

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.01.2020
Judgment pronounced on: 20.03.2020

CRL.L.P. 731/2019 & CRL.M.A.43519/2019 (Condonation of Delay)

STATE Petitioner
versus

PRABHJOT SINGH Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Dutta, APP with Insp. B.S. Gulia, P.S. Moti Nagar.

For the Respondent : None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

HON'BLE MR JUSTICE I.S MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present leave to appeal petition under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') assails the judgment and order dated 17.07.2019, emanating from FIR No.302/2010, under Sections 363/364-A/506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station- Moti Nagar, Delhi, whereby Mr. Prabhjot Singh (hereinafter referred to as 'the respondent') was *acquitted* of all the charges.

2. The findings of the trial court, as are necessary for the

adjudication of the present leave to appeal are adumbrated as follows:-

- (i) On 24.09.2010, Mr. Z (PW-2), the father of the prosecutrix X (PW-1) filed a complaint with Police Station – Moti Nagar, Delhi suspecting that his daughter had been abducted by an unnamed person.
- (ii) On the very same day i.e. 24.09.2010, at around 05:00 p.m. the prosecutrix X (PW-1), aged about 17 years 6 months, was recovered from the precincts of Moti Nagar Metro Station. Since the prosecutrix X (PW-1) was in the company of the respondent at that time and place, the latter was arrested and taken into custody.
- (iii) The allegations against the respondent were that on 24.09.2010 at about 09:00 a.m. he had kidnapped the prosecutrix X (PW-1) from the lawful custody of her parents without the latter's consent and had thereafter sent Short Message Service (SMSs) to Mr. Z, the father, demanding Rs.60,00,000/- as ransom for the release of the prosecutrix X.
- (iv) Subsequent upon the investigation, the prosecution charge

sheeted the respondent under Sections 363/364-A/506 IPC, as aforestated.

(v) The respondent denied the charges against him in toto and claimed trial.

(vi) In order to bring home the charges against the respondent, the prosecution examined, as many as, 16 witnesses amongst whom the crucial testimony is that of the prosecutrix X, her father Mr. Z, and her brother Mr. J who were examined as PW-1, PW-2 and PW-3 respectively.

3. In the instant case, the complaint Mr. Z (PW-2) — the father of the prosecutrix — stated that on 24.09.2010 Ms. X (PW-1) prosecutrix left the house at about 9.00 am for her college but she did not return back in time on that day. Thereupon PW2 and PW3 searched for the prosecutrix PW-1, however, failed to trace her whereabouts. On the same day at about 11.30 am, Mr. Z, her father (PW-2) received an SMS on his mobile phone 9999071171 from the mobile phone no. 9212725572 admittedly of that Ms. X, the prosecutrix herself, to the effect that “*agar ladhki ko jinda dekhna chahte ho to Rs. 60 lakhs ka intzamkar lo aur han koi hoshiyari mat dikhana varna...*”. According to the prosecution’s case, two more SMS were also received by Mr. Z

(PW-2) originating from the said mobile phone number of his daughter, at about 11.15 – 11.30 am. Mr. Z (PW2) then called Mr. J, the brother of the prosecutrix (PW-3) and told him that he had received a call from his sister's phone and that he could hear her crying and therefore asked him to find out about her whereabouts. Mr. J (PW-3) the brother of the prosecutrix then called on the mobile number of Ms. X and the call was allegedly taken by some unknown person, who told him to make arrangement of Rs. 60 lacs within one hour, and warned him that he should not try to be clever otherwise Ms. X would be in peril. Mr. J (PW3) also received some more SMSs about 13-14 in number on his mobile phone, which were of similar nature.

4. In the backdrop of this factual scenario, on the same day i.e 24.10.2010, at around 05:00 pm, in the evening, the police recovered Ms. X (PW-1). PW-1 was produced before CWC and was, thereafter, released in the custody of Mr. Z vide handing over memo. (Ex.PW1/E). ASI Santosh (PW6) duty officer registered FIR number 302/2010 (Ex.PW6/A) and also made endorsement on rukka (Ex.PW6/B). On 24.09.2010 at about 4.30 pm, the copy of the FIR (Ex.PW6/A) and original tehrir (Ex.PW2/B) were handed over to investigating officer/SI Raghubir Singh, (PW-15) through Ct. Rajesh (PW-8) for investigation

and PW-15 collected the call details records of the mobile number of the prosecutrix (PW-1). Investigating Officer S.I. Rajinder Singh (PW-16) further obtained the CFSL result regarding the examination of the subject mobile phone number (Ex.PW11/A).

