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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 24.01.2018

Judgment delivered on: 31.01.2018

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CRL.A. 1458/2012

PRIYA HARSHVARDHAN

Through

Appellant with his
Kulwant Saroop, Adv.

..... Appellant

versus

STATE NCT OF DELHI

Through

Ms. Neelam Sharma, APP for the
State

..... Respondent

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CRL.A. 42/2013 & Crl. M.A. No.8419/2016

RAKESH SINGH @ HARKESH SINGH

Through

Appellant with his
Kulwant Saroop, Adv.

..... Appellant

versus

STATE NCT OF DELHI

Through

Ms. Neelam Sharma, APP for the
State

..... Respondent

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The appellants have impugned the judgment and order on sentence dated 26.10.2012 and 03.11.2012 respectively wherein the appellants stood convicted and thereafter sentenced. Appellant Rakesh Singh had been convicted under Sections 342/506/385 as also Section 365 read with Section

120-B of the IPC. He had been acquitted of the offence under Section 328 of the IPC. He had been sentenced to undergo RI for a period of six years and to pay a fine of ₹10,000/- and in default of payment of fine, to undergo RI for a period of six months for the offence under Section 365 read with Section 120-B. For offence under Section 342 of the IPC, he had been sentenced to undergo RI for a period of one year. For offence under Section 506-II of the IPC, he had been sentenced to undergo RI for a period of five years. For offence under Section 385 of the IPC, he had been sentenced to undergo RI for a period of two years.

2 Convict Priya Harshvardhan had been convicted under Section 365 read with Section 120-B of the IPC. He had been sentenced to undergo RI for a period of three years and to pay a fine of ₹20,000/- and in default of payment of fine to undergo RI for a period of six months. Benefits of Section 428 of the Cr.PC have been granted to both the convicts.

3 Both the appellants are on bail. Nominal roll of appellant Rakesh Singh reflects that he had undergone incarceration of 3- ½ years before he was released on bail. Accused Priya Harshvardhan had undergone incarceration of 2- ½ months before he was released on bail.

4 The version of the prosecution is that on 11.11.2008 at 12:30 in the afternoon, accused persons in furtherance of their common intention and in terms of common object of their conspiracy had abducted the victim H Kaur (aged 33 years) (PW-1). This was from outside her house bearing No. 12, Road No. 73, West Punjabi Bagh, Delhi. The fact that H Kaur was a married lady having two children and married to one Amardeep is an admitted position. The lady was finally recovered from Siliguri, Assam on 01.02.2009 i.e. after a gap of almost 2 months & 20 days. Further allegations of the prosecution were that the victim had been administered drugs by mixing them in water with an intent to wrongfully confine her at various places including Naraina, Delhi, Deemapur, Assam as also Siliguri, West Bengal. The accused persons had also criminally intimidated her and wrongfully confined her threatening her to cause harm to her. Accused Rakesh Singh used to keep a knife with him which was the source of intimidation to the victim. Prima-facie charges of extortion were also levelled against the accused persons.

5 Further version of the prosecution is that accused Rakesh Singh used to work as electrician in the house of the victim and often used to go to her house. He had become friendly with the elder son of the victim. The

husband of the victim was unhappy with this friendship that Rakesh Singh shared with his family and often there used to be a quarrel on this count. Accused Priya Harshvardhan was a friend of Rakesh.

6 15 witnesses were examined by the prosecution of whom the star witness of the prosecution was victim herself who was examined as PW-2. Her brother who had lodged the complaint pursuant to which the recovery of the victim had been effected on 01.02.2009 from Siliguri, West Bengal was examined as PW-1. Investigating Officer M.N Vijayan (PW-10) was accompanied by constable Umesh Tiwari (PW-3) who had gone to Siliguri where the victim had been recovered. Their testimony has been highlighted. Testimony of PW-7 (Mohd. Babu Hazarika) a driver working in Siliguri has also been brought to the fore.

