THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

Crl.A.Nos.959, 960, 971, 1053, 1055, 1058 of 2011
and 185 of 2012

Date: 09.07.2018

Crl.A.No.959 of 2011

Between:

Akbar Hussein Khan … Appellant

And

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P., Hyderabad … Respondent

Counsel for the Appellants : Mrs. C. Vasundhara Reddy
Mr. K. Suresh Reddy
Mrs. A. Gayatri Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

These appeals by accused Nos.2 to 7 and 10 to 12, arise out of common judgment dated 10.08.2011 in Sessions Case No.561 of 2004 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad. They were convicted for the offences under Section 364-A IPC read with Section 120-B, and Sections 341 and 506 IPC and Section 7(1) of the Criminal Law Amendment Act, 1932, and sentenced to undergo imprisonment for life and also to pay a fine of Rs.1000/- each and in default of payment of fine, to undergo simple imprisonment for one year each for the offence under Section 364-A IPC read with Section 120-B IPC. In view of the imposition of the sentence of life imprisonment against the appellants for the offences under Sections 364-A IPC read with Section 120-B IPC, no separate sentences were imposed by the Court below against them for the remaining offences with which they were convicted.

2. Accused No.2 filed Criminal Appeal No.971 of 2011, accused No.3 filed Criminal Appeal No.1053 of 2011, accused No.4 filed Criminal Appeal No.1058 of 2011, accused No.5 filed Criminal Appeal No.185 of 2012, accused No.6 filed Criminal Appeal No.959 of 2011, accused No.7 filed Criminal

Appeal No.960 of 2011 and accused Nos.10 to 12 filed Criminal Appeal No.1055 of 2011, assailing their conviction and sentencing as noted above. These cases involve alleged kidnapping of a boy, by name, Master Satish Kumar, 9 years of age, at about 06.15 p.m. on 12.02.2004, when he was playing with other children in a residential colony. It is the case of the prosecution that accused No.1 entered into a criminal conspiracy with all the remaining accused and made the latter to kidnap the boy, who was kept in their illegal custody for 14 days, till the police have raided a lodge at Tuljapur and retrieved the boy. As the entire version of the prosecution was enumerated by the court below and in the view we are proposing to take, it is wholly unnecessary to refer to the same. However, based on the charge sheet filed by the Investigating Officer, the court below framed the following charges against the accused:

> **"Firstly**: That accused nos.1 to 11, 13, 15, 17 to 20 of you along with other absconding accused on 12.2.2004 in between 5.30 to 5.45 p.m., at Kakatiyanagar, Langar House, Hyderabad, conspired together by forming into a gang and kidnapped the boy Satish Kumar near to his house for a ransom amount of Rs.2 crores and that you thereby committed an offence punishable u/s. 364-A r/w. 120-B IPC and 25(1) (a) of Arms Act and within my cognizance.
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> **Secondly**: That accused Nos. 1 to 11, 13, 15, 17 to 20 of you along with other accused in continuation of the offence of kidnapping, committed criminal intimidation by threatening Satish Kumar with injury to his person, to

cause death and that you thereby committed an offence punishable u/s. 506 IPC and within my cognizance.

Thirdly: That accused Nos. 1 to 11, 13, 15, 17 to 20 of you along with other absconding accused after kidnapping the victim boy Satish Kumar wrongfully restrained him at a farm house situated at Peddamangalaram village, Moinabad Mandal, R.R. district and from there to Ghogargav village and again from there to Matho Shri Lodge of Tuljapur, Maharashtra State to gain pecuniary benefits, and that you thereby committed an offence punishable under section 341 IPC and within my cognizance.

Fourthly: That accused No.4 of you on 20.02.2004 at 12.30 hours at H.No.10-4-38/A, Plot No.201, Sale-hind Apartment, Humayunnagar, Hyderabad, had in your possession of arms i.e. dagger and one air pistol for which you have no valid licence or permit to possess the same in accordance with Arms Act, and that accused No.4 of you thereby committed an offence punishable u/s. 25(1)(a) of Arms Act and within my cognizance.

Fifthly: That accused Nos. 1 to 11, 13, 15, 17 to 20 of you along with other absconding accused on the same day, time and place mentioned above in charge No.1 supra, abstained victim boy Satish Kumar and intimidated him and his father who does business and offered a ransom of Rs.2 crores and that you thereby committed an offence punishable u/s. 7(1) of Criminal Law Amendment Act and within my cognizance".

