

Parkash Chand Vs. State

Parkash Chand Vs. State

SooperKanoon Citation : sooperkanoon.com/1135265

Court : Delhi

Decided On : Mar-18-2014

Judge : G.P. Mittal

Appellant : Parkash Chand

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

21. t February, 2014 Pronounced on:

18. h March, 2014 + CRL. A. 342/1999 PARKASH CHAND Appellant Through Mr. Haneef Mohammad, Mr. Kishor Behuria & Ms. Harpreet Kaur, Advocates versus STATE Respondent Through Mr. Rajat Katyal, APP CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.

1. After having been convicted for the offence punishable under Section 364A of the Indian Penal Code, 1860 (IPC) in Sessions Case No.59/96 arising out of FIR No.222/95 and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, the appellant has approached this Court by way of the instant appeal.

2. The appellant and one Virender Singh (since deceased) faced trial for the earlier said offence for having kidnapped a child Nitin, aged 3 years and demanded a ransom of Rs. 5 lakh from PW4 (father of the kidnapped child) for release of the child. The complainant (PW4) and his brother Satpal (PW1) were also threatened on telephone that if any information regarding kidnapping of the child was given to the police, the child would be killed.

3. In fact, on 19.05.1995 at about 09:00 p.m., D.D. No.22 (Ex. PW3/A) was lodged by PW4 regarding missing of the child Nitin. The police, through this D.D., was informed that at about 10:00 am, Nitin aged 3 years was playing in the street outside his house. After some time, when PW4 looked for the child, he was found missing. Since PW4 did not lay any suspicion with regard to kidnapping of the child, he did not get the FIR registered. Subsequently, on 24.05.1995 at about 08:30 am, he received a telephone call from an unknown person on his land line phone bearing No.2114254. The caller informed him that the child was in his custody and that if the police was informed about the kidnapping of the child, he (the child) would be killed. A ransom of Rs. 5 lakh was also demanded and the complainant was required to keep the same ready by 25.05.1995. According to the case set up by the prosecution, the complainant got frightened and instead of informing the police about the telephone call, he (PW4) discussed the matter with one of his neighbours (Master Ji) who assured him to get the telephone call taped as he had a known person in the Telephone Exchange. On 26.05.1995 at about 03:50 pm, a telephone call was again received from the same person and PW4 was reminded to arrange the money and to be present at the Railway Station alongwith the ransom money. It is alleged that PW4 alongwith his brother Satpal PW1 remained present at Shahdara Railway Station from 10:30 am to 02:30 pm on 27.05.1995, but they returned as no one contacted them at the Railway Station. It is alleged that on 28.05.1995 at about 07:45 p.m., the kidnapper again called PW4 and asked him to wait for his call on the next day. The complainant PW4 was frightened and therefore, for the first time he made a report Ex. PW4/ A to the police on 30.05.1995 on the basis of which case FIR No.222/95 was registered.

4. On 02.06.1995, another call was received by PW1 while PW4 was also present in the house. They were informed to reach the Khekra Railway Station with Rs. 5

lakh and to get the child. They were again threatened that if the police is informed, the child would be killed. The complainant passed on this information to S.I. Kuldeep Singh of Special Staff, East District (PW7). A raiding party was organised by SI R.C. Sharma (PW8). PW8 alongwith the complainant, PW7 and other police officials reached Railway Station Khekra. PW4 noticed Virender Singh (co-convict and since deceased) who was working as a compounder with appellant Parkash Chand present there. He (PW4) informed PW8 that Virender Singh (since deceased) was working as a compounder with his brother-in-law Parkash Chand and he might be aware of the whereabouts of the child. Said Virender Singh (since deceased) was intercepted and on interrogation, he informed the police about the kidnapping of the child. A ransom note Ex. PW1/ E was also recovered from the pocket of his shirt. A disclosure statement Ex. PW1/ B was made by him. In pursuance of the disclosure statement, the police party along with the complainant reached the tenanted room of Virender Singh (since deceased) and the kidnapped child was recovered from the appellants custody. A recovery memo Ex. PW1/A in respect of the child was prepared. Version of kidnapping as detailed by child Nitin was recorded on an audio cassette at Baghpat in question-answer form.

5. On appellant pleading not guilty to the charge, the prosecution examined eight witnesses. Rajpal, the complainant (PW4) is the star witness of the prosecution. He deposed about the lodging of the missing report, the FIR, the receipt of various calls from an unknown person and then visit to Railway Station Khekra leading to the recovery of the child from the room of Virender Singh (since deceased) from the appellants custody. PW1 corroborated PW4s testimony in all material particulars. HC Pushpa (PW5), HC Lakhi Singh (PW6), SI Kuldeep Singh (PW7) and SI R.C. Sharma (PW8) deposed on similar lines and corroborated PW4s testimony with regard to the recovery of the child.