7 In the course of arguments, learned counsel for the appellant submits that this is a clear case where the question of any of the charges for which the appellants have been convicted cannot be sustained. The victim is an adult lady being more than 33 years of age and having two children. She had voluntarily accompanied Rakesh Singh with whom she had developed an intimate relationship and had stayed with him for more than 2- ½ months at Siliguri from where she was ultimately recovered. The question of

confinement would not arise as it is not as if that the woman was kept locked or bolted in a room from where she could not go out; had she wanted to leave the company of Rakesh Singh, she had ample opportunities in this long period of time when she was living with him. Attention has been drawn to the testimony of PW-2 and particularly her cross-examination. Attention has also been drawn to a document Ex.PW-1/F which is a statement given by the victim at the time when she was recovered (01.02.2019) wherein PW-1 had stated that no wrong had been committed upon her and she is leaving the company of Rakesh Singh along with her jewellery and ₹30,000/- cash. Submission being that this document admittedly having been executed by PW-2, this is a clear case where the victim on her own had taken jewellery and ₹30,000/- and this was the same amount which was recovered and taken back by her; the question of the accused person putting any pressure upon her did not arise. Learned defence counsel has also highlighted the version of PW-7 who was a driver who was driving the vehicle when accused Rakesh Singh and the victim were taken to hotel where they stayed for two days; he had supplied a gas cylinder to Rakesh Singh and in fact he had set up their tenanted accommodation. Submission being that this was with the consent of the victim. The question of a wrongful confinement as defined

under Section 340 of the IPC is not made out. No extortion was also levelled upon the victim. There is also no explanation as to why the victim who though was medically examined but her MLC has been withheld from the Court; material evidence which would have thrown light upon the defence of the accused has been withheld; the MLC would have shown that there was never any pressure or coercion upon the victim.

8 The prosecution has denied these submissions. Learned APP for the State points out that this is a clear case where the judgment should not be interfered with as the victim in her testimony has categorically stated that she was being administered drugs by accused Rakesh Singh which were mixed with water and that was the reason why she was found in semi-conscious condition and was not in a position to move out and go back to her family. Attention has also been drawn to the version of PW-3 and PW-13 both of whom have noted that at the time when the victim was recovered from the house, the door was bolted from outside meaning thereby that the victim had been kept secretly confined in that room.

9 Arguments have been heard. Record has been perused.

10 PW-2 is the star witness of the prosecution. She has deposed that she was married to Amardeep Singh for the last 14 years; she had two sons born

out of her wedlock; her elder son was aged 14 years and her second son was aged 07 years. In April, 2008, repair works were going on in her house and many labourers were working there. The electric connections were being looked after by Rakesh Singh. Rakesh Singh had developed intimacy with her elder son. He used to talk to PW-2 about her family members. Her elder son used to go out with Rakesh Singh on his motorcycle. In September, 2008, a quarrel took place between PW-2 and her husband and the bone of contention was Rakesh Singh who had come to her room for checking the light; husband of PW-1 entered the room and caught hold of Rakesh Singh and started rebuking him. Rakesh Singh used to telephone her many times and often offered her 'prashad' which he used to get from the Mandir and after taking prashad she used to become numb. Rakesh Singh used to address her as bhabhi. PW-2 had faith upon him. Priya Harshvardhan, the friend of Rakesh Singh also accompanied him to their house on some occasions; PW-2 was told by Rakesh Singh that Priya Harshvardhan was working in a Government job and was intending to go to the USA.

11 On 10.11.2008, Rakesh Singh came to her house in Punjabi Bagh. He threatened her that he had call details recorded of her conversations with him and in case she did not pay ₹10 lacs to him, he will hand over those call

details to her husband. He gave PW-2 time only up to noon of 11.11.2008 to pay this sum of ₹10 lacs. On 11.11.2008 when PW-2 came out of her house, she found Rakesh Singh standing at a distance. He was accompanied by his friend Priya Harshvardhan. PW-2 had left her house at that time to collect the call details from Rakesh Singh and at his instructions, she had brought her valuables and ₹60,000/- in cash. He told her to go to Naraina. PW-2 initially refused to go to Naraina but Rakesh Singh threatened her that her call details will be handed over to her husband; she had no choice but to accompany Rakesh Singh on the motorcycle to Naraina. She sat in the auto rickshaw to go to Naraina where Priya Harshvardhan administered an injection upon her pursuant to which she became restless and semi-conscious; when she regained consciousness, she found herself in the train where Rakesh Singh was present. He told her that they are going to Deema Pur. PW-2 told Rakesh Singh that she wanted to return to her home; he gave her something in the water by virtue of which she lost her senses and when she regained consciousness, she found herself in a room. She was informed that this room was located in an area where there were ULFA activities and in case she raised her voice, she would be killed. Rakesh Singh then took her to a place in a forest. He used to administer medicines mixed in water to her

pursuant to which she remained out of her senses and restless. He also used to threaten her with a knife. PW-2 used to weep and cry because she was missing her family and children. She spoke to Priya Harshvardhan and informed him that she wished to go to her brother and children.

12 On 01.02.2009, brother of PW-2 (Kamaljeet Singh-PW-1) came to their room where PW-2 had been confined. PW-2 then accompanied her brother and returned back to Delhi. She denied that she was medically examined. She admitted that her jewellery and balance cash of ₹30,000/- was brought back by her to Delhi. She was unaware as to what had happened to ₹30,000/- (out of ₹ 60,000/-). She admitted that Ex.PW-1/F was a statement given by her wherein she had stated that cash of ₹30,000 and jewellery had been brought back by her.

13 The witness was subjected to a lengthy cross-examination. She admitted that several workers were working in her house at different timings. Her mother-in-law and children used to remain at home and her husband and father-in-law used to go for work. They had a permanent lady housemaid. She admitted that at the time when the altercation took place between herself and her husband, her mother-in-law and children were in the lobby. Rakesh Singh was visiting their house daily to carry out the job of the electrician.

She admitted that after taking 'prashad' which was offered to her by Rakesh Singh she became numb. She did not report the matter to anyone as she had not associated this feeling with the 'prashad'. She discovered this fact when she was in Assam where Rakesh Singh used to give her medicines pursuant to which she used to become lifeless and numb. She admitted that when she met Rakesh Singh on 10.11.2008, it was day time. Her mother-in-law and maid servant were also there. Her children were not at home. She did not disclose to her in-laws nor to her parents that she was being blackmailed by Rakesh Singh. She denied the fact that she had a love affair with Rakesh Singh. She denied the fact that she had gone with him voluntarily and that there was no coercion upon her.

14 In her cross-examination, the witness was also confronted with her earlier statement i.e. her statement recorded under Section 161 of the Cr.PC (Ex.PW-2/DA). She was evasive. On most of the questions which were put to her, she could not remember whether it was Priya Harshvardhan who had taken her on his motorcycle to New Delhi Railway Station or Rakesh Singh who came back to the place where an auto rickshaw was parked and he accompanied her after he had left his motorcycle. She admitted that she had stated in her earlier statement that she had stayed in a hotel for 3 days with

Rakesh Singh. She could not remember whether during her three days stay at the Hotel, she had a bath or she had gone to the toilet or whether she was confined to bed during that time. She could not remember the mode of conveyance used by her to reach the hotel. She denied the suggestion that Rakesh Singh had purchased new clothes for her to accompany her to Siliguri or that she had signed the invoice bill by virtue of which a television and a DVD player in the name of Rakesh Singh had been purchased. She admitted that she was conscious when she had signed the document Ex.PW-1/F; its contents had been read over to her and she had put her signatures upon it; she had signed this document in Assam.

15 PW-1 (Kamalpreet Singh) was the brother of PW-2 on whose complaint the present FIR had been registered. He deposed that his sister had been married to Amardeep Singh in the year 1994 and was living in West Punjabi Bagh. On 11.11.2008, he received an information from Amardeep Singh that his sister (PW-2) had left her house to go to the market but since then had not returned back. PW-1 reached Delhi (from Patiala) with his mother where he was informed that Amardeep Singh had already lodged a missing report. On search of his sister, she could not be located. The matter was again reported to the police. FIR was finally registered only

on 28.01.2009. In the course of investigation, police suspected that his sister might be in Assam with Rakesh Singh. PW-1 accompanied the police party to Assam where his sister was recovered. Rakesh Singh had led them to a room where his sister was found. PW-2 was not medically examined. She came back to Delhi along with her cash of ₹30,000/- and jewellery which she was wearing. She was not medically examined. Accused Rakesh Singh was arrested in his presence.

16 In his cross-examination, he admitted that accused Rakesh Singh led them to a house where there were six rooms and then to another room which was locked from outside and on Rakesh Singh unlocking the room, he found his sister present there in a semi conscious condition.

17 The police party who had apprehended the accused and got recovered PW-2 from Assam were PW-13 (SI Khemender Pal Singh) accompanied by constable Umesh Tiwari (PW-3).

18 PW-13 has deposed that on the date of recovery (01.02.2009), accused Rakesh Singh led them to his room which was bolted from outside. Accused Rakesh Singh opened the room and 'H Kaur' (PW-2) was present inside that room. She was identified by PW-1 as his sister. The house owner Inder

Kumar Singh and one Babu Hazarika were also examined by him. PW-2 denied medical examination. She gave a written statement (Ex.PW-1/F).

19 In his cross-examination, he admitted that the room from where PW-2 was recovered had only one takhat and no other goods except certain wearing apparels. No gas cylinder or television was found there.

20 PW-3 had also accompanied PW-13 in the search party. He deposed that accused Rakesh Singh led them to a place where 5-6 rooms were in line. Out of those 5-6 room the accused pointed out one room which was bolted from outside. This room was opened and 'H Kaur' was recovered from them. She was identified by her brother. There was a gali outside this room and passersby were moving in the street. PW-2 had been sent for medical examination. The accused was arrested in his presence.

21 Another material witness is PW-7 Mohd. Babu Hazarika who was a resident of Assam and was a taxi operator. His testimony is to the effect that he was driving the taxi which was boarded by Rakesh Singh who was accompanied by his wife (identified as PW-2). PW-7 took the couple to a hotel where he left them and he was asked to come back again to take them for an excursion. 2-3 days later, he took them to a rented accommodation which Rakesh Singh had taken on rent at ₹500/- per month. 10-15 days

later, Rakesh Singh called him at the tenanted room and requested him to arrange for a gas cylinder which was provided by PW-7 to him at his rented accommodation where Rakesh Singh was staying with his wife.

22 In his cross-examination, he stated that he always found Rakesh Singh accompanied by his wife in the rented accommodation. There were 5-7 tenants living in that house. The wife of the accused Rakesh Singh (PW-2) cooked meal for them on gas cylinder which he provided to them. Both of them had also gone for a tour. He did not find PW-2 at any point of time in a semi conscious or an unconscious condition. They used to talk while they were travelling in the taxi. There was a television and cooking vessel in the rented accommodation apart from wearing apparel. The couple was residing happily and there was no quarrel between them. He later on learnt that police had arrested accused Rakesh Singh.

23 These are the material witnesses who had been examined by the prosecution. From the testimony of PW-2 what can be deciphered is that PW-2 had an unhappy marital status with her husband. Rakesh Singh started visiting her house at Punjabi Bagh in April, 2009 and continued to do so on an everyday basis till September, 2009. Her elder son had developed intimacy with Rakesh Singh. PW1 also had a friendly relationship with

Rakesh Singh and this is clear from the fact that he used to even call her on her mobile phone and discuss her family members.

24 On the fateful day i.e. on 11.11.2008, PW-2 had taken her jewellery and ₹60,000/- in cash and gone out of the house. This was a voluntary act. Her submission that she was threatened by Rakesh Singh that in case she did not pay the money, he would disclose her telephone conversation with Rakesh Singh to her husband is of little credibility for the reason that if this was a fact, she would have at best taken the cash to pay to Rakesh Singh (which he was demanding) and not the jewellery. The fact that she stayed with Rakesh Singh at various places at Naraina, Delhi and thereafter in a hotel room in Assam and was finally recovered from Siliguri which was after a period of 2- ½ months substantiates the submission of the learned defence counsel that all this could not have happened if there was continuous harassment and coercion upon the victim. The victim was 33 year old lady. Being a fully conscious adult and the statement of PW-7 showing that she was always being addressed as the wife of Rakesh Singh and she had accompanied Rakesh Singh in his taxi not only to the hotel but also to the rented accommodation which had been provided by himself; the couple had also gone for excursion tours where they stayed happily; PW-2 was never

found in semi conscious or unconscious condition; she even cooked meal for PW-7 on the gas cylinder which he had provided to them dispels the version of the prosecution that the sister was either under threat or she was being extorted. PW-7 was an independent witness and it is not as if the prosecution has chosen to cross-examine him; the testimony of PW-7 was in fact the version recorded by the police in the course of their investigation. This version of PW-7 seals the fate of the case; the Trial Court not giving any credence to the testimony of PW-7 has been unable to appreciate the testimony in the right perspective. The Trial Court had wrongly relied upon the shoddy and discreditable version of PW-2 who appears to have blowing hot and cold and changing her version only to save her honour as she admittedly being a married woman had left the company of her husband and her children to join Rakesh Singh for reasons better known to her and had travelled long distance from Delhi to Assam and then to Siliguri where she was living in a rented accommodation where 6-7 other tenants were living in that accommodation. She knew how to use a mobile and in fact the whole story appears to have started from the mobile calls which were allegedly exchanged between her and Rakesh Singh which was the bone of contention. Nothing prevented her from making a telephone call to her family. Even

presuming that PW-2 did not have the mobile phone, there is nothing in her version which could suggest that she had made efforts to borrow a mobile phone from her neighbours (5-7 tenants were living in the adjacent area); the passersby were walking on the streets. She did nothing of the sort. PW-2's act in accompanying Rakesh Singh appears to be wholly voluntary and with her own consent. Testimony of the witnesses has to be appreciated as a whole; no single version can be picked up to discredit the other evidence and that too the testimony of a witness (PW2) who is also wholly dishonest and nothing short of a liar.