5. The respondent in his statement under section 313 Cr.P.C has categorically deposed that *“Ms .X and he used to study together in same school and they have been friend since then, they were in love with each other and they wanted to marry each other but father and brother of Ms. X did not approve of their relationship; as there was difference in financial status and social position of his father and the father of the prosecutrix Ms. X. The father of Ms. X, in connivance with the police, had got the present case registered and been falsely implicated.”*

6. Mr. Ashish Dutta, learned APP appearing on behalf of the State would canvas that, since the victim has categorically identified the respondent during her examination in the court, she has duly supported the case of the prosecution. The father of the prosecutrix (PW-2), who was a material witness, has also supported the case of the prosecution and identified the case property i.e. mobile phone. The learned APP would, therefore, urge that the present is a fit case for grant of leave to appeal.

7. Having heard learned APP and after perusing the entire evidence on record, we find ourselves unable to agree with the submissions made on behalf of the State, for reasons elaborated hereunder:-

- a) The FIR was evidently ante-timed and same issue was duly considered by the trial court in following manner-

“ 79. If Mr. J (PW-3) received a call from Mr. Z (PW-2) at about 11.15 -11.30 am, left his house after about half an hour and Mr. Z (PW-2) reached the Police Station Moti Nagar after about one hour of Mr. J (PW-3) reaching there, then it was not possible for the DD No. 17A and FIR (Ex. PW6/A) to be registered on 24.09.2010 at 12.20 p.m. As per the evidence of Mr. J (PW-3), after receiving his father's call at 11:15-11:30 am, he left his house in half an hour which would be about 11:45 am – 12:00 noon and he reached there in 15 minutes which would be about 12:00 noon – 12:15 pm and his father Mr. Z reached there after one hour which would be about 01:00 -01:15 pm. The prosecution has failed to explain as to how the FIR (Ex. PW 6/B) was registered at 12:20 pm when apparently. Mr. Z, father of the prosecutrix (PW-2) was not even in the Police Station.

78. It is clear from the judicial record that the FIR (Ex. PW6/B) appears to be ante timed.”

- b) Further, on the date of the incident, it is evident from a conspectus of the evidence and testimony of the prosecutrix that, she was not under any threat by the respondent and was in fact voluntary accompanying

him everywhere. The deposition of the prosecutrix, PW-2 is riddled with contradictions and does not inspire confidence; as elaborated by the trial court in the following words-

*“ FREE MOVEMENT OF THE PROSECUTRIX ON
24.09.2010*

79. As per the prosecutrix, Ms. X prosecutrix (PW-1) was kidnapped by the accused for ransom while the accused has claimed that she was never kidnapped and was moving freely on 24.09.2010.
80. Ms. X, prosecutrix (PW-1) has deposed in her cross-examination recorded on 25.10.2018 in the pre-lunch session in para 1 that **“I had received the call from the accused at about 5.00 pm and he had directed me to come to Moti nagar metro station. I was perhaps at Shadipur metro station at that time. I was there for about 15-20 minutes The police was already present at Moti Nagar metro station when I had reached there and had taken me in a car. I had seen that the accused was with the police in a separate car.”**
81. Ms. X, prosecutrix (PW-1) has deposed in her cross-examination recorded on 25.10.2018 in the post lunch session in para 12 that **“It is correct that there are two separate queues for the gents and ladies for entering the metro station and the ladies are frisked by the lady police. Again said there is only entrance and the ladies are directed to go to the side where the lady police checks them.”**
82. Ms. X, prosecutrix (PW-1) has deposed in her cross- examination recorded on 25.10.2018 in

the post lunch session in para 17 that **“ I did not raise any alarm nor made any complaint to the metro security personnel when the accused had snatched my phone.”**

83. Ms. X, prosecutrix (PW-1) has deposed in her cross- examination recorded on 25.10.2018 in the post lunch session in para18 that **“Accused had turned around so I could not see what he was messaging from my phoneAccused was not carrying any weapon with him... I did not request any fellow passenger to give their phone to me so that I could contact my parents.”**
84. Ms. X, prosecutrix (PW-1) has deposed in her cross examination recorded on 25.10.2018 in the post lunch session in para 19 that **“On 24.09.2010 while I was with the accused from 9.00 am till 5.00 am, I did not raise any alarm nor shout for help nor make any complaint to the fellow passengers or security persons nor try to escape.”**
85. Ms. X, prosecutrix (PW-1) has deposed in her cross-examination recorded on 25.10.2018 in the post lunch session in para 31 that **“Again said , I have remembered now that on 24.09.2010 I had watched the movie “Dabang” with the accused at Fun Cinemas, Moti Nagar from 12.00 noon to 3.00 p.m and we had left the movie hall at 2.00 pm approximately.”**
86. Ms. X, prosecutrix (PW-1) has deposed in her cross-examination recorded on 25.10.2018 in the post lunch session in para 32 that **“It is correct that the accused had gone separately to purchase the movie tickets and at that time I was at market of Moti Nagar metro station. It is correct that accused had gone to purchase the tickets at about 11.35 am and I entered the movie hall at about 12.00 noon. It is correct that accused and I were separately frisked by**

the security of movie hall.”