As the plea of the accused was one of denial, they stood trial during which the prosecution examined P.Ws.1 to 43, got Exs.P.1 to P.92 marked, and produced M.Os.1 to 27. On behalf of the defence, no evidence was adduced.

3. On appreciation of the oral and documentary evidence, the lower Court has acquitted accused No.1 of all the charges, accused Nos.8, 13, 15 and 17 to 20 for the offences under Sections 364-A read with Section 120-B IPC, and Sections 341

and 506 IPC, and Section 7(1) of the Criminal Law Amendment Act, 1932, accused No.4 for the offence under Section 25(1)(a) of the Arms Act, 1959. The appellants in these appeals/accused Nos.2 to 7 and 10 to 12 were convicted and sentenced as noted hereinbefore.

4. At the hearing, Smt. C. Vasundhara Reddy, learned counsel for accused Nos.2 to 6 and also representing Smt. A. Gayatri Reddy, learned counsel for accused Nos.10 to 12, submitted that when the prosecution has projected accused No.1 as the kingpin responsible for the alleged criminal conspiracy with the other accused, the Court below having acquitted of accused No.1 of all the charges by holding that the charges against accused No.1 are not proved by the prosecution, it has committed a serious error in convicting the appellants for the charge under Section 364-A IPC. She has further submitted that the only material witness based on whose testimony the lower Court has convicted the appellants is the victim boy, examined as P.W.36, and nowhere he has deposed that he was kept captive by the appellants for ransom thereby the prosecution failed to prove the offence under Section 364-A IPC. She has further submitted that even assuming that the prosecution was able to prove that each of

the appellants herein had a role in kidnapping and holding of the illegal custody of P.W.36, at the best, they may be held guilty for the offence under Section 361 IPC and that the Court below has patently erred in convicting them for the offence under Section 364-A IPC. She has also submitted that the maximum sentence for the offence under Section 361 IPC is seven years of imprisonment under Section 363 IPC and that as the appellants have already undergone imprisonment of five years, the sentence may be limited to the period already undergone by them.

5. Mr. K. Suresh Reddy, learned counsel for accused No.7, who is the appellant in Criminal Appeal No.960 of 2011, submitted that on the report called for by this Court, the trial Court has sent its report dt.04.07.2014 stating that as on the date of the offence, the appellant was seventeen years of age. He further argued that under Section 18 of the Juvenile Justice (Care and Protection) Act, 2015, options are left open to the Court while dealing with the juveniles who were found to be in conflict with law and that under clause (g) of sub-section (1) of Section 18 of the said Act, the maximum period for which the juvenile could be directed to be sent to special home is three years.

6. We have heard Mr. C. Pratap Reddy, learned Public Prosecutor for the State of Telangana also.

7. As argued by the learned counsel for the appellants, accused No.1 was projected as a kingpin who has criminally conspired to commit the offence of kidnapping of the victim boy P.W.36 to extract money from P.W.1, by the prosecution. While dealing with the role allegedly played by accused No.1 and the evidence produced by the prosecution, the Court below had this to say:

> "66. In this case it is the case of the prosecution that accused No.1 is the main person that has criminally conspired to commit the offence of kidnapping of victim boy PW.36, to extract money from PW1, the father of the victim boy. In his statement under Section 313 (1)(b) of Cr.P.C., the accused No.1 has stated that his name is Syed Abid Hussain, son of Syed Hussain. His name is not Ali Bhai. He does not know Ali Bhai. He has no relationship with any Ali Bhai. The prosecution in this case has not produced any evidence to show that accused No.1 Syed Abid Hussain, is having alias name as Ali Bhai. When there is no evidence produced by the prosecution to show that accused No.1 Syed Abid Hussain, son of Syed Hussain, the prosecution has marked Ex.P.75 the acknowledgement for the receipt of the emergency certificate issued in the name of Syed Hafiz Hussain son of Syed Hussain which was seized under a cover of confession-cum-seizure panchanama under Ex.P.76 by the police of Jubilee Hills Police Station, Hyderabad. As per Ex.P.76, which is admissible portion in seizure-cum-confessional panchanama, the police have seized Ex.P.75 acknowledgment issued by the Sub-Inspector of Police, Hyderabad Airport dated 10.3.2007 for the receipt of emergency certificate. The prosecution has not examined the police officer who issued Ex.P.75. Passport of accused No.1 was also not produced. There is absolutely no evidence on record to show that alias name of accused No.1 is Ali Bhai. P.W.40 M. Srinivas Rao, the then Inspector of Police, Jubilee Hills Police Station, Hyderabad has stated that the then Sub-Inspector of Police, Srinivas Reddy has registered a case on report preferred by P.W.39 S. Srinivasa Rao the then Sub-Inspector of Police, Task Force, Central Zone, Hyderabad City

