

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-230-DB of 2012 (O&M)

Reserved on : 15.03.2019

Date of decision : 27.03.2019

Umesh Kumar alias Bhola and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepinder Brar, Advocate,
for appellant No.1.

Mr. Mohan Singh Rana, Advocate,
for appellant No.2.

Mr. Vishal Garg, Addl. A.G., Haryana.

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RAJIV SHARMA, J.

1. This appeal is instituted against judgment dated 08.12.2011 and order dated 09.12.2011, rendered by learned Additional Sessions Judge, Palwal, in Sessions Case No. 160 dated 24.12.2009. Appellants Umesh Kumar alias Bhola and Pawan Kumar along with co-accused Pooja were charged with and tried for the offences punishable under Sections 365, 364A, 302, 201 read with Section 120-B of the Indian Penal Code. The appellants were convicted and sentenced as under :-

<u>Offence</u>	<u>Sentence</u>
Section 365 read with Section 120-B of the Indian Penal Code	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of ₹ 5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of 1 year and 9 months.
Section 364A read with Section 120-B of the Indian Penal Code	To undergo imprisonment for life and to pay a fine of ₹ 5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of 3 years.
Section 302 read with Section 120-B of the Indian Penal Code	To undergo imprisonment for life and to pay a fine of ₹ 5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of 3 years.
Section 201 read with Section 120-B of the Indian Penal Code	To undergo rigorous imprisonment for a period of 7 years and to pay a fine of ₹ 5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for a period of 1 year and 9 months.

All the sentences were ordered to run concurrently. Co-accused Pooja was acquitted.

2. The case of the prosecution, in a nutshell, is that application (Ex.PK) was moved by Lal Chand (PW.5) to the police. It was stated by Lal Chand in the application (Ex.PK) that his son Rajiv had not returned. His missing report was lodged on 27.08.2009. He had suspicion that some unknown person had kidnapped his son. FIR (Ex.PA) was registered by the

police on 01.09.2009. On 02.09.2009, Duli Chand (PW.4) received a ransom call. The caller demanded ₹ 50,00,000/- within 24 hours with a threat that in case ransom is not paid, Rajiv would be killed. After receiving the call, Duli Chand, Lal Chand and Basant Lal informed the police about the factum of demand of ransom. Call details (Ex.PS) were obtained. Pooja was arrested on 04.09.2009. She made disclosure statement (Ex.PB). Thereafter, Umesh was also arrested. He made disclosure statement (Ex.PC). Pawan Kumar was also arrested. He suffered disclosure statement. The dead body was not recovered. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution.

4. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case against the appellants beyond reasonable doubt. He supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.1 ASI Abdul Hamid testified that on 01.09.2009, he was posted as IO in Police Station Camp Palwal. Lal Chand presented him an application. He lodged formal FIR Ex.PA. He started investigation. On

02.09.2009, Duli Chand met him and told that he had received a telephonic message, and an unknown person demanded ransom of ₹ 50,00,000/- from him for release of Rajiv. He recorded his statement. The call details were also obtained. The phone from which call was made belonged to Naresh resident of Bainsla Colony, Faridabad. Naresh met him and told him that he had handed over the SIM of his phone to his maternal uncle's son Deepak resident of Kosi Kalan. He did not record the statement of Naresh. Deepak told him that he had given his SIM to Pooja for charging. Pooja was arrested by him on 04.09.2009. She was interrogated by him. Pooja told him that she had given SIM to her friend Umesh alias Bhola. Her disclosure statement is Ex.PB. On 07.09.2009, SHO/Inspector Narender Kumar interrogated accused Umesh. He made disclosure statement Ex.PC. Similarly, on 07.09.2009, accused Pawan was also interrogated by SHO/Inspector Narender Kumar. Pawan made disclosure statement Ex.PD. In his cross-examination, he deposed that he made enquiries from the students who were studying with Rajiv at tuition. However, he could not give their names. He did not record their names in case diary. He neither recorded statements of Deepak and Naresh under Section 161 Cr.P.C nor joined them in investigation. No recoveries were made on the basis of disclosure statements made by the accused in his presence.