87. Ms. X , prosecutrix (PW-1) has deposed in her cross-examination recorded on 26.10.2018 in para 1 that she did not remember whether or not the accused had left Fun Cinema, Moti Nagar about 15 minutes prior to my leaving the same. She also did not remember whether or not they had left together from Fun Cinema.
88. Ms. X, prosecutrix (PW-1) has deposed in her cross-examination recorded on 26.10.2018 in para 8 that she did not remember whether or not the accused was with her when she went from Fun Cinema to Moti nagar metro station.
89. Ms. X, prosecutrix (PW-1) has deposed in her cross- examination recorded on 26.10.2018 in para 11 that she did not remember at what point of time the accused had come to her after coming out of the movie hall at Fun Cinema although they had boarded the metro together.
90. It is clear from the record especially the evidence of Ms. X, prosecutrix (PW-1) that she was moving freely during the period of her alleged kidnapping. The accused had even turned away from her and was not carrying any weapon. Ms. X, prosecutrix (PW-1) was moving at the different metro stations freely and is not make any complaint to anyone including co-passengers, the police and the security who were available there. She was went to the Fun Cinema alone and then was in the company of the accused and they watched a movie “Dabang” together. She did not make any complaint at the movie hall also.
91. The allegation against the accused of kidnapping Ms. X, prosecutrix (PW-1) appears to be false as her movement was free all the time .”

c) The complaint PW-2 and PW-3, who are the father

and brother of the prosecutrix, respectively, gave contradictory testimonies as found by the learned Trial Court in the following words:-

“ 94. However, Mr. J, brother of the prosecutrix (PW-3) has deposed that he received a call from Mr. Z, his father (PW-2) at about 11:15 -11:30 am that Ms. X, prosecutrix (PW-1) had called Mr.Z and she was crying over the phone. Then Mr.J (PW-3) called on the mobile phone of Ms.X (PW-1) and an unknown person picked up the phone and threatened Mr. J. Thereafter, Mr.J (PW-3) told about this fact to Mr.Z (PW-2) who then went to the college of Ms.X, prosecutrix (PW-1) for verifying the said information.

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96. Mr. Z, father of the prosecutrix (PW-2) has deposed that he reached the Police Station before 12:00 noon while Mr. J brother of the prosecutrix (PW-3) has deposed that Mr.Z, his father (PW-2) reached at the police station after about one hour of his reaching there and the time as calculated above in about 01:00-01:15 pm.

97. The prosecution has not furnished any explanation regarding the contradictions in the evidence of Mr.Z, father of the prosecutrix (PW-2) and Mr.J, brother of the prosecutrix (PW-3).

98. **The contradictions are too major and cannot be ignored. They strike at the root of the prosecution story.”**

d) Furthermore, it is axiomatic from the record and

deposition of the prosecution witness that, the complaint (Ex. PW 2/B) was ambiguous and unspecific and was only regarding a suspicion of Ms. X, the prosecutrix (PW-1) being kidnapped by some unknown person. The trial court in this regard recorded as follows:-

“102. On perusal of the FIR (Ex.PW6/A) and the complaint (Ex.PW2/B) that the name of the culprit or the accused is not mentioned. The FIR and complaint are completely silent regarding the name of the accused and it is only mentioned that there is suspicion that an unknown person has kidnapped the prosecutrix.”

- e) Lastly, we are of the considered view that there is nothing on the record before this court, which even remotely establishes the intention of the respondent to kidnap the prosecutrix X, or the fact that he sent the alleged ransom messages; and resultantly the relevant finding of the trial court in this regard with which we concur, are as follows:-

“105. There is nothing shown by the prosecutrix in the SMSs to prove that it the accused who had sent the alleged SMSs.

106. It is clear on perusal of the record especially

the evidence of Ms.X, prosecutrix (PW-1) and as per the CDRs that she had made several calls to the accused from 9:01am till 11:24am including the calls at 9:01 am, 9:18 am , 9:24 am , 9:42 am, 9:43am , 9:44am , 10:53 am , 11:09am , 11:14 am and at 11:24 am on 24.09.2010.

107. However, in her cross examination recorded on 25.10.2018, Ms. X, prosecutrix (PW-1) had deposed that at 9:30 am, the accused had snatched both her mobile phones from her and that she had not talked to the accused on 24.10.2010 in the morning before she had met him.
108. Here, it will be important to mention that although Ms. X , prosecutrix (PW-1) has deposed that she did not have her mobile phone with her after 9:30 am on 24.09.2010 but Mr. Z, father of the prosecutrix (PW-2) has deposed that he had received a call from the mobile number of his daughter and his daughter was crying on the phone.

