

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

% *Judgment Reserved on: May 11, 2016*
Judgment Delivered on: May 13, 2016

+ **CRL.A. 917/2001**

BISMILLAH

..... Appellant

Represented by: Mr. Shaad Anwar, Adv.
versus

STATE

..... Respondent

Represented by: Mr. Varun Goswami, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Convicted for the offence punishable under Section 364-A IPC vide judgment dated November 05, 2001, Bismillah has been directed to undergo imprisonment for life and a fine of ₹1000/- and in default whereof to undergo R.I. for one month vide order on sentence of the even date. The role assigned to Bismillah is of keeping the kidnapped boy Wasim PW-4 in her custody and providing food and shelter, besides negotiating the ransom amount. The three co-accused persons, who allegedly kidnapped Wasim could not be arrested and thus they were declared proclaimed offenders and Bismillah faced the trial alone.

2. On October 28, 1999 Rahis Malik father of Wasim lodged FIR No.639/1999 under Section 363 IPC at PS Nand Nagri informing that Mohd. Yunus, Qadir and Anwar came to his house on October 26, 1999 and

left in the morning of October 27, 1999. Again at around 12.00 O'clock on October 27, 1999 the three of them came and enticing his son Mohd. Wasim, took him away. He searched his son aged around 5 years, however he could not trace him. He suspected Mohd. Yunus, Qadir and Anwar to have kidnapped his son. During the course of investigation, further ransom call was received and it is the case of prosecution that the child was recovered after payment of ₹35,000/-. When Wasim was recovered, he was in the custody of Bismillah, the appellant herein.

3. Rahis Malik deposed in sync with the rukka and reiterated that he returned from Aligarh at about 1.00 AM on the intervening night of October 27-28, 1999 after came to know that his son had been kidnapped by Yunus, Qadir and Anwar as told to him by his brother who called him up at 5.00 PM on that date. As per his brother the callers demanded ₹2 lakhs. On October 28, 1999 he again received a phone call for arranging ₹2 lakhs to which he replied in the negative. Yunus again cautioned Rahis Malik that he should send the money in the garden outside village Palwada failing which they will cut the body of his son into pieces. Abdul Sattar, a friend of Islam who is the relative of accused told Rahis Malik that they had relations in that village Palwada and they would bring back the child safely. On October 28, 1999 at 4.00 PM he sent both of them i.e. Abdul Sattar and Islam to village Palwada to negotiate with the mother of Yunus (Bismillah) at the house of Yunus. After returning on November 30, 1999 they informed that they had negotiated with Anwar and his mother Bismillah and it has been settled that the child will be released after paying ₹50,000/-. On October 31, 1999 Rahis Malik handed-over ₹50,000/- to Abdul Sattar, Islam and Vakil and on November 01, 1999 at about 11.30 AM the three of them returned at his

residence along with his child in a maruti van. They told Rahis Malik that they had paid ₹35,000/- to Bismillah in the presence of Anwar. No doubt the portion of Rahis Malik's statement which relates to negotiations with Anwar and Bismillah and the payment pursuant thereto is all hearsay, however we note that the prosecution has produced all the three witnesses Abdul Sattar, Islam and Vakil to prove the case.

4. Abdul Sattar PW-1 deposed that after son of Rahis Malik was kidnapped by two-three persons of village Palwada near Garhi, U.P. a telephone call was received by Rahis Malik from those persons to the effect that he has to pay ₹41,500/- in connection with some transaction where after the child would be released. Rahis Malik gave them ₹35,000/- for paying to those persons. Abdul Sattar along with Vakil Ahmed, one Mullaji and one Zahir R/o L Block was given the money where after four of them went to village Palwada. Rahis Malik had told them that the person would meet them outside the village and thereafter take them to the relevant place. They found a person standing outside the village who took them to a baithak. There they had a meal at the night and rested. In the morning they paid ₹35,000/- to a person whose name was revealed as Anwar aged about 30 years. He brought son of Rahis Malik and handed him over to them. This witness was cross-examined by the learned APP. In cross-examination he denied any relationship with Bismillah or that Bismillah met them at the spot.