6. In his examination under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the appellant denied that any ransom calls were made by him along with his co-accused in furtherance of his common intention on 24.05.1995, 26.05.1995, 28.05.1995 or 02.06.1995. The appellant also denied that any ransom was demanded or that the child was recovered from his custody in pursuance of the disclosure statement made by his co-convict. The appellant stated that he got

married to Rekha, complainant Rajpals sister on 27.02.1990. He gave a loan of Rs. 2,20,000/- to the complainant. PWs Rajpal and Satpal promised to return the amount. When he (the appellant) went to receive the amount from the complainants house, he and his coconvict Virender Singh (since deceased) were falsely implicated in the case in conspiracy with the police.

7. Co-convict Virender Singh (since deceased) stated that he was arrested from outside his examination centre at Mahamana Malviya Inter College, Meerut, Khekra on 01.06.1995 where he had taken his intermediate examination from 2:00 p.m. to 05:00 p.m. The ransom note was also planted on him and he was falsely implicated in the case.

8. On appreciation of evidence, the Trial Court found that the audio cassette alleged to be prepared by the I.O. could, at the most be treated as a statement of the child u/s 161 Cr.P.C. The same did not inspire confidence and was otherwise also not admissible in evidence. The Trial Court further observed that the lack of making DD entries in the local Police Station at the place of recovery and non-joining of independent witnesses at the time of arrest of the appellant and recovery of the child were mere irregularities and did not affect the substratum of the prosecution case which was fully proved. The appellant and the co-convict Virender Singh (since deceased) were thus, convicted and sentenced as stated earlier, though the co-convict Virender Singh has died and the appeal filed by him has abated.

9. The learned counsel for the appellant has urged that the appellant is a close relation (brother-in-law) of the complainant. It is beyond comprehension that the appellant would kidnap a child of his own wifes brother for ransom. In fact, the complainant owed a sum of Rs. 2,20,000/- to the appellant. The appellant was called at complainants house to return the said amount. When the appellant reached the complainants house, he was falsely implicated in the case in collusion with the police. The learned counsel for the appellant further urges that the false implication is fortified from the fact that nobody had seen the appellant taking away the child; it is not the prosecution case that the ransom money had ever been arranged by the complainant either at the time of their first visit to Railway Station

Shahdara or at the time of their second visit at Railway Station Khekra for release of the child. The learned counsel for the appellant also urges that the alleged ransom letter Ex. PW1/ E does not bear the complainants address; it is unbelievable that a ransom note without any address will be kept by the co-convict in his pocket. It is further urged that no person from the Telephone Exchange has been examined to prove the calls received from any particular telephone on the complainants telephone nor any investigation was carried out by the police to identify the phone from which alleged ransom calls was made. Nonmaking of the DD entry at the local Police Station (Khekra) before or even after the recovery of the child and non-presence of any public witness including the landlord Man Singh of the co-convicts rented room at the time of the alleged recovery of the child from the appellants possession belies the prosecutions version. The learned counsel for the appellant strenuously canvasses that the claim of both PWs 1 and 4 that they had attended to the ransom calls coupled with various other contradictions in the testimonies of prosecution witnesses make the prosecution version doubtful and lends credence to the defence version.

10. On the other hand, learned APP for the State has urged that the testimony of the complainant and the official witnesses examined by the prosecution are natural and credible. He contends that minor contradictions and variations are bound to occur in the deposition of truthful witnesses and the same do not, in any way, affect the veracity of the prosecution case.

11. We have given our thoughtful consideration to the contentions raised on behalf of the parties.

12. First of all, we may say that we are not going to attach any importance to the ransom note Ex. PW1/ E alleged to have been recovered from Virender Singh (since deceased) in view of the Full Bench decision of this Court in Sapan Haldar & Anr v. State, 191 (2012) DLT225 wherein it was laid down that neither Section 4 nor Section 5 of the Identification of Prisoners Act, 1920 includes handwriting of an under trial in the term Measurements and thus, neither the police officer conducting an investigation nor a Magistrate could direct an accused to give his sample handwriting/ signatures. It was held that this power was available with the

court concerned only under Section 73 of the Indian Evidence Act, 1872 or under Section 311A of the Cr.P.C. inserted by virtue of amendment w.e.f. 2006 which empowered a Magistrate to direct a person to give his specimen signatures/ handwriting. Otherwise also, once the victim had been called to the Railway Station Khekra to pay the ransom, it is unbelievable that the culprit would still be ready with a ransom note to hand it over to the complainant. Similarly, as held by the Trial Court, recording of statement of the child victim on an audio cassette is again of no consequence as, at the most, the same could have been treated as a statement under Section 161 of Cr.P.C. The same is not admissible and therefore, does not further case of prosecution.

