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

+ CRL.L.P. 348/2014

STATE

..... Petitioner

Through Ms. Neelam Sharma, APP for the  
State with IO SI Ajay, PS S P Badli.

versus

JITENDER @ CHORBA & ANOTHER

..... Respondents

Through Mr. Rohit Chauhan, Proxy Advocate  
for R-1 Jitender @ Chorba

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **04.11.2016**

Petitioner seeks leave to appeal against the acquittal of respondents for the offences under Sections 363/367/34 IPC.

Prosecution case story, as unfolded, is that respondent no.2 Sumitra is related to complainant Ram Mahesh. She along with her children was living with the brother of complainant in an adjoining house for several years and the kidnapped child used to call her aunty.

FIR was registered on the complaint of Ram Mahesh, wherein he alleged that his son Anand Mohan @ Tau, aged 4 years was missing from the house and was not traceable. During the investigation it was revealed that the child was last seen with respondents by a shopkeeper. Sumitra had kidnapped the child and handed him over to respondent no.1, who in turn left him at Bawana

canal. One Ms. Baby found the abandoned child and handed him over to Ms. Sakina, who was running a NGO. On 20.10.2009, respondent no.1 went to J.J.Colony Bawana to take the child from Sakina where he was apprehended by the residents of the locality as they found his activity suspicious. Thereafter, respondent no.2 was informed about the child, who came there and took his custody.

It is also the case of prosecution that on 20<sup>th</sup> October, 2010, in the morning, PW-2 Ram Mahesh and his wife PW-7 heard respondent no.2 and her husband Ram Niwas quarrelling and taking the name of the kidnapped child, at which they went there and on their persistent queries, respondent no.2 confessed that she had kidnapped the child and had handed him over to respondent no.1. As per PW-2 Ram Mahesh and PW-7 Ram Kali, respondent no.2 used to threaten them that she will kidnap their son so that properties of PW-2 devolves upon her children. Trial Court has not found this plea to be convincing as PW-2 and PW-7 had never lodged any complaint against the respondent no.2 regarding such threats, inasmuch as no suspicion was shown against the respondent no.2 in the FIR nor any such allegations of threat were made therein.

PW-2 has deposed that on 20.10.2009 he heard noises of quarrel between Sumitra and her husband Ram Niwas (brother of the complainant Ram Mahesh). During the quarrel they were taking name of Anand Mohan. Accordingly, he went there with his wife. On their repeated queries, respondent no.2 disclosed that she had kidnapped the child and had handed him over to respondent no.1, who had left him near Bawana Canal. However, this version of PW-2 is

not corroborated by his wife PW-7 Ram Kali who has deposed that she came to know about kidnapping of her son when she heard a mobile phone conversation between the respondents. Further, in her statement under Section 161 Cr.P.C., PW-7 Ram kali had taken a different stand than what she deposed in court. She said in her statement before the police that after she reached house of respondent no.2 on hearing noises of quarrel and repeatedly asked her about the whereabouts of her son, respondent no.2 confessed that she had kidnapped the child. Trial Court has noted that PW-2 and PW-7, have given different versions regarding 'extrajudicial confession'. Trial Court has also noted that had any such extrajudicial confession been made to PW-2, respondent no.2 would have been arrested on the same day i.e. on 20.10.2009, however, she was arrested on 21.10.2009. It is noted that PW2 and PW7 had not approached the police immediately thereof.

As regards last seen story of the prosecution, Trial Court has noted that respondent no.1 and respondent no.2 had admitted in their statements that on 17.10.2009 at about 11.00 to 11:30 AM, they had taken the child to the shop of PW-8 Phekan Sharma as the child Anand Mohan was insisting for buying a toy pistol. Their stand was that they had left the child back to his house on their return from the shop. The story of kidnapping also appears to be doubtful.

Since the child was not recovered from their custody nor they kept him with them between 17<sup>th</sup> to 20<sup>th</sup> October, 2009, nor any ransom was demanded. It is also surprising that a kidnapper, who had abandoned the child, would go back after three days to take back the

child, thereby risking his arrest.

It is noted that witnesses have also given different versions with regard to recovery of the child. PW-2 has deposed that on 20.10.2009 he came to know that public had apprehended respondent no.1 near Bawana Canal and on receiving this information, he went there and recovered his child. PW-10 HC Chand Singh has deposed that on 19.10.2009 he was posted at PS Narela and DD No.50 (Ex. PW-10/A) regarding an abandoned child was entrusted to him for inquiry. He deposed that on reaching at E-618, JJ Colony, Bawana he found the crowd encircling a 3-4 years old boy who was in custody of a lady Sakina. However, as per the prosecution, abandoned child was found by Baby much prior to 19<sup>th</sup> October, 2009 and was handed over to Sakina, who kept him with her till 20<sup>th</sup> October, 2009.

It is noted that Sumitra was deserted by her husband PW-2 and was staying with the brother of PW-2 Ram Mahesh along with her children from her previous marriage. Thus, property of PW2 could not have devolved upon the children of respondent no.2. Accordingly, motive also remained unproved.

Be that as it may, Trial court for the reasons recorded, on meticulous scrutiny of evidence, has concluded that prosecution had failed to prove the case, which I find to be a possible view, inasmuch as, same, in my view, does not suffer from any perversity.

Petition is dismissed.

**A.K. PATHAK, J**

**NOVEMBER 04, 2016/sm**