

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Appeal No.1045 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the appellant/A.2 aggrieved by the judgment dated 17.07.2006 in S.C.No.106 of 2004 on the file of Assistant Sessions Judge, Nuzvid, whereunder the learned Judge found the appellant/ A.2 and other accused (A.1, A.3 and A.6), guilty of the offences under Sections 364A, 506(ii) and 342 IPC and sentenced to undergo RI for ten(10) years and to pay fine of Rs.100/- each for the offence under Section 364A IPC; to undergo RI for seven(7) years for the offence under Section 506(ii) IPC; and SI for one (1) year for the offence under Section 342 IPC. All the sentences are directed to run concurrently.

2) The factual matrix of the case which led to file this appeal can be stated thus:

a) A.1—Shaik Jilani, who worked as Police Constable was dismissed from service due to his bad behaviour and habits. He was involved in a murder case of his father. After he came out of jail he did fruit business and sustained heavy loss. As he was addicted to bad vices, he planned to kidnap the children of rich people and thereby enrich by blackmailing their parents. While-so, A.1 got acquainted with PW.1—Bandam Sivaraju, the father of kidnapped boy and used to borrow amounts from him. As such, he hatched a plan to kidnap

PW.1's son who is studying 1st standard in St. Ann's School, Nuzvid and in this regard he requested cooperation of A.2. A.2 agreed for the same and introduced A.3 to A.6. In pursuance of their plan, A.3 got acquaintance with the kidnapped boy by giving chocolates.

b) On 08.04.2003 at 10.45AM, A.3 went to the class room of the kidnapped boy and took him out. As the boy already knows A.3, he came out of the class room. Then, A.3 took the boy on a motor cycle along with A.1 and went to Mylavaram where A.2 also joined them. From there, A.1 to A.3 kidnapped the boy to Ramannapalem and kept in a house and telephoned to PW.1 and demanded Rs.50 lakhs. On the next day they took the kidnapped boy to Jamalapuram as police were searching for the boy. Four days thereafter, they took the boy to Eluru and kept there for two days. A.1 used to telephone to PW2—mother of the kidnapped boy from the telephone booths of Nandigama, Kalaparru, Chintalpudi, Dharmazigudem, Eluru, Sattupalli and demanded Rs.50 lakhs ransom at first for release of the child and later reduced the amount to Rs.10 lakhs and gave directions as to where and how the amount has to be paid. From Eluru they took the kidnapped boy to Sattupalli and kept him in the house of A.6.

c) PW.1 gave a report to Nuzvid Town PS. Basing on which, the police registered a case in Crime No.66/2003 under Section 363 IPC. Thereafter, PW.15—C.I of Police took up investigation. During the course of investigation, he arranged caller ID facility to the telephone in the house of PWs.1 and 2 and recorded the conversation. Finally on

17.04.2003, the police went to Velagalapalli cross road at Nuzvid town to a telephone booth where they found A.1 and A.2 and arrested them in the presence of mediators. Pursuant to their confession, they found the kidnapped boy in the house of A.6 and then the police arrested A.3, A.5 and A.6 and sent to judicial custody. Later on 19.04.2003, the police arrested A.4 at Leelanagar cross road.

d) The police after investigation filed charge sheet against accused. The matter was taken cognizance by the learned Magistrate and committed to the Trial Court. After appearance of the accused, the Trial Court framed charges under Sections 364A, 342, 506(ii) and 120B IPC, for which the accused pleaded not guilty and claimed to be tried.

e) During trial PWs.1 to 15 were examined and Exs.P1 to P17 were marked on behalf of prosecution. Exs.D1 and D2 were marked on behalf of defence and MOs.1 to 7 were exhibited.

f) The Trial Court after considering both oral and documentary evidence came to conclusion that the prosecution clinchingly established the guilt of A.1 to A.3 for the offences under Sections 364A, 506(ii) and 342 IPC and accordingly convicted and sentenced them of the offences as stated supra. The Trial Court acquitted A.4 and A.5 holding that the case was not established against them. Similarly, the Trial Court acquitted A.1 to A.3 for the offence under Section 120B IPC holding that the said charge was not made out.

Hence the appeal filed by A.2.

3) Heard arguments of Sri G.Vivekanand, learned counsel for appellant/A.2 and learned Additional Public Prosecutor for the State (AP).

4) Severely fulminating the judgment of Trial Court, learned counsel for appellant/A.2 argued that the Trial Court grossly erred in holding that the appellant/A.2 participated in the crime along with A.1 and A.3. The evidence on record is full of discrepancies and contradictions about the alleged presence and participation of appellant/A.2 and therefore, the Trial Court ought to have acquitted him.

a) Nextly, he argued that the evidence of PW.6–kidnapped boy does not conclusively prove the presence of appellant/A.2 and in that regard there were lot of discrepancies in his evidence, which escaped the attention of the Trial Court. He further submitted that when the Trial Court came to conclusion that the prosecution failed to establish the conspiracy among A.1 to A.3 to kidnap PW.6, it ought to have held that appellant's/A.2's participation is also unbelievable.

b) He further argued that the Trial Court failed to take into consideration that all the accused were shown in advance to the witnesses before conducting Test Identification Parade and thereby the identification of the accused before the Magistrate and also during trial

lost significance. Therefore, the Trial Court ought to have disbelieved the evidence of witnesses touching identification aspect.

c) He further argued that the essential ingredients of Section 364A IPC are not attracted against the appellant/A.2 as there was no threat or causing bodily injury or endangering to the life of PW.6. He further argued that the charges under Sections 342 and 506(ii) IPC are also not attracted against the appellant/A.2.

He thus prayed to allow the appeal by setting aside the conviction and sentence passed by the Trial Court against the appellant/A.2.

5) In oppugnation, learned Addl. Public Prosecutor argued that the presence and participation of appellant/A.2 along with A.1 and A.3 right from the date of kidnap of PW.6 from the school by A.3 till A.1 and A.2 were caught by the police at the telephone booth of Velagalapalli village on 17-04-2003 is writ large from the evidence of PW.1, PW.6, PW.13 and PW.15 and therefore it is futile for the appellant/A.2 to contend that the offences against him were not established. He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination in this appeal is:

"Whether the prosecution could able to establish the guilt of appellant/A.2 for the offences under Sections 364A, 342 and 506(ii) IPC beyond reasonable doubt and whether conviction and sentences recorded by the trial Court against appellant/A.2 are factually and legally sustainable?"

7) **POINT:** The prosecution case is that A.1, who previously worked as Police Constable, was dismissed from service for his bad behaviour and bad habits. Besides that he was accused of committing murder of his own father. For some time he did fruit business after he came out of jail and sustained heavy loss. As he was in need of money for his vices, he planned to kidnap the children to enrich himself by blackmailing their parents for ransom. A.1 got acquaintance with PW.1—Bandam Sivaraju, as he used to borrow amounts on interest from him. Therefore, A.1 hatched a plan to kidnap PW.6 son of PW.1 who was studying 1st standard in St. Ann's School, Nuzvid and in that context he sought cooperation of appellant/A.2, who readily agreed for the same and introduced A.3 to A.6. As part of their plan, A.3 developed acquaintance with PW.6—the kidnapped boy by giving him chocolates. On 08.04.2003 at 10:45 AM, A.3 went to the class room of the boy and took him out. PW.6 followed him and the teacher without any suspicion sent the boy with A.3. Then, A.3 took the boy from out of the school and PW5 who was watchman of the school, saw A.3 taking the boy out. A.1 was waiting for them at a distance out side of the school. Both A.1 and A.3 took the boy on Rajdoot Motor cycle to Mylavaram, where A.2 joined them. From there, A.1 to A.3 took the boy to Ramannapalem and kept in a house and contacted PW.2 – wife of PW.1 and demanded Rs.50 lakhs as ransom for releasing the boy with a threat that if they failed to pay amount they would kill the boy. 4 days thereafter they took the kidnapped boy to Eluru and kept there for 2 days. A.4 was instructed to watch the movements of the police.

a) It is the further case of prosecution that A.1 was making telephone calls to PW2 from telephone booths of Nandigama, Kalaparru, Chintalapudi, Dharmazigudem, Eluru, Sattupalli and at first demanded Rs.50 lakhs and on the inability expressed by PW2, reduced the ransom to Rs.10 lakhs to release the boy and on each time of demand, he used to give directions to PW2 as to the place where her husband and his friend have to deliver the amount. Though PW.1—father of kidnapped boy and PW.13—C.I of Police, Mylavaram, who under the guise of PW1's friend 'Radha' went to the places suggested by A.1, but the accused did not meet them due to one or other reasons. In the meanwhile, the accused took the boy from Eluru to Sattupalli and kept in the house of A.6 and A.5 and A.6 were instructed to guard the boy.

b) It is to be noted that on the date of kidnap itself i.e., on 08-04-2003 PW.1 gave report to police of Nuzvid town police station and PW.14—Sub- Inspector of Police registered the same as case in Crime No.66/2003 and issued Ex.P16—F.I.R and commenced investigation. Subsequently, on 12.04.2003, PW.15—Circle Inspector of Police, Nuzvid took up investigation and with the assistance of PW9—Divisional Engineer, Telephones, Nuzvid arranged caller ID facility to the telephone of PW.1 and the same was kept under observation. The Investigating Officer got recorded the conversation of A.1 with PW2. Finally, on 17.04.2003 on the instructions of A.1, PW.15 along with other staff went to Velagalapalli cross road at Nuzvid town to a

telephone booth where they found A.1 and A.2 and on suspicion, he interrogated them in the presence of mediators. After confirmation that they were accused in this case arrested them. In pursuance of confession of A.1 and A.2, on 17/18.04.2003 at 2:00 am, the police found kidnapped boy in the house of A.6. Then, the Investigating Officer arrested A.3, A.5 and A.6 and recovered the kidnapped boy. The accused were remanded to judicial custody on 19.04.2003. The Investigating Officer arrested A.4 at Leelanagar cross road in the presence of mediators and seized his Rajdoot motor cycle bearing Registration No.ADB 4164, which was used for the commission of offence. On the requisition made by the Investigating officer, test identification was conducted by PW.11 and the accused were identified by witnesses in the said test identification.

8) In the light of arguments of learned counsel for appellant/A.2, it has now to be seen, whether the prosecution could able to establish the guilt of appellant/A.2 by cogent evidence.

9) So far as participation of appellant/A.2 in the offences is concerned, the same is revealed in the evidence of PWs.1, 6, 13 and 15. Hence, their evidence has to be scrutinized to determine the complicity of appellant/A.2 in the offence.

10) The relevant portion of evidence of PW.1 signifying the complicity of appellant/A.2 is to the effect that on 17.04.2003 at about 4:00 p.m, A.1 telephoned to his wife (PW2) and instructed to start at

5:00 p.m, at his house along with money and to come to the cross roads of Valagalapalli via Vissannapet and polavaram and in between Polavaram and Velagalapalli, the kidnapper would give a whistle and on hearing whistle PW.1 should stop the motor cycle. As per instructions of A.1, PW.1 and PW.13, started on their motor cycle and reached Velagalapalli cross road via Vissannapet and Polavaram at 7:30 p.m. However, on the way they did not hear the whistle sound. Therefore, PW.1 telephoned to his wife from Velagalapalli cross road and informed about the said fact to her to know whether she got any further instructions from the kidnappers. On that PW2 informed him that just some time ago she received telephone call from the kidnappers from the same telephone number, from which PW.1 made call and she asked PW.1 to search the premises for the kidnappers. PW.1 immediately informed this fact to police, who were following PW.1 and PW.13 in mufti dress. Then, after 15 minutes the mufti police found one kidnapper telephoning to his house from the telephone booth from where PW.1 telephoned to his wife earlier. That person was talking to PW2 saying why they were delaying in bringing the cash of Rs.10 lakhs and instructed her to bring money immediately. The mufti police immediately caught hold the said person and brought the said person to PW.1 at check post, where PW.1 and PW.13 were sitting and enquired PW.1 whether he knew the said person. PW.1 informed the police that the said person was A.1, who belongs to Vissannapet, but he does not know his name. PW.1 requested A.1 to take money and release his son. A.1 told them that the boy was at Sattupalli. Then

PW.1 and others enquired A.1 as to why they demanded him to bring money to cross road of Velagalapalli and kept the boy at Sattupalli. At that time the appellant/A.2 was also present along with A.1. A.1 informed them that another person (Appellant/A.2) was in the auto and took them and showed the appellant/A.2 in the auto. A.1 informed them that his son (A.4) got a friend, who is A.5 and he kept the boy in the house of his friend i.e, A.6 at Sattupalli. Then PW.1, PW.13, PW.15 along with A.1 and A.2 went Sattupalli in a car. After reaching Sattupalli A.1 showed his son A.4 and his friend A.5. Then they took A.4 and A.5 in their car. On the way A.1 informed to A.4 and A.5 that police caught A.1 and A.2 and asked them to handover the boy to the police. They passed one kilometre in Sattupalli along with A.1 and A.2 and thereafter A.1 stopped the car and showed the house where the kidnapped boy was kept and there they found A.6. Then the police went into the house of A.6 and brought back his son and thereafter they came back to his house along with his son. This is the evidence of PW.1 relating to the incidents touching the nabbing of all the accused concerned to the kidnapping episode. The evidence of PW.1 would clearly reveal that on the intervening night of 17/18.04.2003, A.2 was very much present along with A.1 at Velagalapalli cross road and on being showed by A.1, the police caught A.2. PW.1, PW.13, PW.15 and A.1 and A.2 proceeded to Sattupalli to recover the boy. Since PW.1 happened to see A.2 sitting in the auto near telephone booth at Velagalapalli cross road and thereafter he travelled for a considerable time along with A.1 and A.2, there was no problem for PW.1 to

identify A.2. Hence, the evidence of PW.1 touching the complicity of A.2 in the offence is well established. It is pertinent to note that except giving suggestion that PW.1 does not know anything about the case and he was deposing falsehood, no useful material could be extracted to disprove the presence and participation of appellant/A.2 in the crime. Therefore, the evidence of PW.1 itself is sufficient to prove the guilt of the appellant/A.2. The evidence of PW.1 is corroborated by other witnesses also.

11) PW.6 is kidnapped boy. His evidence relating to the appellant/A.2 is to the effect that on 08.04.2003 at about 10:45 am, A.3 came to their class room and enquired PW4 class teacher about him (PW.6) and on seeing A.3 he came out along with him and they both came outside the school and there they found another person, who is A.1 and all the three proceeded on their motor cycle to a hotel and had Tiffin and they proceeded on the motor cycle to some distance and on the way they found another person who is A.2, who came on another motor bike and all of them went to another village. Three days thereafter, the kidnappers gave a chance to him to talk to his mother through telephone and he asked his mother to come with cash of Rs.10 lakhs and take back him. This is the evidence of PW.6 concerning to the complicity of the appellant/A.2. It would reveal that within a short time after kidnapping of PW.6, A.2 met A.1 and A.3 and all the three took the boy (PW.6) to another village. In the cross-examination PW.6 stated that prior to identification of the accused at Sub-Jail, Nuzvid he

has seen the accused and later he identified the accused. From this admission it is vehemently argued by the learned counsel for appellant/A.2 that the evidence of PW.6 regarding his identifying the accused including appellant/A.2 has no probative value since the accused were shown to the boy prior to his identifying them in the Sub-Jail, Nuzvid. On a careful scrutiny of the evidence of PW.6, I am unable to accept this argument. What was admitted by PW.6 is that prior to identifying the accused in the Sub-Jail he has seen the accused. However, it is not clear from his evidence as to how long prior to the identification of accused and where he happened to see the accused. His admission that prior to the identification of the accused he has seen the accused may also be construed as he saw the accused at the time of offence also. Since there is no specific suggestion in the cross-examination to the effect that prior to his identifying the accused in the Sub-Jail he happened to see them at a particular place, it is difficult to infer from the above admission that the accused were shown to the boy in advance to facilitate their identification. It is not out of context here to mention that in the further cross-examination PW.6 clearly stated that the police did not show the photos and also videos of the accused to him. When this answer is placed in conjunction with his earlier admission that he saw the accused prior to his identifying them in the Sub-Jail, the only inference that can be drawn is that the answer of the boy is that he earlier saw the accused during the relevant period of offence and not when the police specifically showed the accused to him to facilitate their identification. Therefore, the evidence of PW.6

corroborated PW.1 and confirmed about the participation of appellant/A.2 in the commission of offence.

12) Then, we have the evidence of PW.13. He was Circle Inspector of Police, Mylavaram circle. On the oral instructions of Superintendent of Police, Krishna District, he was put on special duty to assist Investigating officer in tracing the kidnapped boy. He deposed that from 15.04.2003 onwards till the boy was traced he was accompanying PW.1. On 15.04.2003 and 16.03.2003 he moved along with PW.1 on his motor cycle under the guise of his friend Radha by carrying one Rexene bag as if they were carrying Rs.10 lakhs. He further deposed that on 17.04.2003 at about 7:30 p.m, they both proceeded to Velagalapalli cross road basing on the phone call information received by the wife of PW.1 and they reached near telephone booth and by then PW.15 and his staff gathered there in mufti. On suspicion PW.15 arrested A.1 and interrogated him in the presence of mediators and they cross checked the telephone booth number vide 8823274561 with PW2 and came to know that from the said telephone number she received calls twice from the suspects. Then the Inspector of Police rounded up the appellant/A.2, who was at a distance and interrogated him in the presence of mediators and both the accused lead the police party to Sattupalli where they recovered the boy from the house of A.6. So, the evidence of PW.13 is in tune with PW.1 and reveals about the presence and complicity of the appellant/A.2 in the offence proper or else there was no need for the appellant/A.2 to be present near telephone booth at

Velagalapalli cross road on that night. The evidence of PW.13 could not be shattered in the cross-examination.

13) Finally, PW.15—Investigating Officer also deposed in his evidence that on the night of 17.04.2003 he along with mediators and other staff visited the cross road of Velagalapalli and there he traced STD booth and phone number 88823274561 and there he arranged the trap at STD booth with the assistance of his staff and thereafter he received information about A.1, who sent message to the house of PW.1 by demanding Rs.10 lakhs for release of their son through aforementioned phone number. Immediately he found suspected persons i.e., A.1 and A.2 near cross road centre and arrested them and interrogated them and on their confession proceeded to Sattupalli and recovered the boy from the house of A.6. Thus, the evidence of PW.1, PW.6, PW.13 and PW.15 clinchingly established the complicity of the appellant/A.2 in the offence. Therefore, he is liable for the charges under sections 364A, 342 and 506(II) IPC. The argument advanced on behalf of appellant/A.2 did not carry any basis in view of the cogent and convincing evidence placed by the prosecution on record. The Trial Court rightly convicted and sentenced the appellant/A.2. Hence, I find no merits in the appeal and it is liable to be dismissed.

14) In the result, the Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court against the appellant/A.2 in S.C.No.106 of 2004. The Trial Court is directed to

issue warrant to secure the presence of appellant/A2 for serving the remaining period of sentence.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 17.07.2018

Note: Registry is directed to send a copy of this judgment to the concerned Court forthwith.

(b/o)

Murthy / scs