13. It is true that there is no witness to the actual removal of the child from the lawful guardianship of his parents. That however, would not weaken the prosecution case. Similarly, the fact that there is no proof that the money was arranged by the complainant either at the time of the visit to the Railway Station Shahdara or at the time of the raid at Railway Station Khekra by itself would not belie the case of the prosecution. We have carefully examined the testimonies of the prosecution witnesses which we find to be natural and credible and convincing, whereas the defence version is found to be improbable and unbelievable. It may be noted that since the complainant did not suspect anybody behind disappearance of the child, only a missing report was submitted to the police and DD No.22 was recorded on 19.05.1995 with regard to missing of child Nitin. Had the complainant or, for that matter, his brother PW1 Satpal conspired to implicate their own sisters husband (the appellant) falsely in this case, they would not have initially lodged a missing report and subsequently an FIR. Their conduct exhibits a natural concern for the safety of their child. Although, they received a ransom call for the first time on 24.05.1995 at about 08:30 a.m., but they did not approach the police as they were very much concerned about the safety of the child. PWs 1 and 4 even went to the Railway Station Shahdara as per the call made by the caller. But, they failed to get the child. It was only on 28.05.1995 when they received a call at about 07:45 p.m. and the caller called them a liar in spite of their insistence that they did visit the Railway Station Shahdara and non-receipt of any subsequent call from the caller that they got frightened and had to approach the police under compulsion for the safety of their child.

14. The learned counsel for the appellant has referred to the discrepancy in the statement of PWs 1 and 4 because PW1 stated that he received the call, whereas PW4 stated that we received the call. However, it would be fruitful to refer to the testimony of PW4 in this regard who has categorically stated that both PWs 1 and 4 were residing together in House No.322, Gali No.5, Balbir Nagar, Shahdara as a joint family. They had one telephone installed at their house. Therefore, the factum of the telephone call dated 24.05.1995 being claimed by PW1 to have been received by him and claimed by PW4 to have been received by them is not really a contradiction at all.

15. The child was allegedly recovered on 02.06.1995 pursuant to the apprehension of Virender Singh (since deceased) and his disclosure that the child was at his (tenanted room) with the appellant. Normally, an officer in-charge of a Police Station or a police officer making an investigation is expected to inform the police officer in-charge of the Police Station at the place where a search is to be made with regard to the commission of an offence. However, Section 166 (3) of the Code empowers an Investigating Officer to cause such search himself as if such place were within the limits of his own Police Station or to send a copy of the record to the officer in-charge of the Police Station if there is a reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made might result in evidence of the commission of an offence being concealed or destroyed. This procedure, however, has not been followed by SI R.C. Sharma (PW8) in this case. PW8 was cross-examined in this regard and he testified that the local police was not informed because of shortage of time and that the accused might escape. At the same time, he stated that a DD entry was got recorded in the local Police Station after recovery of the child. However, copy of the said DD entry has not been placed on record by the police. Thus, even if it is assumed that the information regarding the search was not delivered to the local Police Station, it was only an irregularity and not an illegality to affect the case of prosecution. (State of Punjab v. Balbir Singh (1994) 3 SCC299. One has to be conscious of the fact that at small places (like Khekra), the information travels very fast and thus, PW8s testimony that they straightway went to the place where the child was kept (without going to Police Station Tateri) so that the child may not be moved seems plausible.

16. Of course, evidence has not been led that the ransom money was arranged by the complainant. It is, however, nowhere the requirement that the offence under Section 364A will not be complete unless the ransom money is arranged. What can be inferred from the conduct of PWs 1 and 4 is that they were not possessed of means to pay a sum of Rs. 5 lakh and, therefore, they wanted to meet and talk with the kidnapper. In any case, what is required to be proved for bringing home the guilt u/s 364A IPC is (i) the kidnapping or abduction of a person; (ii) threat to cause death or hurt to a person or a reasonable apprehension that such person (victim) may be put to death or hurt; and (iii) this threat should be to compel the government to do or abstain from doing anything or to any person to pay a ransom. Thus, non-arrangement of the ransom money neither belies the case of prosecution nor takes the case out of the purview of Section 364A IPC.

