

Auab and Another Vs. State of Uttarakhand

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Court : Uttaranchal

Decided On : May-16-2013

Judge : The Honourable Chief Justice Mr. Barin Ghosh & Servesh Kumar Gupta

Appeal No. : Criminal Appeal No. 97 of 2008 with Criminal Appeal No. 187 of 2012

Appellant : Auab and Another

Respondent : State of Uttarakhand

Judgement :

Ghosh, C.J. (Oral)

At 6:30 PM of 19th January, 2006, a missing report was lodged by Sabir (PW5). In that, it was stated that Mahran, son of Rahman (PW1), was returning from school, but since then, he did not reach home and searches made out did not yield any result. At 0015 AM of 20th January, 2006, PW1 informed the police that around 11/11:30 PM of 19th January, 2006, he received a phone-call from an unknown person, who stated that his son is in the custody of the caller, and that, payment of ransom of Rs.6 lacs would ensure release of his son. PW1, thereafter again on 20th January, 2006, informed the police that around 6:00 PM, he received yet another call when the caller demanded a ransom of Rs.5 lacs as a condition precedent for release of his son. On 21st January, 2006, once again, a call was

received and, then, the ransom claim was reduced to Rs.2 lacs. While deposing in Court, PW1 held out that this call was received in the evening (Saayen). According to the prosecution, this call was received by PW1 in the evening of 20th January, 2006 and not on 21st January, 2006, which is said to be the version of PW1 expressed before the Court. In the event, this call was received in the evening of 21st January, 2006 and not in the evening of 20th January, 2006, then, on 22nd January, 2006, PW1 received yet another call when the caller disclosed to PW1 the location, where the ransom amount was to be handed over. According to the prosecution, this happened on 21st January, 2006 and, on receiving this information, police went to the place of occurrence followed by an encounter resulting in death of Shaheed, escape of an unknown person from the place and recovery of the victim. Victim disclosed involvement of Dilshad. Accordingly, he was arrested. Dilshad, in custody, disclosed that it was Auab, a rival of PW1 in trade, who hatched the conspiracy. Accordingly, Auab was also arrested. They were charged for offences punishable under Sections 364 A and 120B of the Indian Penal Code. The Court below, after considering the evidence on record, convicted both Auab for offence punishable under Section 120B of IPC and Dilshad for offences punishable under Sections 364A and 120B of IPC and appropriately sentenced them. It is the contention of the counsel, appearing for Dilshad, that while the encounter took place on 21st January, 2006, on 22nd January, 2006 the location for handing over of the ransom was disclosed.

2. We think that the analysis of the evidence of PW1 would indicate that the first call for the ransom was received by him at around 11/11:30 PM on 19th January, 2006. On 20th January, 2006, two calls were received by PW1, when the initial ransom demand of Rs.6 lacs was reduced to Rs.5 lacs and, thereafter, to Rs.2 lacs. On 21st January, 2006, the location of the place for handing over of ransom amount was disclosed. Police, on 21st January, 2006, went to the place, where the ransom was to be handed over and faced an encounter when Shaheed died, victim was recovered and an unknown person escaped. The question is, whether the prosecution has been able to establish involvement of Dilshad and Auab with the crime, which was attempted by Shaheed and the other unknown person. In the instant case, victim deposed as PW2. While in the witness box, he stated that Dilshad and Shaheed were together all throughout until such time PW2 was taken

by Shaheed to Jwalapur. A look at the evidence of PW2 would show that in a motorcycle, Shaheed, Dilshad and PW2 travelled from Roorkee to Piran Kaliyar Sharif. There, PW2 was allowed to speak to PW1 from a public booth. At that time, he was threatened by Shaheed of dire consequences, if he cries or makes a scene. According to PW2, Dilshad was present all throughout. If that piece of evidence was acceptable to the Court below, then prosecution was not required to do anything further to convince the Court that it has been able to make out a good case against Dilshad for offences punishable under Sections 364A and 120B of IPC. The Court below, having had accepted this piece of evidence and there being no reason, at least no reason has been pointed out by the counsel appearing for Dilshad, to take a different view, there is no scope of interference with the judgment under Appeals, insofar as the same held that the prosecution has been able to prove its case against Dilshad for offences punishable under Sections 364A and 120B of IPC.

3. The question, therefore, remains, whether the prosecution was able to put home the charge as was framed against Auab. PW2 has not stated a word about Auab. PW1 has not indicated anything, which would show involvement of Auab with the crime in question. Similarly, neither PW3, nor PW4, or PW5, or PW6, or PW7, or PW8, or PW9 has stated anything, which would suggest that Auab was even remotely connected with the crime in question. It is Inspector Kailash Panwar (PW10), who was the investigating officer, who stated in Court that Dilshad had disclosed to him that it was Auab, who had made the plan for the crime and was the main conspirator. This piece of evidence is not acceptable in law. Therefore, the conclusion would be that the prosecution failed to bring on record any evidence suggesting even a remote connection of Auab with the crime in question. We, accordingly, hold that Auab has been convicted by the judgment under Appeal without there being any evidence on record against him. That part of the judgment, by which, Auab has been convicted for offence punishable under Section 120B of IPC is, accordingly, interfered with and the same is set aside. Auab is on bail. His bail bond is cancelled and sureties are discharged. He need not surrender. Dilshad is also on bail. His bail bond is cancelled. He is directed to surrender forthwith for serving out the remaining part of the sentence.

4. Criminal Appeal No. 187 of 2012 is, accordingly, dismissed and Criminal Appeal No. 97 of 2008 is allowed.

5. Let a copy of this judgment be sent to the Court below along with the lower court records for compliance.

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