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

% *Date of decision: September 19, 2023*

+ **CRL.A. 1220/2019**

JOGINDER KUMAR Appellant

Through: Mr.Kunal Malhotra, Advocate
(DHCLSC) with Mr.Ravinder Gaur,
Advocate.

versus

STATE & ANR. Respondents

Through: Mr.Tarang Srivastava, APP for the
State/R-1.
Mr.M.L.Yadav, Advocate for R-2.

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+ **CRL.L.P. 106/2020**

STATE Petitioner

Through: Mr.Tarang Srivastava, APP for the
State with Inspector Praveen Kumar,
P.S.Jyoti Nagar.

versus

MONU KUNDU & ANR. Respondents

Through: Mr.M.L.Yadav, Advocate for R-1.
Mr.Prateek and Mr.Sushil Kumar,
Advocate for R-2.

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+ **CRL.L.P. 433/2023 & CRL.M.A. 23042/2023**

STATE GNCT OF DELHI Petitioner

Through: Mr.Tarang Srivastava, APP for the
State with Inspector Praveen Kumar,
P.S.Jyoti Nagar.

versus



VIKAS @ VICKY

..... Respondent

Through: Mr.C.M.Grover, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. **Crl.A.1220/2019** has been filed by the appellant Joginder Kumar (Complainant in FIR), father of the victim-child under Section 372 of the Code of Criminal Procedure, 1973 (in short, "CrPC") against the impugned Judgment dated 07.05.2019 of the learned Judge, Special Court (POCSO Act) by which the accused-respondent No. 2 Monu @ Kundu was acquitted for the offences charged under Sections 363, 364A & 120B of the Indian Penal Code, 1860 (in short, "IPC").
2. **Crl.Leave Petition Nos.106/2020 and 433/2023** have been preferred by the State by which the State has sought Leave to Appeal against the impugned Judgments dated 13.05.2019 and 07.05.2019 respectively, by which the accused namely Monu @ Kundu and Sonu (respondents in Crl.L.P.106/2020) have been acquitted for the offences under Sections 363/364A/120B IPC and Vikas @ Vicky (respondent in Crl.L.P.433/2023) though found guilty for the offence under Section 363 IPC and sentenced to undergo rigorous imprisonment for three years and fine of Rs.30,000/-, in default, to undergo simple imprisonment of 6 months. However, they were acquitted for the offences under Sections 364A/120B IPC.
3. **The case of the prosecution in brief** is that on 04.11.2011, a child Harsh @ Nonu aged 5 years, son of appellant (in Crl.A.1220/2019) was kidnapped while he was playing on the road outside his house, at about 5



PM in the evening by some unknown persons. Subsequently, on the statement of the father of the child, the FIR No. 434/2011 under Section 363 IPC was registered at Police Station Jyoti Nagar. On 05.11.2011, a call from a MCD Booth was received informing that his son was in captivity and a sum of Rs.25 lakhs was demanded as ransom for the release of his son. On 06.11.2011, an information was received by the police official from Police Station Baghpat that one child has been recovered from the village Hamidabad, U.P. The police official and the complainant met them at the spot and recovered the child. The MLC of the child was conducted and marks of rope on his neck were found aside from other injuries and abrasions. The witness PW-9 Salamu disclosed that the child was kidnapped by the accused Vicky @ Vikas and respondent No. 2 Monu @ Kundu (in CrI.A.1220/2019) tied the victim child by a rope around the neck and left him at the sugarcane field. Further evidence was collected and the statement of the child Harsh @ Nonu was recorded who stated that it was Vikas @ Vicky who along with his friends had taken him on a motorcycle and after entering into Baghpat, accused Monu @ Kundu had tied him, and he had become unconscious. On regaining consciousness, he went to a village in Baghpat.

4. The police after completion of investigation, filed the Charge Sheet against the accused Vikas @ Vicky, Monu @ Kundu and Sonu under Sections 120B/363/364A IPC for being involved in the conspiracy to kidnap the child and for making ransom call. **The Charges were framed** against all the three the accused on 23.04.2012 under Sections 120B, 363/120B and 364A/120B IPC who pleaded not guilty and claimed trial.

5. Statements of accused were recorded under Section 313 Cr.P.C, who claimed that they were falsely implicated in the present case.



6. The statements of 15 prosecution witnesses were recorded and the Learned ASJ vide the Judgment dated 07.05.2019 convicted the accused Vikas @ Vicky under Section 363 IPC while the other two accused i.e. Monu @ Kundu and Sonu were acquitted of the charges for the offences under Sections 363/364A/120B IPC.

7. Aggrieved by the said acquittal of the two accused i.e. Monu @ Kundu and Sonu for the offences under Sections 363/364A/120B IPC and acquittal of accused Vikas @ Vicky for the offence under Section 364A/120B IPC, the Appeal and the Criminal Leave Petitions have been preferred by father of the child and the State, respectively.

