

Afroz Vs. State

Afroz Vs. State

SooperKanoon Citation : sooperkanoon.com/1171059

Court : Delhi

Decided On : Aug-21-2014

Judge : Pradeep Nandrajog

Appellant : Afroz

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on: July 22, 2014 Judgment Pronounced on: August 21, 2014 % + CRL.A. 1120/2012 PRAVEEN Represented by: Appellant Mr.Siddharth Aggarwal, Advocate with Mr.Rahul Kumar, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CRL.A. 468/2012 SIRI RAM @ PAPPU @ LATPATIYA Appellant Represented by: Mr.Vimal Puggal, Advocate with Mr. Mr.Vineet Hans, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CRL.A. 483/2012 SAMUAL MASSEY Represented by: Appellant Mr.Vikas Mahajan, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CRL.A. 512/2012 SUNIL @ LILLY Represented by: Appellant Mr.Tanveer A.Mir, Advocate versus STATE OF DELHI Represented by: Respondent Ms.Aashaa Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CRL.A. 602/2012 AFROZ Represented by: Appellant Mr.Aftab Rasheed, Advocate versus STATE Represented by: Respondent Ms.Aashaa

Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CRL.A. 614/2012 POORAN SINGH @ VIPIN Represented by: Appellant Mr.Aftab Rasheed, Advocate versus STATE GOVT. OF NCT OF DELHI Respondent Represented by: Ms.Aashaa Tiwari, APP SI Sanjay Neolia (I.O.) and SI Naveen, PS Preet Vihar CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Appellants Praveen, Pooran Singh, Sunil @ Lilly, Samuel Massey, Afroz and Siri Ram @ Pappu @ Latpatiya, along with Ijaj, Firoz and Sanjeev Chopra (declared proclaimed offender on November 11, 2003) were accused in FIR No.569/2000 for an offence punishable under Section 364A/34 IPC P.S. Preet Vihar. Sanjeev Chopra being declared a proclaimed offender, Trial was faced by the other eight accused. Vide impugned judgment dated March 16, 2002, Ijaj has been acquitted for the offence since in his testimony the victim, Sachin Aggarwal, did not name Ijaj. In appeal it transpired that Firoz was a juvenile on the date of the offence and thus vide order dated July 22, 2013 passed in Crl.Appeal No.420/2013 he was set free noting that he had already suffered a sentence of more than three years prescribed for a juvenile as per law. Thus, we are left with the above captioned appeals filed by Praveen, Pooran Singh, Sunil, Samuel, Afroz and Siri Ram.

2. Case of the prosecution is that pursuant to a common intention to kidnap Sachin Aggarwal PW-2 aged about 16 years and 6 months, the accused kidnapped him on November 11, 2000 in front of his house A-22, Nirman Vihar. Ransom was demanded under threat to cause death or hurt Sachin Aggarwal in order to compel his father to pay ransom. Being convicted for the offence punishable under Section 364A IPC the learned Trial Judge was obliged to impose the minimum sentence of undergoing imprisonment for life on all the appellants. The conviction has been rested on the testimony of the victim Sachin Aggarwal PW-2, his father Sita Ram PW-1 and that of Ct.Neeraj Kumar PW-5, Ct.Dharamvir Tyagi PW-6, Ct.Mahender PW-8, Ct.Dilbagh Singh PW-10, Ct.Ranjeet PW-11, HC Virender Pratap PW-13, SI Pawan Kumar PW-14 and SI Sanjay Neolia PW22.

3. As per the prosecution the case was cracked by SI Sanjay Neolia PW- 22 and other police officers were a part of the team(s) constituted to recover the victim. The entire contours of the case of the prosecution would thus be noted by us through the mouth of SI Sanjay Neolia, of course not be little the testimony of the victim.

4. Sachin Aggarwal aged 16 years and 6 month was residing with his parents at A-22, Nirman Vihar, Delhi-110092 and left his house at around 6.00 P.M. on November 11, 2000 He did not return His parents thought he had gone to watch a movie. A landline telephone No.2463896 was installed in the house. At 12.15 midnight i.e. the intervening night of November 11, 2000 and November 12, 2000 the telephone bell rang in the house which was attended to by Manish Aggarwal PW-3, the brother of Sachin Aggarwal. The caller said that he was a member of the underworld. He said that Sachin was in their custody. He demanded that Sachin Aggarwals father should speak to him. Sita Ram Aggarwal PW-1, Sachins father came on the line. Ransom was demanded under threat of liquidating the victim. He immediately rang up 100 informing as aforesaid. The information was conveyed to the duty officer of P.S.Preet Vihar HC Dharmpal, PW-7, who recorded DD No.3. Investigation was entrusted to SI Sanjay Neolia PW-22 who, accompanied by Ct.Rambeer PW-4 went to A-2, Nirman Vihar and recorded Sita Ram Aggarwals statement Ex.PW-1/A that his son Sachin had left the house at 6.00 P.M. and had not returned and that at mid-night a ransom call was received. Making an endorsement Ex.PW-22/A thereunder he despatched the statement from the house of Sita Ram Aggarwal at 3.15 A.M. FIR No.569/2000, Ex.PW-7/A for an offence punishable under Section 364A IPC was registered at P.S.Preet Vihar and DD No.4-A, Ex.PW-7/B dated November 12, 2000.

5. SI Sanjay Neolia commenced the investigation but could not find any clue on November 12, 2000. As deposed to by SI Sanjay Neolia, on November 13, 2000 at 4.00 P.M. Sita Ram Aggarwal told him of having received some information on his mobile number, the detail of which he could not remember, the calling number was of the service provider Essar Limited. That number became the clue and with reference to said number he was able to track Sunil @ Lilly who spilled the beans informing him that he and co-accused had kidnapped Sachin Aggarwal and had

confined him at 14/150, Vasundhra, Ghaziabad. A raiding party headed by the SHO P.S.Preet Vihar Jagdish Malik PW-9 consisting of PW-5, PW-6, PW-8, PW10, PW-11, PW-13, PW-14 and SI Sanjay Neolia was constituted. The victim was recovered. Firoz and Iraj, as deposed to by him, were present in the house when the victim was recovered. Sanjiv Chopra (P.O), Pooran Singh, Praveen and Afroz reached the house when the police party was already present and were apprehended. Samuel managed to escape but was later apprehended. Sri Ram @ Pappu was apprehended much later on February 13, 2001.

6. The testimony of SI Sanjay Neolia being extremely sketchy and hazy as to the facts which led him to Sunil @ Lilly for the reason he deposed : On the same day at about 4 pm complainant Sita Ram came at PS and met to me. He told to me that he received a information on his mobile phone, the number of which I do not remember now. Complainant told me that the kidnappers are having the custody of my son Sachin and they are demanding `35,00,000/-. I informed these facts to SHO inspector Jagdish. The call detail of the phone number of the kidnappers was obtained from Essar Ltd. During investigation I had also made an effort to interrogate one Lilly who was not available at his house and his maternal uncle had appeared in PS and had given a telephone number (land line) of Lilly. I came to know during investigation that there was a call made from the said telephone number to the number of the kidnappers, the detail of which was obtained. These facts were also disclosed to SHO. On 13.11.2000 SHO formed a raiding team for investigation comprising of myself, SI Pawan, SI Gagandeep, HC Virender, HC Bhim, Ct. Neeraj, Ct. Dharmabir, Ct. Dilbag & Ct. Ranjeet. The facts of this case were briefed to ten members. Team proceeded to the house of Lilly i.e. S-15 Pandav Nagar, Delhi under supervision and control of inspector Jagdish. Complainant was also with us. Lilly was not present at the aforesaid house. It came into our notice at the house of Sh. Lilly. He is admitted in R.K. Orthopadic Hospital in Pavdav Nagar. From the house of Sh. Lilly we reached at the aforesaid hospital. Sh. Lilly met us at the gate of the aforesaid hospital who was pointed out and identified by the complainant Sita Ram and his son namely Manish Aggarwal. I & SHO interrogated Sh. Lilly. It was told to us by Lilly that we had called Sachin Aggarwal outside his house. He has further told us that in pursuance of planning Sachin was taken by him along with his associates. I arrested Lilly who is also

known as Sunil Kumar present in the court. (witness correctly identified accused Lilly) in the suit. I prepared his arrest memo Ex.PW22C and personal search memo Ex PW14A both bears my signature at point A. I interrogated him whatsoever, he told to me in connection of the present case. I recorded the same under his disclosure statement Ex. PW9/A which bears my signature at point B. After completion of arrest proceedings etc. we came back to PS alongwith accused Sunil @ Lilly. On the same day accused Sunil @ Lilly led aforesaid team members, complainant and PW Manish Aggarwal to H.No.14/150 Vashundhara, Ghaziabad in pursuance of his disclosure statement in search of the kidnapped Sachin Aggarwal. On reaching there, we found that the door of the room pointed out by accused Sunil was bolted from inside. We surrounded that room. Accused Sunil also told us that another associates namely Pappu is inside the room along with the kidnapped child. Ct. Ranjeet climbed on the roof of that room which was single storied. I knocked the door by saying Pappu. In the meantime Ct. Ranjeet informed us that there are certain boys inside in the room and they are trying to flee away from the back side of the room. I along with Ct. Neeraj apprehended one of the boys namely Firoj present in the court (witness correctly identified). SI Pawan apprehended another boy Izaz, accused present in the court with the help of one constable (witness correctly identified). Ct. Ranjeet jumped inside the room and the opened the bolt. Again said he jumped in the varamda and opened the door. We alongwith apprehended accused persons went inside the room. We found Ct. Ranjeet, complainant and Sachin inside the room. Ct. Ranjeet told that he had untied the hands of Sachin.