and has issued FIR in Crime No.90/2007 under Section 12(b) of Passport Act against the accused No.1 herein. Then, he verified the investigation done by the Sub-Inspector of Police, Jubilee Hills Police Station, Hyderabad, and relevant documents and material objects and he sent the accused No.1 to the court for judicial remand. Subsequently, he has taken the accused no.1 for police custody in that case and in the presence of one Sudhakar Reddy and Gnaneswar he interrogated the accused No.1 and at that time, the accused no.1 has confessed to has committed the offence in this case. The so called confessional statement of accused no.1 recorded by this P.W.30 is not filed before this court and the so called independent witness who were present at the time of alleged confession of accused no.1 neither cited nor examined in this case. In this case there is absolutely no evidence to show that the accused no.1 is also having alias name as Ali Bhai, therefore, we cannot convict the accused no.1 in this case."

… … …

"69. The prosecution has examined Nodal Officers P.Ws.14 and 26 of Idea Communication Services who filed call details of the landline number 56584844 and call details of cell no.9848370160 respectively. The prosecution has also examined Nodal Officer of Reliance and Airtel Communications Services as P.Ws.27 and 28. P.W.27 filed the call details of cell no.31173244. P.W.28 has filed call details of three cell phones with numbers (I) 9849411346, (II) 9849280951, (III) 9849360590. With these call details we cannot conclude that any of the accused in this case have contacted P.W.1 and his family members through landline of P.W.1."

"70. In a case reported in 2007(2) ALD (Crl.)342 (AP) on which the learned counsel for accused nos.2, 10 and 17 to 20 relied on, the Honourable High Court of Andhra Pradesh observed that,

> "No doubt, Ex.P.20 which is telephone call details produced by P.W.23, shows that A5 and A9 used to call to cell number of A1. But, that does not lead to an inference that there was a conspiracy."

"71. In the absence of the Text of the communication from one telephone to another telephone, we cannot conclude that there was criminal conspiracy between the accused persons. M.Os.1 and 2 contains the conversation between two persons at different times. No audio analyzer test was conducted to prove that any of the voices in the audio cassettes under M.Os.1 and 2 belongs to a particular accused. In the absence of any such analysis by the Expert, basing on M.Os.1 and 2, we cannot conclude that any of the accused in this case are the persons that have threatened particular person in this case. Further, in this

case, M.Os.1 and 2 were not immediately produced into court and further, M.Os.1 and 2 were produced into court openly without seeing them."

"72. In a case between Lalji Bansanarayan Chowbey v. Jiyalal Chavan and Another, reported in 2009 CRL.L.J (NOC) 574 (Bombay), on which the learned counsel for accused nos.1, 5, 8, 13 and 15 relied, the Honourable Bombay High Court held that,

> "He tried to produce tape recorded conversation between himself and complainant – That tape record was neither immediately produced in court nor was sealed as per requirement of law – Failure to produce transcription of tape recorded conversation – Thus precautions which are required to be taken for the purpose of admitting tape recorded version in evidence not taken."

"73. In a case between Chandrakant Ratilal Mehta and others v. The State of Maharashtra, reported in 1993 CRL.L.J. 2863 (which was referred in the decision reported in Bombay High Court Bench at Aurangabad in Criminal Appeal No.14 of 2009), it was held that,

> "Tape recorded evidence if is to be acceptable, the tape must have been sealed at earliest point of time and opened except under orders of the Court. The precautions which are required to be taken for the purpose of admitting tape-recorded version in the evidence are not taken in the present case. It is difficult to countenance the defence only on the basis of so called tape-recorded version of which origin is very much doubtful."

"74. In view of the above decision, it is clear that the tape-recorded evidence under M.Os.1 and 2 in this case is no way helpful to the prosecution case."

"75. Further in this case, P.W.8, J. Satyanarayana, a Police Constable no.3128 of Amberpet Police Station in his evidence has stated that he is having an auto rickshaw bearing no.AP 13W 4666 and he has given that auto to accused no.5 on rent in the year 2004 and subsequently, accused no.5 did not pay the rent to him for that auto. Subsequently, he came to know through newspaper that one boy was kidnapped by some persons and later on 20.2.2004, the Langar House Police, called him through phone and went there and saw accused no.5 and his auto at the police station and that the Inspector of Police, Limba Reddy informed to him that his auto was used for kidnapping purpose, as such, he has seized the said auto and he identified the said auto as M.O.3 and accused No.5 as the person to whom he has given his auto on rent. Therefore, it is also a circumstance to show that accused no.5 was having connection with the auto rickshaw M.O.3 which is corroborated with the evidence of P.W.34."

… … …

"79. In the present case also there is no sufficient material produced by the prosecution to show that there was an agreement among the accused nos.1, 8, 12, 13, 15 and 18 to 20 to do an illegal act, i.e., kidnapping for ransom in this case. But, the evidence of P.W.36 shows that the accused nos.2 to 7 and 10, 11, and 12 have actively and physically participated in kidnapping him and keeping him in their custody from the evening of 12.2.2004 to the night of 24.4.2004."

80. The evidence of P.W.1 clearly reveals that the persons responsible for kidnapping his son P.W.36 have threatened him by phone and demanded ransom for the release of his son. So, the kidnap of P.W.36 by the accused nos.2 to 7, 10, 11 and 12 which is proved with the evidence of P.W.36 for ransom."

8. On the above extracted reasoning, the trial Court has acquitted accused No.1. It has, however, held that the evidence of P.W.1 clearly reveals that the persons responsible for kidnapping of his son have threatened him by phone and demanded ransom for the release of his son and therefore kidnapping of P.W.36 for ransom by the appellants is proved.

9. As rightly argued by the learned counsel for the appellants, the lower Court has fallen into a serious error in convicting the appellants for the offence sunder Section 364-A IPC on the reasoning that P.W.1 has received threatening calls by phone, when it has in unequivocal terms held that from the call details produced by the prosecution by examining P.Ws.27 and 28, nodal officers of Reliance Communications and Airtel, it cannot be concluded that any of the accused in this case have contacted P.W.1 and his family members through the landline

of P.W.1. When the whole case of the prosecution that it was accused No.1 who made calls to P.W.1, was disbelieved by the lower Court, it defies any logic or reason to hold that the remaining accused have kidnapped P.W.36 for ransom. In order to establish kidnapping for ransom, the prosecution shall have to prove that there was a demand for ransom. When none of the appellants were accused of demanding ransom and the only accused who allegedly demanded ransom was acquitted by the lower Court, the conviction of the appellants for the offence under Section 364-A read with Section 120-B IPC is wholly unsustainable. Accordingly, that part of the judgment of the lower Court by which the appellants have been convicted for the offence under Section 364-A IPC read with Section 120-B IPC is set aside.

10. As regards the alternative submission, once the kidnapping for ransom is held not proved, as rightly argued by the learned counsel for the appellants, the latter could be convicted only for the offence under Section 361 IPC (kidnapping from lawful guardianship). Under Section 363 IPC the maximum punishment for the said offence is seven years. Admittedly, all the appellants, except accused No.7/appellant in Criminal Appeal No.960 of 2011, have undergone at least five

years of imprisonment. The conviction of all the appellants, except the appellant in Criminal Appeal No.960 of 2011, is modified to the one for the offence under Section 361 IPC.

11. In the facts and circumstances of the case, the sentence imposed on the appellants, other than accused No.7, is limited to the period of sentence already undergone by them.

12. As regards accused No.7/appellant in Criminal Appeal No.960 of 2011, by order dt.04.12.2014 in Criminal M.P. Nos.2135 and 2152 of 2014 the learned I Additional Metropolitan Sessions Judge, Hyderabad, held that the date of birth of accused No.7 is 16.06.1986 and that as on the date of commission of the offence, i.e., 12.02.2004, she was aged seventeen years, seven months and twenty six days. In the light of the said report, as accused No.7 was proved to be a juvenile as on the date of the commission of the offence, the conviction imposed against her is liable to be set aside.

13. In the result, the criminal appeals are partly allowed. The conviction imposed against the appellants – accused other than accused No.7, for the offence under Section 364-A IPC is set aside, and instead they are convicted for the offence under Section 361 IPC. The sentence of imprisonment is limited to the period of sentence already undergone by them and the

sentence of fine is, however, confirmed. Since accused No.7 was a juvenile as on the date of commission of the offence, her conviction is set aside. She is accordingly set free. The fine amount, if any, paid by her shall be refunded to her.

All the appellants shall be released, if they are not required in any other case or crime, and the bail bonds furnished by them shall stand cancelled. The appellants shall surrender before the respective jail superintendents to complete the legal formalities of their release.

C.V. NAGARJUNA REDDY, J

M. GANGA RAO, J

09-07-2018

msb/bnr