8. PW.3 Laxman deposed that he used to sell vegetable after coming to Palwal near railway bridge, Palwal. On 26.08.2009, he saw Pawan, Umesh and Rajiv on a motor cycle. The motor cycle was being driven by Umesh. Pawan was pillion rider. Rajiv was sitting in between Umesh and Pawan. At about 9.00/9.15 PM, when they were crossing his

cart, he asked Rajiv where he was going. He told that he was going to Kithwari. Thereafter, this witness had gone to his village through a Tempo. Second day, he had gone to Aligarh to buy buffalo. He kept on sorting out buffaloes in the nearby villages of Aligarh. However, he could not find any suitable buffalo. He returned to his village after five days. He heard from his children that Rajiv was kidnapped. He went to the house of Lal Singh. He told Lal Singh and Rattan Lal that on 26.08.2009, he had seen Rajiv with Umesh and Pawan on a motor cycle. He knew Umesh and Pawan, because they used to come to his cart to buy vegetables. He identified them in the court. In his cross-examination, he was confronted with his statement Ex.DA, wherein specific reason for going to Aligarh for purchasing buffaloes was not mentioned. He did not know the names of villages which were visited to purchase buffaloes. Lal Chand was his neighbour. His statement was recorded by the police on 03.09.2009.

9. PW.4 Duli Chand testified that Rajiv used to attend his tuition classes at the house of Hem Chand. He used to attend his classes at 8.00 PM. On 26.08.2009, he had gone to attend his tuition classes as usual. However, he did not come back. Next morning, they had gone to Police Station to lodge missing report. He was using mobile No. 9818502702 since 2003. On 02.09.2009 at 9.00 AM, he received a call from mobile No.9313151125. The caller asked him whether he was maternal uncle of Rajiv. The caller demanded a ransom of ₹ 50,00,000/-. He threatened him not to lodge a report to the police. He along with Basant Lal and Lal Chand went to the Police Station. On 08.09.2009, an identity card of Rajiv was recovered from the house of Umesh. A mobile phone and SIM were also

recovered. The motor cycle was also recovered on 02.09.2009 at the instance of accused Umesh and Pawan. The accused confessed before the police that Rajiv was put in a sack and some stones were put in another sack. After tying the same, body of Rajiv was thrown in Agra canal. Accused Umesh also disclosed that clothes and book of Rajiv were burnt to ashes and were thrown in canal distributory.

10. PW.5 Lal Chand is father of the deceased. He deposed that on 26.08.2009, his son Rajiv had gone to attend his tuition classes as usual. He did not come back. A missing report was lodged with the police vide DDR Ex.PJ on 27.08.2009. He lodged complaint Ex.PK. On 02.09.2009, Laxman came to him and told that he had seen Rajiv with two boys, namely Pawan and Umesh. Then Duli Chand received a telephone call for demand of ransom. The dead body of his son was not recovered.

11. PW.6 Nand Ram Dagar deposed that on 07.09.2009, he was called by the police to conduct diving operation at Agra canal. He called five divers who were in his contact. He along with his team conducted diving operation at 2.00 AM. He found two gunny bags tied from their openings. One gunny bag was full of stones weighing about 15/20 kgs. The second gunny bag was tied from its opening and was torn from its side. The gunny bag was opened to take its contents. The contents were some rubber pieces like tyre tube. Both the gunny bags were taken into possession by the police vide memo Ex.PL. In his cross-examination, he stated that no human remains were found in gunny bags.