17. The learned counsel for the appellant has pointed out another contradiction in the testimonies of the prosecution witnesses, viz, PW7 stated that the I.O. had requested 15-20 persons to join the raiding party before conducting the search (at Tateri) but they declined to become a witness, whereas PW6 stated that no neighbour was requested to be witness to the search. This, to our mind, is not such a huge contradiction so as to belie the prosecution case and the natural testimonies of the witnesses. The official witnesses participate in a number of searches and sometimes they inter-mingle the facts of one case with another case. Thus, even if it is assumed that the landlord or the neighbours were not joined as witnesses to the search of the room, it would not affect the search which is duly proved from the testimony of the complainant (PW4) coupled with the statements of PWs 6, 7 and 8. The factual position that the small boy was recovered can hardly be disputed.

18. It is contended by the learned counsel for the appellant that neither the call details in respect of phone No.2114254 installed at the residence of the complainant were obtained nor any witness was cited or produced from the Telephone Department to prove that any calls were made by the appellant or his co-convict at the house of complainant. It is urged that the investigating agency has not carried out any investigation to find out the telephone from which the calls were allegedly made. We have perused the testimony of the IO (PW-8). He did

state that he visited the telephone department to collect the call record. He also stated that he moved an application for obtaining the said record from the telephone department. He added that he does not have copy of the application. A perusal of the Trial Court Record reveals that neither any witness was cited from the telephone department nor any investigation was carried out to find out as to from which telephone the ransom calls were made by the appellant/coconvict. A report of the call observations from 24.05.1995 to 29.05.1995 in respect of telephone No.2114254 is available in the Trial Court Record. The same has not been proved though certain phone numbers have been mentioned from which calls were received on the earlier said telephone but none of the number was connected to the appellant/co-convict. Undoubtedly, this aspect ought to have been investigated by the IO. This is a lapse on the part of the investigating agency. However, because of this lapse, the entire case of the prosecution cannot be thrown and the case has to be judged on the basis of the evidence adduced unless the defect or the lapse in the investigation completely falsifies the prosecution case. In this connection, we may refer to the report of Supreme Court in *Paras Yadav v. State of Bihar*, 1999 (2) SCC126 wherein it was held that wherever there are lapse or omissions committed by the investigating agency designedly or because of negligence, the prosecution evidence is required to be examined de hors such omissions to find out whether the evidence produced is reliable or not. It was observed that the conduct of the officials should not stand in the way of the Courts getting the truth. A reference can also be made to the report of the Supreme Court in *Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC517 and *Zahira Habibullah v. State of Gujarat*, (2004) 4 SCC158 19. We have ocular testimonies about kidnapping, ransom calls and threats on telephone. These statements, evidence and material cannot be disbelieved and discarded only for want of call records. Factum of kidnapping as noticed, stands proved beyond doubt and pale of any debate. Threats and demand for ransom have been disposed to. In our view, from the testimony of PW-4, which is corroborated by the testimony of PW-1 and the official witnesses, there remains no doubt that the complainants son Nitin got missing on 19.05.1995 in pursuance of which DD No.22 (Ex.PW-3/A) was lodged immediately in Police Post Jyoti Nagar, Shahdara. It is also established that on receipt of the ransom call on 24.05.1995 the

complainant and his family members were frightened and they were trying to get at the kidnapper to get the child safely. It is also proved that the ransom calls were again received thereafter on 26.05.1995 followed by the calls on 28.05.1995 and 02.06.1995. It is also established that the coconvict Virender Singh (since deceased and the proceedings have been abated against him) was apprehended from the Railway Station Khekra and that in pursuance of the disclosure statement Ex.PW-1/B made by him, the child Nitin was recovered from the appellant from the tenanted room of deceased co-convict Virender Singh.

20. Lastly, it is urged by the learned counsel for the appellant that since there was no apprehension to cause death or hurt to the victim, the offence under Section 364A IPC is not made out. Learned counsel for the appellant urges that, at the most, the appellant may be convicted under Section 363 IPC. We do not agree. We have carefully perused the testimony of PW4. The complainant was threatened on 24.05.1995 as also on 02.06.1995 that the complainant should arrange the ransom money and if the information is passed to the police, the child would be killed. Thus, on proved facts, all the ingredients of Section 364A, as stated hereinabove, are established.

21. In view of the foregoing discussion, we are of the opinion that the appeal is devoid of any merit; thus, the judgment of conviction and order on sentence passed by the Trial Court are affirmed and the appeal is dismissed. (G.P. MITTAL) JUDGE (SANJIV KHANNA) JUDGE MARCH18 2014 pst

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com