7. To reassure ourselves as to how SI Sanjay Neolia cracked the case, we perused the case diary which revealed that after the FIR was registered in the wee hours of morning November 12, 2000 various friends of Sachin Aggarwal were contacted, all of whom gave satisfactory response to their whereabouts when Sachin went missing. suspicious. But, Sunils conduct was He was not to be found in his house nor in the house of his maternal uncle where he had gone to leave his mother.

8. Case diary shows that the investigating officer contacted various friends of Lilly who could give no clue. At around 5.00 P.M. a call was noted emanating from a

calling mobile No.9811281467 to the land line No.2433692 installed in Lillys house. The investigating officer sensed out that Raj Kumar, brother of Lilly, was not disclosing Lillys whereabouts and thus at 7.30 P.M. Raj Kumar was again interrogated and he informed that Lilly was suffering from backache and was under treatment at Orthopaedic Nursing Home at A-8, Pandav Nagar opposite Mother Dairy and possibly he as admitted there. At 8.00 P.M. Lilly was apprehended from the Nursing Home. He made a confession of having kidnapped Sachin Aggarwal. He named the co-accused. Raiding party was constituted thereafter and the victim was recovered from the house number whereof was disclosed by Sunil and who led the raiding party to Vasundhara and pointed out the house.

9. We have noted these facts from the case diary only to find out how SI Sanjay Neolia tripped on Sunil and from Sunil to the victim Sachin but this narration has no bearing on the conviction of the appellants as the same would have to be based upon legally admissible evidence which we will deal hereinafter.

10. At the trial Ct.Neeraj Kumar PW-5, Ct.Dharmvir Tyagi PW-6, Ct.Mahender PW-8, Ct.Dilbagh PW-10, Ct.Ranjeet PW-11, HC Virender Pratap PW-13, SI Pawan Kumar PW-14 and SI Sanjay Neolia deposed that they were the member of the raiding party. They deposed, with variations which we would be noting while dealing with the submissions made by counsel for the appellants, that after he was arrested Sunil made a disclosure statement informing that Sachin was confined at house No.14/150 Vasundhara. He then led the police party to the said house. Sunil said that an associate named Pappu was inside the room. Ct.Ranjeet climbed on the roof of the single storey house and knocked calling out Pappu. He informed that some boys were trying to flee from the rear side. SI Sanjay Neolia and Ct.Neeraj apprehended Firoz. SI Pawan apprehended Iraj. Sanjeev Chopra, Pooran Singh, Praveen and Afroz came in a car at about 10.30 P.M. and on seeing the police attempted to flee but were arrested. The said police witnesses deposed that a khukri Ex.P-1 and a nylon rope Ex.P-2 was recovered from inside the room as also a toy pistol Ex.PW-2/Article 10, a mobile phone Ex.PW-2/Article 2. The witnesses proved the arrest memos and the recovery memos. Insp.Jagdish Malik PW-9 deposed in sync.

11. Insp.Jitender Singh PW-20 deposed having arrested Siri Ram @ Pappu on February 13, 2001 on receiving secret information that a wanted criminal will arrive at the railway bridge. Samual Massey being arrested on November 14, 2000 was proved by PW-6 and PW-10.

12. Depositing in Court as PW-2 Sachin identified and named all the accused except Ijaj. He deposed that his friend Sunil had made him sit in the maruti car bearing No.DL2CA-8412 and that at that time Sanjeev Chopra was in the car. On the pretext of a party he was taken to Vasundhara where he was confined and he was threatened with death if his father did not pay the ransom. He said that he was kept tied with the rope Ex.P-2. He identified the kukhri Ex.P-1 with which he was threatened. He identified the mobile phone Ex.PW-2/Article 2 which was used by the kidnappers. Punam Sethi PW-12 the owner of maruti 800 car bearing No.DL2CA-8412 deposed that her brother Sanjeev had requested him to transfer ownership of the car to him and thus she had handed over the car to his brother. She had taken possession of the car on superdari after it was seized by the police in the instant case. CRL.A. 1120/2012 & conn. Appeals Arvind Kumar Garg PW-17 the Page 9 of 16 brother of Sudhir Garg owner of house No.14/150 deposed that his brother had gone to Moscow in the year 1986 and had executed a power of attorney in his favour to manage the house. He had let out the house to Sanjeev Chopra at a rent of Rs.3500/- per month.