12. PW.7 Narender Kadyan, DSP, deposed that accused Umesh and Pawan made disclosure statements Ex.PC and Ex.PD on 07.09.2009. They

were taken to the place of occurrence. They disclosed the manner in which Rajiv was killed. On 08.09.2009, accused Umesh alias Bhola got recovered a mobile phone. The call details of the phone were obtained on the same day from Computer Branch. On 09.09.2009, Umesh alias Bhola was interrogated. He got recovered motor cycle. Umesh alias Bhola and Pawan Kumar again made disclosure statements Ex.PE and Ex.PF on 11.09.2009. They got identified the place of occurrence. Rough site plan of that place was prepared vide Ex.PO. The identity card of Rajiv was got recovered by accused Pawan Kumar from his residence. On 11.09.2009, a team of FSL headed by Dr. Ajmer visited the spot. However, no incriminating evidence was gathered. He arranged for a diving team from Kurukshetra on 13.09.2009. In his cross-examination, he deposed that on 07.09.2009, recovery of gunny bags was effected from Agra canal. It was night time. The motor cycle was got recovered by accused Pawan from the shop of Mahender Saini. He did not record the statement of Mahender Saini or any other person residing in the vicinity of that shop.

13. PW.8 ASI Anoj Kumar had prepared the scaled site plan Ex.PR.

14. PW.11 HC Hem Raj deposed that he had done computer course. He was asked by the Investigating Officer to provide call details pertaining to mobile No. 9313151125. He obtained call details from Reliance Company vide Ex.PS.

15. PW.12 Constable Amrit Singh deposed that Pooja made disclosure statement Ex.PB. In his cross-examination, he deposed that he did not know whether any recovery was effected in pursuance of disclosure

statement or not. Pooja was arrested on 04.09.2009.

16. PW.13 Basant Lal deposed that his grand-son Rajiv had gone to attend his tuition as usual on 26.08.2009. He did not come back. He moved application to the police. Thereafter, on 02.09.2009, Duli Chand, his relative, received a telephone call on his mobile. He was asked to pay ransom of ₹ 50,00,000/-. Thereafter, they informed the police in this regard. On the same day, Laxman Singh, a vegetable vendor, came to their house and informed that Rajiv was taken by Pawan and Umesh alias Bhola on motor cycle towards Kithwari. On 07.09.2009, they were called by the police. They were taken to a canal as Umesh and Pawan disclosed that they had thrown dead body of Rajiv in canal. Pawan made disclosure statement Ex.PC. He attested the same. One sack was recovered by the police from the canal. It was torn. Another sack was also recovered by the police from the canal. It was containing stones. He along with the police went to the house of Umesh alias Bhola on 08.09.2009. Umesh got recovered one mobile set and one mobile SIM. The motor cycle was also got recovered by Umesh and Pawan on 09.09.2009. Accused Pawan got recovered Identity Card of Rajiv from his house on 11.09.2009.

17. The Forensic Science Laboratory report is Ex.P4. Blood was detected on exhibit-1 (jute sack pieces).

18. The report with regard to result of polygraph test is Ex.P5. According to this report, on 11.02.2010, during pre-test interview, accused Umesh Kumar gave his confessional statement regarding the case, in the presence of Shri Rajan, Laboratory Assistant, and Shri Surender Singh, A.D. (Lie Detection). He confessed that he with the help of accused Pawan had

kidnapped and committed the murder of Rajiv. On the same day, due to shortage of time, polygraph test of suspect could not be conducted, because a lot of time was utilised in recording the confessional statement, knowing the case history and conducting pre-test interview etc. So his polygraph examination was scheduled for 20.04.2010. However, during the scheduled examination on 20.04.2010, he refused that he had given any confessional statement. Accused Umesh had given answers in 'No' on all the nine issues. According to test and analysis of polygrams, responses of Umesh appeared to be deceptive at issues No.1, 2, 3, 4, 5, 7, 8 and 9, and inconclusive at issue No.6. Similarly, on 11.02.2010, during pre-test interview, accused Pawan Kumar gave his confessional statement regarding the case, in the presence of Shri Rajan, Laboratory Assistant, and Shri Surender Singh, A.D. (Lie Detection). He confessed that he with the help of accused Umesh had kidnapped and committed the murder of Rajiv. On the same day, due to shortage of time, polygraph test of suspect could not be conducted, because a lot of time was utilised in recording the confessional statement, knowing the case history and conducting pre-test interview etc. So his polygraph examination was scheduled for 20.04.2010. However, during the scheduled examination on 20.04.2010, he refused that he had given any confessional statement. Accused Pawan Kumar had given answers in 'No' on all the nine issues. According to test and analysis of polygrams, responses of Pawan Kumar appeared to be deceptive at issues No.1, 2, 3, 4, 5, 6, 8 and 9 and inconclusive at issue No.7.