25 The fact that there was no extortion and coercion upon the victim is further fortified by the fact that she had returned back with the cash and jewellery taken by her. Ex. PW-1/F which is an admitted document written by her reflects the true picture. PW-2 has admitted that she has signed this document after it had been read over to her, explained to her; she thereafter signed it. In fact there were categorical questions put to her by the defence counsel and she admitted all of them. Ex.PW-1/F shows that PW-2 had accompanied her brother back to Delhi on 01.02.2009. She did not want to get herself medically examined; nothing wrong was committed upon her; the cash of ₹30,000/- and her jewellery was with her which she had taken back

with her. Her categorical statement that nothing wrong was committed upon her speaks volumes. It is not as if the veracity of this document is in doubt. This is an admitted document. PW-2 having executed this document, why the contents of this document were not appreciated by the trial Court is unexplained. This document (Ex.PW-1/F) supports the submission of the defence that PW-2 had accompanied Rakesh Singh voluntarily; there was no coercion upon her; jewellery and cash taken by her was brought back by her safely; nothing wrong was committed upon her.

26 In this document, PW-2 stated that she did not wish to get herself medically examined. PW-2 has also stated this on oath. PW-1 on oath admitted that no medical examination was conducted upon his sister. This version is different from the version of PW-3. PW-3 who was the accompanying constable in the search team has stated that the victim was medically examined. There was no medical record which has been placed on record. Learned defence counsel rightly points out that an adverse inference for non-production of the medical record has to be drawn as if the MLC of the victim had been produced before the Court, the question of coercion or pressure upon the victim would have been ruled out as there were no injuries upon her person; if there was any pressure or coercion, the MLC would have

reflected vice-versa; this MLC has been withheld by the prosecution for ulterior motives. This submission of the learned defence counsel cannot be ignored.

27 The vehement submission of the learned APP for the State that the room from where the victim was recovered was bolted from outside which clearly shows that the victim had been kept in confinement is an argument which this court cannot appreciate. The victim was recovered on 01.02.2009 at about 06:00 AM in the morning. Rakesh Singh was on duty at that time. He had probably left the room earlier in the morning and had bolted the door from outside in order not to disturb PW2. Had it been a case where there was a confinement of the victim, she would have stated so on oath. She had not stated that she had been confined. Her version is that Rakesh used to administer intoxicant in water upon her pursuant to which she used to remain restless and semi conscious. PW-7 had dispelled this version. He has stated that on all the occasions (which were several) when PW-2 accompanied Rakesh in his taxi she was happy and was making conversations. She even cooked food for him on a gas cylinder which he had supplied to the couple in their rented accommodation. The room was bolted from outside as it was early morning hours and being a cold winter month (01.02.2009) in Siligiri

when Rakesh Singh had left for his work, he had closed the door from the outside. This argument is hardly in support of the prosecution.

28 Accused Rakesh Singh had been convicted under Sections 342/506/385 as also Section 365 read with Section 120-B of the IPC. Accused Priya Harshvardhan had been convicted under Section 365 read with Section 120-B of the IPC.

29 To prove an offence under Section 365 of the IPC, kidnapping or abduction with an intent to wrongfully and secretly confine is the necessary ingredient. 'Wrongful confinement' has been defined under Section 340 of the IPC. It is a restraint upon a person to prevent that person from proceeding beyond certain circumscribed limits. 'Abduction' has been defined under Section 362 of the IPC. There must be a force by a deceitful means to go from one place to another. Section 385 describes the offence of extortion. 'Extortion' has been defined in Section 383 of the IPC. There must be a dishonest inducement putting that person in fear of any injury or delivery of property.

30 None of the ingredients of the aforementioned sections stand proved. This is clear from the discussion supra. None of the offences is made out against the appellants. Benefit of doubt must accrue in favour of the appellants.

They are acquitted of the charges levelled against them. Their bail bonds stand cancelled and surety discharged.

31 Appeals allowed and disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 31, 2018

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