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111. No explanation has been furnished by the prosecution as to why the mobile phone was not recovered nor seized on 24.09.2010 itself when the mobile phone was with the prosecutrix when she was recovered by the police.

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116. Contrary to evidence of Ms.X , prosecutrix (PW-1) ASI Ashok Kumar (PW-14) has deposed that **“We got the secret information at about 6:00 pm when we were near fun cinema hall. Before reaching fun cinema hall, we had gone to tonga**

stand and main market Moti Nagar for searching the prosecutrix and accused. The place where information was at a distance of about 700-800 metres from PS. The place where we received information is thickly populated area and having a market. The place where accused and prosecutrix were spotted was at a distance of about 300-400 metres from the place where we received the secret information. We reached at that place on our respective two wheelers and parked the same at the place where we found both of them. Both of them were found sitting on the pavement (chabutra) of metro station. We made inquiries both of them for about 40-45 minutes. People did not gather at that place. Both of us were in police uniform. I do not remember now if the recovery memo Ex.PW1/D was prepared by IO while sitting or standing however the same was prepared at the spot. The parents of the prosecutrix were not informed from the spot. IO had interrogated the accused at the spot but his disclosure was not recorded at that place. The relatives of the prosecutrix were informed by the IO after we reached at the PS i.e after 07:00 pm.”

117. Investigation Officer SI Raghbir Singh (PW-15) has deposed that “The place where accused and prosecutrix were spotted was at a distance of 500 metres from the place we received information. Both the prosecutrix and accused were found sitting on the chabutra at Moti Nagar metro station. I made inquiries from prosecutrix as well as accused. I remained at the spot for about 30 minutes. We were in uniforms when we apprehended the prosecutrix as well as the accused. The public persons did not gather at the spot. I informed the father of the prosecutrix from the spot.

The prosecutrix returned to the PS with me on my scooter and accused was with HC Ashok on his motorcycle. I informed senior officials regarding the recovery of the prosecutrix. I have not made any public person witness of the recovery of prosecutrix. I did not made any inquiry from anyone at fun cinema regarding the prosecutrix and accused.”

118. It is clear from the evidence of Ms. X, prosecutrix (PW-1) that she was all alone at the Moti Nagar metro station when the police recovered her from there and she was not recovered from the custody of the accused nor he was with her since he was already arrested by the police and seated in a separated car.

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121. The prosecutrix has neither deposed nor explained the words used in those threats nor the impact of those alleged threats upon her. Admittedly there were many persons at the Metro Stations, inside the metro, at the Fun Cinema, in the movie hall etc, where she was taken allegedly by the accused but she preferred not to raise any alarm nor shouted for help nor complained to anyone including the public persons, police personnel, security guards etc, who were available. She did not even try to run away or escape although there was sufficient and ample opportunity.

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162. Even the mobile phone of the accused was not seized on 24.09.2010 when he was arrested but on 25.09.2010, as the seizure memo (**Ex. PW14/E**) and no explanation for

the same is coming forth from the prosecution.

163. The fact that all the mobile phones were not seized on 24.09.2010 indicates that the possibility of the phones being tampered with or manipulated or contents changed or altered cannot be completely ruled out. The cross examination of Mr. Ch. E Sai Parsad (PW-11) also cannot be ignored that such tampering and manipulations are possible.
164. Therefore, reliance cannot be placed upon the report of the CFSL experts regarding the examination of the mobile phones..

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- 176. There does not appear to be any criminal intention and mens rea on the part of the accused and his defence appears to be plausible.”**

8. It would be relevant to observe that, a plain reading of the paragraphs extracted, hereinabove, leaves no manner of doubt that the testimony of the Prosecutrix belies the prosecution's case in toto. The same is contradictory in material particulars, and does not have a ring of truth in it. In our view, therefore, the same is neither reliable nor creditworthy.

9. It is settled law that the Appellate Court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so. [Ref: **Muralidhar and Ors. vs. State of Karnataka** reported as (2014) 5 SCC 730].

10. In the case of **State (Govt. of NCT of Delhi) vs. Kuldeep @ Kallu & Anr.**, reported as **2019 (1) JCC 298 (Del.)**, a Division Bench of this Hon'ble Court has held that:-

"It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective."

11. For the foregoing reasons, we find no warrant to interfere with the findings arrived at by the trial court, in arriving at the conclusion that, the material evidence on record does not inspire confidence and is unreliable and unworthy of credence; and further in the absence of the compelling and substantial reasons, it would be wholly unsafe to base the conviction of the respondent on the basis of the contrary and contradictory evidence on record.

12. The present petition for leave to appeal is accordingly dismissed. The pending application also stands disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

MARCH 20, 2020
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