter card) is similar to the one in which the two ransom demand letters had been addressed. Indeed, there is similarity even in the handwriting of the contents of these three letters when compared with that of the ransom demand letters.

22. It has been the case of the prosecution that during the course of investigation, the IO (PW10) had obtained specimen handwriting of the appellant on six sheets (collectively Ex.PX). It was stated that these specimen writings (S-1 to S-6) along with the three letters (Ex.PW7/A-3 to Ex.PW7/A-5) containing “ the admitted writings of the appellant” (marked A-1 to A-11) were sent for comparison, with the questioned writings (marked Q-1 to Q-6) in the ransom demand letters (Ex.PW7/A-1 to Ex.PW7/A-2) to Central Forensic Science Laboratory (“CFSL”). The prosecution relied on the opinion (Ex.PX)

given by Dr. M. A. Ali, Senior Scientific Officer Grade-II (Document) in CFSL, New Delhi, affirming that the appellant was the author of the questioned writings.

23. Learned trial court accepted the above evidence based essentially on the opinion of the handwriting expert also adding its own observations for reaching such satisfaction.

24. There are, however, weighty reasons as to why the evidence regarding the authorship of the ransom demand letters (Ex.PW7/A-1 to Ex.PW7/A-2) must be excluded from consideration.

25. The specimen writings in the form of earlier letters (Ex.PW7/A-3 to Ex.PW7/A-5) may have been handed over by PW7 to the IO. But, when examined in the court, PW7 was hesitant in confirming the connection of the appellant with such earlier communications. He stated that he was not in position to identify the handwriting of the appellant. His mother (PW6) to whom the said letters were addressed was not even called upon by the prosecution to confirm that the said letters had been sent to her, by her brother, the appellant. The manner in which the IO took it upon himself to secure the specimen writing of the appellant in his custody is wholly impermissible procedure [*Sukhwinder Singh vs. State of Punjab*, (1994) 5 SCC 152 and *State of Haryana vs. Jagbir Singh*, AIR 2003 SC 4377].

26. The opinion of the handwriting expert is relevant. But in order to take it on board, the prosecution must call the handwriting expert as a witness. It appears that the report of the handwriting expert was tendered through the investigating officer by the public prosecutor

under the mistaken belief that the provision contained in Section 293 Cr.P.C would permit such mode of proof. Since the said provision of law does not cover the opinion given by a handwriting expert, the report (Ex.PX) of Dr. M. A. Ali, Senior Scientific Officer (Document) cannot be treated as formally proved [*State of Maharashtra vs. Damu* (2000) 6 SCC 269].

27. In absence of proof that the specimen/admitted writings were in the hand of the appellant, it was not correct for the learned trial court to embark upon the exercise to make a comparison with the questioned writings or reaching conclusions thereupon.

28. Omission on the part of the investigating officer to produce the recovered children or the appellant before the Judicial Magistrate in District Etah, Uttar Pradesh is merely an irregularity. Contemporaneous *roznamcha* entries logged with the local police confirm the recovery and the arrest.

29. As a consequence of the above state of the case, the prosecution has not been able to prove that the ransom demand letters were written by the appellant. This, however, cannot mean that his complicity in the kidnapping and the detention of the two children for ransom has not been brought home.

30. The evidence of PW1 about the circumstances of the kidnapping and of PW7 along with those of the two police officials (PW3 and PW10) regarding the circumstances of the recovery leaves no room for doubts about his complicity.

31. The appellant inspite of opportunity did not come forward with any explanation whatsoever. As mentioned earlier, he did not refute the evidence of PW1 about he being one amongst four persons, rather the one at the forefront, who had taken away the two children from outside their school. He has not explained as to how he was present in the area of police station Sidhpura in District Etah on 08.12.1993. The evidence clearly shows that but for the revelation made by him, it would have not possible for the investigating police officer to reach the place where the children had been kept in secrecy. His disclosure to the investigating officer, thus, is admissible and relevant under Section 27 of the Evidence Act. Since the events that occurred in the wake of such disclosure unmistakably show that he had the special knowledge about the place of captivity of the two children, his involvement not only in taking away the two children from out of the lawful guardianship of the father (PW7) but also in their unlawful detention thereafter is writ large on the record of the case. The prosecution may not have been able to prove that the two letters demanding ransom money (Ex.PW7/A-1 and Ex.PW7/A-2) were written by the appellant himself. But since the circumstances clearly show that the kidnapping and the detention of the children was his handiwork, though with aid and assistance of others, there cannot be a debate as to the fact that the ransom letters were sent at his instance. The lack of proof as to the authorship of the ransom letters is, thus, inconsequential.

32. We, thus, find no error or illegality in the conclusions reached by the trial court. The facts and circumstances established conjointly show that the appellant alongwith at least three others had taken away

the children from outside their school on 19.11.1993. Since he did not have the permission to do so from the lawful guardian of the two minor children, the act of taking away the children constituted the offence of kidnapping. The evidence has proved that the children were taken out of Delhi to District Etah (U.P) where they were illegally detained. During the period of detention, two letters were sent by post at the address of the father of the kidnapped children demanding payment of Rs.3 lakhs as consideration for their safe release. The children were recovered on 08.12.1993 pursuant to the disclosure and at the instance of the appellant. The guilt of the appellant for the offence of kidnapping and detention for ransom punishable under Section 364-A of IPC, thus, has been rightly held brought home. The appeal is devoid of merits and is dismissed.

33. The appellant is directed to surrender to custody within fifteen days of this judgment to serve the sentences awarded against him. We direct the learned Additional District and Sessions Judge presiding over the trial court (the Successor Court) and Station House Officer (SHO) of Police Station Tilak Nagar to take necessary steps to ensure compliance with above directions in accordance with law.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

December 07, 2015/ss