

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

% Date of Decision : March 16, 2016

+ **CRL.A.449/2000**

MAHENDER SINGHAppellant
Represented by: Mr.G.S.Sharma, Advocate with
Mr.R.A.Sharma, Mr.V.K.Sharma
and Mr.Jitender Panchal,
Advocates

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP with SI
Kapil Kumar PS GTB Enclave.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (Oral)

1. Mahender Singh has been convicted for offence punishable under Section 364A IPC vide the judgment dated May 03, 2000 and directed to undergo imprisonment for life vide the order on sentence dated May 11, 2000. Vide the impugned judgment co-accused Vinod Kumar @ Binnay and Smt.Manju Sharma have been acquitted.

2. The prosecution case rests on the testimony of Smt.Saroj Verma, the mother of Rajat @ Golu, child aged 1½ years at the time of alleged incident and we reproduce her deposition in the Court as under:

“Accused Mahender Singh was working as a mistry at our scooter-repair shop, from the last 2 years. On 3.1.98 at about 8.00 or 8.30 a.m., accused Mahender Singh came to our house to obtain the key of the aforesaid shop. I can identify the accused Mahender Singh, present before the Court (the witness rightly identify the accused). I handed

over the keys of our shop to the accused. My son Gollu was playing in the courtyard. He lifted Gollu, questioning him as to whether he would accompany him. At that time, Gollu was aged about 15 months. Gollu used to go at our shop alongwith his father, his grandfather and the accused also. On 3.1.98, accused had taken my son alongwith him. Our shop is located outside the house, in the same premises. When Gollu had not returned for about half an hour I went to our shop alongwith tea for the accused. Accused was not present at the shop. I searched for accused and Gollu, while standing at the shop for sometime. When accused has not returned nor Gollu was available, I telephoned my husband at his office. Within 20 minutes my husband reached home. I was standing outside the shop, waiting for the accused and my son. I immediately heard the telephone call and lifted the receiver. Accused Mahender was there on the other side. He told me that Gollu was with him. He also informed that he was at Geeta Nursing Home, since Gollu had received injuries. He further informed that in case he is not available at Geeta Nursing Home, then he may be searched at GTB Hospital, Shahdara. My husband and our neighbours had gone to Geeta Nursing Home.

After a long time, the accused gave a second telephonic call. He told us that he was sitting at Gagan Cinema and Gollu be taken from there. I informed about this telephonic call to my father-in-law and brother-in-law. I telephoned my husband at the police station and informed him about that fact. At about 4 p.m. accused again telephoned at our residence. Telephone is installed at our shop. I reached there and heard the call. He told me that Gollu was with him and she should arrange for a sum of Rs.5 lakhs upto 10th of January otherwise Gollu will be killed. I became hopeless.

On 26.1.98 my son Gollu was recovered.”

3. In cross-examination various suggestions have been given to Smt.Saroj Verma including the suggestion that she consented to taking away of Golu upto the shop and that when Mahender telephoned her at

about 4.00-4.30 PM that he was returning home with the child Smt.Saroj Verma asked him not to return home with the child as her husband had lodged the complaint and Mahender should return only after 2-3 days. A suggestion was also given to Smt.Saroj Verma that Golu was borne out of the loins of accused Mahender.

4. From the evidence of Smt.Saroj Verma as noted above it is clear that Mahender Singh on January 03, 1998 at about 8.00-8.30 AM in the morning took away child Rajat @ Golu from his house to the shop and did not return till 4.00-4.30 PM in the evening. The child could be recovered only on January 26, 1998 abandoned near a drain in Bullandsher. From the evidence of Saroj Verma the offence of kidnapping punishable under Section 363 IPC is thus made out against Mahender Singh. However, the issue is whether the offence under Section 364A IPC is made out or not.

5. As per Saroj Verma in the call made by Mahender Singh at 4.00 PM he stated that Golu was with him and Saroj Verma should arrange for a sum of ₹5 lakhs upto 10th January otherwise Golu will be killed. In her statement under Section 161 Cr.P.C. the words '*Golu will be killed*' are not mentioned. This is a material improvement in the statement of the witness thus liable to be ignored.

6. Whether mere demand of money unaccompanied by any threat or hurt would fall within the ambit of Section 364A IPC came up for consideration before the Division Bench of this Court in the decision reported as 149 (2008) DLT 306 (DB) Rafiq & Anr. vs.State wherein this Court held:

“10. Another submission made on behalf of the appellant was that no threat to cause death or hurt to the kidnapped child had been extended nor the appellants by their conduct gave rise to a reasonable apprehension that the kidnapped

child could be put to death or hurt, to make Mohd. Ikrar to pay ransom, conviction and sentencing of the appellants under Section 364A IPC cannot be sustained. An argument in this respect was advanced before the learned trial court also but the same was held unacceptable. In this context it may be noticed that though there is evidence of ransom calls being received by the father of the kidnapped child on his phone, the identity of the person making such ransom calls could not be proved. That apart, a mere demand of ransom amount for release of a kidnapped person, is not sufficient to attract application of Section 364A IPC unless it is also proved that the kidnapped person was threatened with death or hurt or that the conduct of the kidnappers was such which could raise a reasonable apprehension that he could be put to death or hurt if the ransom amount was not paid. In the present case the child did not state that the appellants had at any point of time threatened to cause his death or hurt. Even the father of the child at no place in his statement testifies that the person making ransom calls had on any occasion threatened to kill the kidnapped child or cause hurt to him. The appellants at no stage by their conduct gave rise to a reasonable apprehension to the father or any member of his family that in the event of ransom amount being not paid, the kidnapped child would be put to death or hurt. The learned trial court in the impugned judgment while finding that the appellants from their conduct gave rise to reasonable apprehension that the kidnapped child would be put to death or hurt, did not spell out their particular conduct which could have given rise to the reasonable apprehension as aforesaid. There being total absence of evidence in regard to any threat to cause death or hurt to the kidnapped child and also for lack of evidence in regard to the appellants conducting themselves in a way that could give rise to a reasonable apprehension that the child would be put to death or hurt, the ransom demands implicate could not have brought the offence within the ambit of Section 364A IPC.

7. As noted in the present case the ransom call was received by Saroj Verma and that Mahender had threatened to kill Golu in case ransom

amount was not arranged was stated in the Court for the first time which in our opinion is a material improvement. Consequently the conviction of Mahender Singh is modified from one under Section 364A IPC to the offence of kidnapping punishable under Section 363 IPC. Mahender Singh was released on bail on September 15, 2008 after undergoing imprisonment for 10 years and 8 months excluding remissions. Thus the sentence is modified to the period already undergone.

8. The appeal is disposed of.
9. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
10. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MARCH 16, 2016
‘vn’