

Vishnu Vishwas Vs. State

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Court : Delhi

Decided On : Nov-05-2014

Judge : Pradeep Nandrajog

Appellant : Vishnu Vishwas

Respondent : State

Judgement :

\$~R-51 & 52 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: November 05, 2014 + CRL.A.729/2011 PARDEEP DEV Represented by: Appellant Ms.Arundhati Katju, Advocate with Mr.Akshay Sharma, Advocate along with appellant produced in custody. versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP SI Ashok Giri CRL.A.172/2014 VISHNU VISHWAS Represented by: Appellant Ms.Arundhati Katju, Advocate with Mr.Akshay Sharma, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP CORAM: HON'BLE MR. JUSTICE PARDEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PARDEEP NANDRAJOG, J.

(Oral) 1. Appellant Pardeep Dev in Crl.Appeal No.729/2011 has been produced in Court pursuant to the order dated November 03, 2014. His production was sought in Court because his counsel was not appearing in the appeal despite the appeal being on the Board for final hearing in the expedited list and having reached for hearing thrice, but not heard because of no representation from his side.

2. Pardeep Dev states that a counsel be appointed at States expense to represent him in the appeal.
3. Ms.Arundhati Katju, a lawyer on the panel of Delhi High Court Legal Services Committee who is appearing in the connected appeal number CrI.A.No.172/2014 for co-accused Vishnu Vishwas states that she is prepared to argue the appeal even on behalf of appellant Pardeep Dev and thus we appoint Ms.Arundhati Katju, Advocate as a counsel at States expense to argue the appeal on behalf of Pardeep Dev. She shall be paid her fee by the Delhi High Court Legal Services Committee as per schedule.
4. We have heard arguments in the appeal and have perused the relevant record.
5. Four accused, Pardeep Dev, Vishnu Vishwas (the appellants) along with Balram and Tapan Kumar Mandal were tried for the offence of having entered into a conspiracy to kidnap Master Akash to extract ransom from his father Raj Kumar and for having given effect to the conspiracy.
6. At the trial no incriminating evidence surfaced against Balram and Tapan Kumar Mandal whose involvement in the conspiracy was linked only to the disclosure statements made by Pardeep Dev and Vishnu Vishwas, and the same not being admissible evidence, the two have been acquitted vide judgment dated February 21, 2011. The appellants have been convicted on the evidence that the call detail records Ex.PW-5/A pertaining to the mobile number 9210784016 belonging to Raj Kumar, father of Akash as also the call detail records of a land line number 6455224924 of an STD booth in Forbis Ganj, District Ahraria, Bihar Ex.PW-10/F show two telephone calls made from the land line number to the mobile number of Raj Kumar, which corroborates Raj Kumars testimony that he received two telephone calls from the land line number in question on his mobile phone demanding ransom to release his son. The testimony of Sanjay Kumar PW-8, the owner of the STD booth from where the telephone calls were made has been accepted as proof of the fact that the appellants were apprehended by him by locking the STD booth when the appellants visited the same to make a call on March 27, 2008 (the first call being made on March 24, 2008) and on he informing the Investigating Officer, the two were arrested and since they were moving in the

company of Akash, the child was recovered at the spot. Testimony of Master Akash PW-3 has been believed as per which he knew the appellants since they used to work in the factory of his father and at their asking he went with them.

7. Learned counsel for the appellants does not dispute that the call details Ex.PW-5/A and Ex.PW-10/F would evince that at 10:22 AM on March 24, 2008 a call was made from the land line number 6455224924 to the mobile number 9210784016 and that three days later on March 27, 2008 at 9:00 AM a second call was made from the said land line number to the said mobile number. Learned counsel also concedes that the testimony of Sanjay Kumar PW-8 has not been demolished during cross examination and it proves that on March 26, 2008, police officers from Delhi had contacted him informing him, when he confirmed that the land line number was his, that he should keep a watch if anybody made a telephone call on the mobile number 9210784016 and thus when appellants came to his STD booth on 9:00 AM on March 27, 2008 he contacted the Delhi Police Officers over the phone who came to the spot and formally arrested the appellants, who were kept confined by him by locking the STD booth from outside. Since Master Akash was accompanying the appellants he was recovered. We note that Sanjay Kumar is a witness to the victim being recovered as entered in the memo Ex.PW-8/A as also to the arrest of the appellants as per arrest memos Ex.PW-8/B and Ex.PW-8/C as also to their personal search as recorded in the personal search memos Ex.PW-8/D and Ex.PW-8/E. He has signed the said memos. During cross examination no challenge has been made to the memos in question.