8. The grounds pleaded in the Appeal and Leave to Appeal are that the testimony of the complainant and of the child who were throughout consistent, have not been considered in the right perspective and no contradiction could be brought forth in their cross-examinations. It was asserted that certain discrepancies which were noted in the impugned Judgment, were inconsequential as due to lapse of time, the capacity of the child and witnesses to recapitulate the events after a long time was impacted. Reliance is placed on the judgment of this Court in CrI.A.284/2002 titled Siddqua Vs. Narcotic Control Bureau decided on 12.12.2006. It was asserted that in Krishna Mochi & Ors. Vs. State of Bihar (2002) 6 SCC 81, the Apex Court has deprecated the passing of order of acquittal on the basis of normal and minor discrepancies. Reliance was further placed in the case of State of Rajasthan Vs. Smt. Kalki (1981) 2 SCC 752. It is further argued that the child had categorically deposed about he being taken away by the accused Vikas @ Vicky (respondent in CrI.L.P.433/2023) on a motorcycle and that the respondent Monu @ Kundu had joined them subsequently and



had tried to strangle him by tying a rope. The testimony of PW-9 Salamu present at the time of recovery of the child, has also not been considered in the right perspective. The MLC report of the child reflecting marks of rope and the abrasions on his neck, has also not been appreciated in the correct perspective. The Driving Licence and Loan Receipt of Muthoot Finance issued in the name of accused Monu @ Kundu were recovered from the scene of crime pursuant to his disclosure statement which is a relevant piece of evidence under Section 27 of the Indian Evidence Act. It is asserted that the same proves the presence of Monu @ Kundu at the scene of crime. The CDR call details and the location chart proved by the Nodal Officer of Tata Tele Services Ltd. have also not been considered which reflected that the caller while making ransom calls was present at Tikri village within the jurisdiction of Baghat. It was argued that PW2-A father of the child had specifically deposed about having received the ransom call and the CDR records established the presence of the respondent Monu @ Kundu. It is asserted that despite the evidence, these aspects have been overlooked while the benefit of doubt is extended to the accused persons.

9. **It is further asserted on behalf of the State that in the statement** under Section 161 CrPC of the victim, the name of the three accused namely Vikas @ Vicky and his friends Monu @ Kundu **and Sonu** were disclosed. All the three accused were found present at the house of accused Sonu who was then arrested on 6.11.2011. It is further claimed that the testimony of PW-3 Constable Kamlesh Kumar and PW-8 Constable Rukesh Tyagi who corroborated about the ransom calls, have been ignored. There was sufficient material on record which resulted in conviction of Vikas @ Vicky for the offence under Section 363 IPC but the same evidence has not been



appreciated and considered against the other two accused Monu @ Kundu and Sonu to whom benefit of doubt has been extended and they have been acquitted of the charges framed against them. Reliance was placed in the decision of Rana Partap Vs. State of Haryana, wherein it was observed that “*while appreciating the evidence of witness, approach must be whether the evidence of witness read as a whole appears to have a ring of truth and consistent with the prosecution case or to find out whether it is against the general tenor of the case. Their evidence cannot be doubted merely because they belong to opposite faction. All that is required is that their evidence is to be scrutinized with care and caution*”.

10. The learned APP on behalf of the State in CrI.L.P. 433/2023 had questioned the impugned Judgment on the ground that despite the clinching evidence of ransom having been demanded, the accused-respondent Vikas @ Vicky has been wrongly acquitted for the offences under Sections 364A/120B IPC. The impugned Judgment of acquittal qua the respondents Monu @ Kundu and Sonu in CrI.L.P.106/2020 for the offences under Sections 363/364A/120B IPC have also been challenged in view of the submissions made on behalf of the prosecution. A prayer is therefore, made to set aside the impugned Judgments of acquittal passed in respect of respondent Vikas @ Vicky under Section 364A/120B IPC and to convict the respondents Monu @ Kundu and Sonu for the offences under Section 363/364A/120B IPC.

11. The submissions heard as advanced by the learned Counsel for the parties and perused the material on record.

12. The prime witness of the crime in this case was victim child Harsh @ Nonu, who appeared as PW2 and deposed that while he was playing outside his house, the accused Vikas @ Vicky and Monu @ Kundu had taken him



to Baghpat firstly on the motorcycle and thereafter, accused Vikas @ Vicky ran away from the unknown place in the way to Baghpat. Thereafter, Monu @ Kundu had taken him to Baghpat by train. In the way, accused Monu @ Kundu had served him with Chowmin and on reaching Baghpat, he left him in the sugarcane fields. He then tied his neck with sugarcane scrap and left from there due to which, he became unconscious. On regaining consciousness, he came out from sugarcane field and subsequently, was brought back to Delhi.

13. The child victim also gave the statement under Section 164 CrPC to the police exhibited as Ex.PW2/A. He was cross-examined by the prosecution while he denied that the accused Sonu was also present near the motorcycle when he was being kidnapped by accused Vikas @ Vicky. He deposed that he had never seen the accused Sonu. The victim child also deposed that he had not met Sonu at any point of time. His cross examination by the learned APP also did not yield any incriminating admission and he remained consistent that he had not seen accused Sonu ever and denied that he has not deliberately identified him.