5. Vakil Ahmed PW-2 deposed that on October 28, 1999 when he was at the house of Rahis Malik inquiring about his son, Rahis Malik told him that his son Wasim aged 5 years had been kidnapped by Yunus, Anwar and Qadir. Qadir was a resident of Hassanpur whereas Anwar and Yunus were

resident of village Palwada. Rahis Malik further told him that accused persons were demanding ₹50,000/- for the release of his son. On October 31, 1999 he along with Islam and Abdul Sattar left Delhi in a maruti car and reached the house of Yunus at village Palwada. At the house of Yunus, his mother named Bismillah and Anwar met them. Islam was brother-in-law of Bismillah and Abdul Sattar was also a close relative of Bismillah. Abdul Sattar and Islam persuaded Bismillah and Anwar to reduce the amount of ransom and release the child. The matter was settled at ₹35,000/- with the mother of Yunus namely Bismillah. An amount of ₹50,000/- which was given by Rahis Malik for giving to the accused was with him in the form of 5 bundles of ₹10,000/- each. Islam and Abdul Sattar directed him to hand-over ₹35,000/- to Bismillah for releasing the kidnapped child which he handed-over. When he asked about the child from Bismillah and Anwar, Anwar replied that the child will be returned on the next day at about 5.00 AM. On the next day at about 8.00 AM Anwar handed-over the child to Abdul Sattar and Islam, where after they returned to Delhi and handed over the child and the balance amount of ₹15,000/- to Rahis.

6. We now note the testimony of Mohd.Islam PW-3 who also deposed about an earlier transaction of ₹41,500/- and the child to be brought after giving ₹35,000/-. At the village Palwada they met a person named Anwar who took them to the baithak. Anwar told them that a sum of ₹41,500/- was due towards Rahis and as he did not pay the amount they had brought his son to village Palwada. It was settled that after taking ₹35,000/- Anwar would hand-over the child to them. The amount was handed-over to Anwar in the morning where after he took them outside the village and handed-over the child whom they brought back to Delhi.

7. We note that Vakil Ahmed, PW-2 specifically stated that Islam was brother-in-law of Bismillah and Abdul Sattar a close relative of Bismillah. Extensive cross-examination of Vakil Ahmed has been done however there is no suggestion that both Islam and Abdul Sattar were not related to Bismillah. In fact, in cross-examination each minute detail of the incident has been asked and Vakil Ahmed has explained the same in-extenso. The relationship of Islam and Abdul Sattar with Bismillah explains why the two did not support the prosecution case in its entirety and had to be cross-examined by learned APP. It is the case of Bismillah in her statement under Section 313 Cr.PC that her sons Yunus and Anwar had to take ₹41,500/- from Rahis Malik which he had received from her sons after showing plot of land and when her sons demanded the money strictly, Rahis Malik got lodged this false FIR. This explains why the factum of earlier transaction of ₹41,500/- has been introduced both by Abdul Sattar PW-1 and Mohd. Islam PW-3 in their deposition before the Court in order to exonerate Bismillah. However, Abdul Sattar and Mohd. Islam have still supported the version of Vakil Ahmed to the extent that three of them went to the house of Bismillah where after handing over a sum of ₹35000/-, the child Wasim was handed over to them on the next day.

8. Involvement of Bismillah is further fortified by the statement of Wasim PW-4 the child, who was kidnapped. Wasim deposed that when he was going to deliver food for his uncle at the shop, two persons who were standing at some distance from the shop told him that they would give him a rupee and took him to a distant place in a bus i.e. Village Palwada. An Amma used to give him food. He stated that he came back to the house in a car along with Vakil and other persons and identified Bismillah as the

Amma who used to give him food.

9. The only contention raised by learned counsel for the appellant before this Court is that Rahis Malik and Vakil Ahmed were interested witnesses and thus no reliance should be placed on them. As noted above, Abdul Sattar and Mohd. Islam despite being the relatives of Bismillah have supported the crux of the prosecution case though they have sought to bring in the story of ₹41,500/- being due to Rahis Malik. Both Rahis Malik and Vakil Ahmed cannot be termed as interested witnesses for the reason they were natural witnesses one being the father of the child who was kidnapped having received the ransom call and the other who had gone to give the ransom amount and bring the child.

10. Supreme Court in the decision reported as AIR 1977 SC 472 Mst. Dalbir Kaur & Ors. Vs. State of Punjab while dealing with the term “interested witness” held that a close relative who is a natural witness cannot be regarded as an “interested witness”. The term “interested” postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. No animus has been shown against Vakil Ahmed.

11. Moreover, even probabilizing the defence of Bismillah that a sum of ₹41,500/- was due towards Rahis Malik, the same does not absolve her of the offence of being a party to the kidnapping of Wasim, keeping him in her custody, accepting the ransom amount and the threat of killing the child by the co-accused.

12. Consequently, we find no merit in the appeal. The impugned judgment and order on sentence are upheld. The appeal is dismissed.

13. The appellant will surrender to custody to undergo the remaining sentence.
14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.
15. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 13, 2016
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