8. The testimony of Master Akash PW-3 brings out that the appellants, who were known to Akash having worked in the factory of his father, took Akash with them and he stayed with them till he was recovered.

9. Raj Kumar PW-4, the father of Akash has proved that on the occasion of Chhotti Holi held on March 21, 2008, on reaching home at around 8:30 PM he found Akash missing and therefore he lodged the missing person report Ex.PW-4/A the next day and that around 10:15 AM. On March 24, 2008 he received a call on his mobile number 9210784016 from a telephone number 6455224924. `5,00,000/- (Rupees Five Lakhs) was demanded as ransom. He passed on said information to

the police and that he received a second call from the same number on his mobile number on March 27, 2008. His testimony brings out that appellant Vishnu was employed in the factory of his friend Vijay Mishra and so was Pardeep.

10. The testimony of Vijay Kumar Mishra PW-1 establishes that appellant Pardeep and Vishnu were employed by him.

11. The child witness Akash has stated that he accompanied the appellants because he knew them as they were employed with his father, but we have proof of the fact that the two were employed by Vijay Kumar Mishra. But that would not discredit the child witness for the reason concededly the factory of Raj Kumar and Vijay Kumar Mishra is in the same building. The two are fabricators of garments. One has the fabrication unit, called a factory, on the ground floor and the other on the first floor. Akash aged 8 years would have met the two when he went to his fathers fabrication unit which was at a stone throw distance from his residence and the two being workers he may believe that they were employed by his father. Besides, if the appellants had planned to kidnap the young boy, they would have obviously gained his confidence.

12. The testimony of ASI Rajender PW-6 would corroborate the testimony of Raj Kumar that a missing person complaint concerning Akash being missing was lodged at PS Okhla Industrial Area on March 21, 2008. The testimony of SI Ashok Giri PW-10 and Ct.Pramod Kumar PW-9 would corroborate the testimony of Sanjay Kumar PW-8 that the two police officers had recovered Akash when he was in the company of the appellants from the STD booth of Sanjay Kumar on March 27, 2008.

13. We have reached the destination where one can say that the prosecution has proved that the appellants had kidnapped Akash.

14. The question which now arises is : whether the offence punishable under Section 364A IPC is made out. One essential ingredient of the offence under Section 364A IPC is that either by conduct or by words there should be a threat to cause death or hurt of the person kidnapped or there should be conduct which gives rise to a reasonable apprehension that the kidnapped person shall be put to

death or hurt.

15. Master Akash PW-3 has not deposed of any ill treatment or threat of being hurt or killed. In fact his testimony shows that the appellants had befriended him and had thus enticed him away in a friendly manner. The testimony of Sanjay Kumar PW-8 establishes that the appellants were freely moving around with Master Akash, meaning thereby that innocent Akash, not knowing that he had been kidnapped, was happily moving around with the appellants, meaning further thereby that there was no threat extended to Master Akash of being hurt or killed nor by conduct of the appellants he had reasons to believe that he would be killed or hurt.

16. The testimony of Raj Kumar PW-4 does not bring out any threat being extended to him that his son would be hurt or killed and further there is nothing in his testimony which brings out that from the conduct of the appellants Raj Kumar had a reasonable apprehension that his son would be hurt or killed.

17. Thus we bring the curtains down holding that the evidence does not establish the commission of the offence punishable under Section 364A IPC. The evidence brings out that the appellants entered into a conspiracy to kidnap Master Akash and demand ransom from his father. The offence committed by the appellants is of kidnapping Akash for ransom i.e. the offence punishable under Section 363 IPC and the conspiracy would also be to commit said offence.

18. We dispose of the appeal altering the conviction of the appellants for having committed an offence punishable under Section 120B IPC and for having committed an offence punishable under Section 363 IPC and for which we sentence the appellants to period already undergone noting that the maximum sentence permissible would be seven years and that the appellants are in custody since March 27, 2008 i.e. for a period of 6 years, 7 months and 9 days. With remissions earned the two would be completing the sentence of 7 years. The appellant be released forthwith if not required in any other case.

19. TCR be returned.

20. Three copies of the decision be sent to the Superintendent Central Jail Tihar, one for his record and two to be supplied, one each to the appellants. (PARDEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE NOVEMBER05 2014 mamta

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