14. The victim had also deposed that he had not given the name of the associates of accused Vikas @ Vicky to police in his statement and had never visited the police thereafter. In his statement Ex.PW2/DA, however, he had mentioned the name of accused Monu @ Kundu. He explained that he had not stated that the names of other accused which were disclosed by the accused Vikas @ Vicky during his kidnapping. He further denied that he had ever gone to Tihar Jail for TIP of accused Vikas @ Vicky and Monu @ Kundu. He further deposed that he had not raised any alarm when accused persons were taking him or he was not under impression that he had



been kidnapped. Interestingly, in his statements Ex.PW2/A and Ex.PW2/DA, he has not mentioned that accused Monu had tied his neck with the sugarcane scrap. It was also not mentioned that accused Monu had given him Chowmin to eat.

15. From the above-mentioned testimony of the child victim, there appears no incriminating evidence against the accused Sonu and he has been rightly acquitted by the impugned Judgment. **We therefore dismiss the Leave to Appeal filed by the State qua the respondent No.2 Sonu (in CrI.L.P. 106/2020).**

16. The child had not been consistent in his versions in regard to the role of accused Monu. In his statement Ex.PW2/DA to the police, he stated that he was kidnapped by accused Vikas @ Vicky and his friend. He stated that the rope in his neck was tied by the friend of accused Vikas @ Vicky. Thereafter, in his statement under Section 164 CrPC (Ex.PW2/DA), he again stated that one Vikas @ Vicky initially kidnapped him and on the way, his friend Bholu met them who took him to a sugarcane field and tied him with a rope. The learned ASJ observed that the name of accused Monu had not appeared in any of the statements till he appeared as a witness in the Court. In his testimony before the Court, he again gave different versions regarding his kidnapping and the role of accused persons involved in his kidnapping. The child witness was consistent about the role of accused Vikas @ Vicky but because of discrepancies and the inconsistencies with variations in his statements, his testimony vis-à-vis could not be relied upon against accused Monu @ Kundu and Sonu.

17. Learned ASJ observed that either the victim came to know about the name of the accused Monu @ Kundu from the conversations with accused



Vikas @ Vicky or may have picked up his name while they were talking. The learned ASJ further observed that the name of accused Monu @ Kundu was stated by the victim for the first time before the Court. Pertinently, no TIP of accused Monu was got conducted during investigation despite the fact that in the statement under Section 164 CrPC, instead of Monu, the name of Bholu was recorded.

18. The second incriminating piece of evidence on which reliance was placed was the CDR of the mobile phone from which the ransom call was made. The case of the prosecution was that the said mobile phone was recovered from the accused Monu @ Kundu. However, the learned ASJ observed that the statement of the I.O. to the extent that the said mobile phone was recovered from the accused Monu, is not corroborated from the records as no phone i.e. either handset or SIM card has been seized in this case and thus, there was no basis for the prosecution to conclude that the ransom calls were made by the accused Monu @ Kundu.

19. The prosecution relied upon other incriminating piece of evidence against the accused Monu @ Kundu which were his documents. As per the prosecution the recovery of Driving Licence and the Loan Receipt of Muthoot Finance in the name of accused Monu, was made from the sugarcane field where the child had been detained pursuant to the disclosure statement of Monu. Interestingly, the recovery of these two documents has not been made by the police in the first instance when the child was recovered from Baghpat but were subsequently recovered after the arrest of the accused Monu. Such recovery of these two documents from an open field subsequent to the recovery of the child does not seem genuine. It is difficult to accept that the accused Monu @ Kundu would leave these



documents for the convenience of the police to recover them and to then create a link of the crime with Monu @ Kundu.

20. The learned ASJ has rightly observed the variations in the testimonies of the victim child and the prosecution witnesses to conclude that the name of accused Monu may have been subsequently introduced at the instance of accused Vicky or other witness. There is no TIP of the accused Monu conducted and the alleged CDR records relied upon by the prosecution also do not connect the accused Monu with the ransom calls in the absence of any cogent evidence. The recovery of his driving licence and loan receipt of Muthoot Finance issued in his name, are highly unbelievable. Thus, the learned ASJ has rightly observed that the prosecution has not been able to prove its case against the accused Monu beyond reasonable doubt and has acquitted him of the charges.

21. Further, while the prosecution witnesses have consistently proved that the child had been kidnapped by the accused Vikas @ Vicky but significantly, there is no evidence led to prove the ransom calls having been made by Vikas @ Vicky or by Monu @ Kundu in conspiracy with Vikas @ Vicky. There being no conclusive evidence of the ransom calls having been made by the accused Vikas @ Vicky with his associates, he has been rightly acquitted for the offences under Section 364A read with 120B IPC.

22. To conclude, we find that the respondents Monu @ Kundu and Sonu have been rightly acquitted of all the charges and the respondent Vikas @ Vicky has also been rightly given the benefit of doubt under Section 364A/120B IPC.

23. In view of above discussion and in the facts and circumstances of this case, there is no merit in the Appeal filed by the father of the victim and the Leave to Appeal petitions preferred by the State, which are hereby



dismissed.

24. The pending applications, if any, are also disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 19, 2023/akb

Signature Not Verified

Digitally Signed By: RAHIL
SHARMA

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CRLA. 1220/2019 & connected matters

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