19. In this case, dead body was not recovered. The police has relied upon the statement of PW.3 Laxman Singh, who had seen deceased Rajiv in

the company of the appellants on 26.08.2009. According to him, on the second day, he had gone to Aligarh to buy buffaloes. However, he was confronted with his statement Ex.DA made before the police, where it was not so recorded. He did not know even the names of the villages, which were visited by him to purchase buffalo. The statement of PW.3 Laxman Singh has rightly been discarded by the trial court.

20. PW.4 Duli Chand deposed that on 02.09.2009, he had received a call from mobile No. 9313151125 at 9.00 AM. He was asked to pay ransom of ₹ 50,00,000/-. The police got the call details vide Ex.PS. Ex.PS has not been proved as per Section 65 of the Indian Evidence Act, 1872. PW.11 HC Hem Raj only deposed that he had obtained call details from Reliance Company. No Nodal Officer of the Reliance Company has been examined. No certificate was placed on record by the prosecution. There is a detailed procedure under Section 65-B of the Indian Evidence Act, 1872, regarding the manner in which electronic evidence is to be proved.

21. The case of the prosecution is that one Naresh had given the SIM of his mobile to Deepak. The police has neither examined Naresh nor Deepak, as per the statement of PW.1 ASI Abdul Hamid. It is also intriguing to note why Deepak would keep his phone for charging in the house of Pooja, to be used ultimately by Umesh.

22. The case of the prosecution is also that accused Umesh alias Bhola and Pawan Kumar had made disclosure statements, on the basis of which PW.6 Nand Ram Dagar was hired as diver. He went to the spot. He got recovered two sacks. However, dead body was not recovered from the sacks. He found only two sacks tied with their openings. One sack was full

of stones weighing about 15/20 kgs. The second sack was tied from its opening and was torn from its side. This bag contained only rubber pieces.

23. The deceased was the son of PW.5 Lal Chand. In case, ransom was to be demanded, father of the deceased was to be asked to pay the ransom amount. It is not believable that the accused would ask the maternal uncle of the deceased, namely PW.4 Duli Chand, to pay the ransom.

24. PW.5 Lal Chand, father of the deceased, testified that on 02.09.2009, Laxman came to him and told that he had seen Rajiv with two boys, namely Pawan and Umesh. As we have already discussed, statement of PW.3 Laxman Singh does not inspire confidence. According to PW.3 Laxman Singh, he asked Rajiv where he was going. Rajiv told him that he was going to Kithwari. In case, Rajiv was being taken forcibly, he would have raised hue and cry. The disclosure statements made by the appellants were after sustained interrogation. PW.1 ASI Abdul Hamid, in his cross-examination, has deposed that he had not joined Deepak and Naresh during investigation. According to PW.7 Narender Kadyan, DSP, the motor cycle was got recovered by accused Pawan from the shop of Mahender Saini. However, neither his statement nor the statement of any other person residing in the vicinity of that shop was recorded. There was no occasion for the accused to take away Rajiv's Identity Card to his house, more particularly when the case of the prosecution is that they had burnt the belongings of the deceased and threw them in the canal.

25. The case of the prosecution is based on circumstantial evidence. In order to prove a case based on circumstantial evidence, the chain must be complete. In the present case, the chain is not complete.

26. Accordingly, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The appeal is allowed. The judgment dated 08.12.2011 and order dated 09.12.2011 are set aside. Appellants Umesh Kumar alias Bhola and Pawan Kumar are acquitted of the charges framed against them, by giving them benefit of doubt. They be released forthwith.

(RAJIV SHARMA)
JUDGE

March 27, 2019
ndj

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes