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

R-5

+ **CRL.A. 361/2002**

SARDAR SINGH

..... Appellant
Through: Mr. Nitish Harsh Gupta, Advocate.

versus

STATE OF DELHI

..... Respondent
Through: Ms. Radhika Kolluru, APP for State.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

% **ORDER**
11.01.2018

Dr. S. Muralidhar, J.:

1. This appeal has been preferred by the accused against the judgment dated 13th March 2002 passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No.99/2001 arising out of FIR No. 563/99 registered at Police Station ('PS') Malviya Nagar , whereby the Appellant was convicted for the offence under Section 364-A IPC. the appeal is also directed against the order on sentence dated 15th March 2002 whereby the Appellant was sentenced to undergo imprisonment for life and to pay fine of Rs.500/- and in default of payment of fine, to further undergo rigorous

imprisonment for three months.

Charge

2. The charge as framed against the Appellant as under:

“I, S.M.Chopra, Addl. Sessions Judge, New Delhi do hereby charge you Sardar Singh as follows:

That on 4.9.1999 at about 9.00 a.m. in front of House No.310A, Chirag Delhi you along with Pappu (being tried in the Juvenile court) in furtherance of your common intention kidnapped a child Irshan Qureshi aged about 3 years, and/or kept him in detention after such kidnapping and by your conduct gave rise to a reasonable apprehension that such kidnapped child may be put to hurt in order to compel his lawful guardian to pay ransom and thereby committed an offence punishable u/Section 364A/34 IPC and within the cognizance of this court.

And, I hereby direct that you be tried by this court on the aforesaid charge.”

Case of the prosecution

3. The case of the prosecution is that on 4th September 1999, Irshan Qureshi, the three year old son of Ikhlal Qureshi (PW-2), had gone out of his house at 318A, Chirag Delhi to play in the morning at around 9:30 a.m. When PW-2 and his family members looked for Irshan at the place where he had gone to play, he was not traceable. When till 1:30 p.m., they were unable to find the child, PW-2 went to PS Malviya Nagar and lodged a report about his having gone missing. This was recorded as DD No.26-B (Ex.PW-2/A).

4. After PW-2 returned home, he started receiving telephone calls from

some person. The caller asked PW-2 if he wanted to talk his son. When PW-2 answered in the affirmative, the caller put the child on the line. Thereafter, the caller talked to PW-2 and asked for a ransom of Rs.50 lakhs for releasing his son. According to PW-2, at this stage, his elder brother, Alimuddin (PW-4), took the telephone from him but by that time the call was disconnected.

5. According to PW-2, the Investigating Officer (IO) visited his house later in the evening. While the IO was still there, at around 4:30 p.m., the person who had called earlier, called again. This time the IO picked up the phone and handed it over to PW-2. The caller reiterated his demand for a ransom of Rs.50 lakhs but disconnected the phone stating that he would call again.

6. The IO informed the Station House Officer (SHO), who in turn sent the special police staff who reached the house after about half an hour. According to PW-2 and prior to their arrival, he had already tape recorded the conversation which he had with the caller. The members of the special staff also heard the tape recorded conversation. In the meanwhile, the caller called again and maintained his demand of Rs.50 lakhs. However, when PW-2 expressed his inability to pay that amount, the caller ultimately agreed to accept Rs.10 lakhs. For handing over of the money, the caller asked PW-2 to come to a park near Sapna Cinema at 9 pm on 4th September 1999.

7. On the instruction of the police officials, a bag was prepared in which newspapers were filled up with some currency notes on the top. PW-2 then reached the bus stop. At this stage, the caller again called PW-2 and asked him not to come and to send the money through PW-4 as he knew PW-4.

8. According to PW-2, when PW-4 reached the bus stop near Amar Colony park, Sapna Cinema which was the spot indicated by the caller, the special staff police members also reached there. PW-2 went there in a separate car. After waiting for some time and when no one came there, PW-2 and PW-4 returned home.

9. The next day, 5th September 1999, at 10:30 a.m., the person called PW-2 again and fixed the time for the drop off of the ransom at 2.30 p.m. at the same place. PWs 2 and 4, this time accompanied by Chiraguddin (PW-5), another brother of PW-2. The police officials of PS Malviya Nagar accompanied them to the place. PW-4 with the bag reached the bus stop and the police officials and PW-2 stood watching from some distance. After some time, one person came to the bus stop and took the bag from PW-2 and immediately the police officials and PW-2 headed for the bus stop. The person who had come to collect the ransom, along with the bag, was apprehended at the bus stop itself.

10. The person apprehended was the co-accused Pappu, who was a juvenile at the time of commission of the alleged offence and was, therefore, separately tried by the Juvenile Justice Board.

11. The case of the prosecution is that on enquiring from Pappu as to where the child was, he indicated that the child had been kept at some park near Tagore International School, Amar Colony. While PW-2 remained at the bus stop since he was completely perplexed and agitated, Pappu took the police

party, accompanied by PW-4 and PW-5, to a park near the aforementioned school where the child was found with the present Appellant Sardar Singh (Accused No.1/A-1). According to the prosecution, A-1 was overpowered and the child was recovered from him and brought back to the PS where PW-2 identified the child. Thereafter the child was handed over to him.

Key witnesses turn hostile

12. The three key independent witnesses in the case were PW-2, PW-4 and PW-5 viz., Ikhlal Qureshi and his brothers Alimuddin and Chiraguddin respectively. In his deposition, PW-2 maintained that he himself was present when the child was recovered from the possession of the present Appellant. Further, the cassette containing the recorded conversations between PW-2 and the caller was not sent to the forensic science laboratory (FSL) for comparison of the voice samples of the Appellant with the voice appearing in the conversations. According to PW-2, it is only after reaching the PS that the child was handed over to him. However, he further stated that the Appellant was brought to the PS along with Pappu and his son.

13. PW-4, who purportedly accompanied the police even to Tagore Garden for the recovery of the child from the Appellant, did not support the prosecution. According to him, on 5th September 1999, on reaching the spot near the park in Amar Colony with the money in the bag, the person who had come to collect the bag was apprehended. According to PW-4 “thereafter we came back to Malviya Nagar Police Station. We were handed over the child in the police station and we went back to our house”. This witness maintained that “the child was recovered from the police station and

not from anybody else”.

14. With the PW-4 turning hostile, the Court permitted the learned APP for the State to cross-examine him. In his cross-examination, he specifically denied that the co-accused Pappu took the police to the Appellant who was standing near the Tagore Garden School and that the child was recovered at that point from the Appellant. He denied his previous statement (Ex.PW-4/A). Although he admitted his signatures thereon, he stated that “I signed it in a casual manner without going through its contents.” He also admitted to signing the inspection memo of recovery of the child. He denied the suggestion that he was not deposing against the Appellant as he had been won over by the Appellant.

15. The other brother of PW-2 Chiraguddin (PW-5) is also supposed to have accompanied them on the last occasion when co-accused Pappu was apprehended. However, in his deposition, he stated “One Pappu was used to work at my workshop. When Pappu was caught in this case he disclosed this fact to the police. I did not play any role except the above in this case.” He too in his cross-examination by the learned APP for the State denied that Pappu had led them to the Appellant from whom the child was recovered.

16. It is, therefore, seen that the independent witnesses, who were supposed to support the case of the prosecution in regard to the recovery of the child from the Appellant, turned hostile.

Impugned judgment of the trial Court

17. The trial Court in the impugned judgment dated 13th March, 2002, noted that PW-4 had turned completely hostile and failed to support the prosecution. However, the trial Court observed that “since PW-4 admitted his signatures on the recovery memo which was written when the kidnapped child has been recovered from the appellant, the conclusion that ought to be drawn is that PW-4 was won over by the appellant as he might have frightened or might have been won over by the accused and, therefore, could not have got the courage to identify the accused Sardar Singh”.

18. In other words, despite PW-4 clearly stating that he had signed his previous statement to the police in a casual manner without reading it, the mere fact that the recovery memo was signed by him was seen by the trial Court as an incriminating piece of evidence with the surmise that PW-4 might have been won over. This was despite the fact that in his cross-examination by the learned APP for the State, PW-4 clearly denied the suggestion that he had been won over by the Appellant.

19. The learned trial Court did not consider the effect of PW-5, the other brother of PW-2 also turning hostile and not supporting the prosecution case. He too denied the suggestion that he had been won over by the Appellant. He also specifically denied the suggestion that Pappu had led the police to the Appellant and had recovered the child from the Appellant.

20. Instead, the trial Court appears to have gone entirely by the evidence of the two police witnesses i.e. Ct. Mohd. Yusuf (PW-7) and Sub Inspector

Lekh Raj Singh (PW-8), who was the Investigating Officer of the case. The trial Court appears to have gone by the principle that merely because they were police witnesses, their testimonies ought not to be discarded.

Reasons

21. The undisputed fact is that two of the three independent witnesses failed to support the prosecution on the most critical aspect of the case in the manner indicated hereinbefore. It was unsafe for the trial Court to have proceeded only on the statements of the police witnesses in convicting the Appellant for the offence under Section 364A IPC. The trial Court proceeded on surmises and conjectures that the Appellant had won over those independent witnesses who were the uncles of the child. There was no reason for the uncles of the child to support the Appellant for no rhyme or reason. The suggestions to them that they had been won over were firmly denied by them in their cross-examination. The entire discussion in the trial Court judgment on this aspect is based on surmises and conjectures that these witnesses might have been frightened or intimidated. There was no basis for the trial Court to have formed such opinion.

22. In that view of the matter, the Court is unable to concur with the view expressed by the trial Court that it has been proved by the prosecution beyond reasonable doubt that it was the Appellant from whose possession the child was recovered. It is further seen that even in the disclosure statement of the co-accused, he mentioned the child as already having been recovered and not that he had lead the police to the place where the child was being kept. This also raises doubts whether the child was even

recovered by the police from the possession of the Appellant in the manner as stated by the prosecution.

Conclusion

23. For all the aforementioned reasons, the Court sets aside the impugned judgment dated 13th March 2002 as well as the order on sentence dated 15th March, 2002 passed by the learned trial Court. The Appellant is acquitted of the offence under Section 364A IPC. The bail bonds and surety bonds furnished by him stand discharged.

24. The appeal is allowed in the above terms. The Appellant will fulfil the requirements of Section 437 A Cr PC to the satisfaction of the trial Court within two weeks.

25. The trial Court record be returned forthwith with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 11, 2018
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