13. Since after they were arrested the investigating officer had desired a TIP of Samual Massey and Siri Ram to be conducted, Raj Kumar Chauhan, PW-18 and Manoj Kumar Nagpal PW-19 who were then working as Metropolitan Magistrates deposed that Samual Massey and Siri Ram refused to participate in the TIP proceedings alleging that they and their photographs were shown to Sachin.

14. As noted above, notwithstanding Ijaj being proved to be apprehended at the spot when he and Firoz were attempting to run away from the house where Sachin was recovered, the learned Trial Judge acquitted Ijaj because during testimony Sachin did not name him and regretfully the learned Public Prosecutor did not spot an inadvertent omission when Sachin was deposing.

15. Dealing with the incriminating evidence against each accused, we prefer to list the same separately and independently against each and simultaneously deal with the contentions advanced.

16. The prime mover on the chess board is obviously Sunil @ Lilly. His counsel argued that firstly the car in question has not been proved to be in possession of Sanjeev Chopra. Secondly that vis-a-vis Sachins statement recorded under Section 161 Cr.P.C., the one recorded before the learned Metropolitan Magistrate under Section 164 Cr.P.C. and the one recorded in Court had a serious variations inasmuch as while deposing in Court Sachin said that he went out of the house on receiving a call from Sunil and as he came down Sunil and Sanjeev Chopra took him in the car to Vasundhara. In his statements made to the investigating officer he said that Sunil had called him to Narula restaurant in Block-A Preet Vihar where he met Sunil and Sanjeev Chopra. It was urged that as per SI Sanjay Neolia lead to trace Sunil was from a alleged telephone call : which one was a mystery. It was urged that no public person was associated in Sunil being arrested. It was urged that no police officer from district Ghaziabad in the State of Uttar Pradesh was associated with Sachins recovery from the house at Vasundhara which was in district Ghaziabad and thus Sachins recovery was tainted. Lastly it was urged that the testimony of Sachin would evidence that when ransom calls were made on the intervening night of November 11, 2000 and November 12, 2000 he was not present and thus the threat to kill the victim could not be fastened on him.

17. The first contention overlooks the testimony of PW-12 and the second is based upon variation in the testimony of Sachin which are of a minor variation. That in one statement Sachin says that on receiving the telephone call from Sunil as he came out of the house and Sunil and Sanjeev Chopra met him and in the other he saying that he went, on being called, to Narula restaurant does not demolish Sachins creditworthiness. Sachins statement under Section 161 Cr.P.C. was recorded immediately when he was rescued and obviously he was in a position to give better details of what transpired three days back as against what he recollected when he deposed in Court after over five years on April 26, 2006. As regards the third contention, we have already noted hereinabove while narrating the pursuit by SI Sanjay Neolia to recover Sachin with reference to the case diary;

noting that while deposing in Court SI Sanjay Neolia has somewhat blogged the steps taken by him to find out Sachin and how come he stumbled upon Sunil. He somewhat blogged by simply stating that he got a clue to Lillys (Sunils) involvement through a call made on Lillys landline number. We have noted the pursuit facts leading to Sunil in paragraph 7 above and would simply record that it does not matter how Sunil was traced. What matters is the incriminating evidence against him. There are two incriminating evidences against him. Firstly he led the police to the place wherefrom Sachin was recovered and secondly Sachin identified him as one of the kidnapper. There was no time to associate a public person when Sunil was arrested for the reason a kidnapped victim had to be recovered and there was danger to his life. The police had to move with lightening speed till the victim was recovered. That apart, there is no law that unless a public witness is associated when a person is apprehended; the fact of apprehension becomes tainted. That apart, a person being arrested is one thing and recoveries pursuant to the disclosure are another. It may be true that Delhi Police officials did not associate any police officer from district Ghaziabad in the State of Uttar Pradesh, but it has to be kept in mind that when one conspirator in a case of kidnapping is arrested it becomes important to reach out to the victim as quickly as possible for the reason the possibility of co-accused smelling or finding out that a co-conspirator has been apprehended and thereafter killing the victim and fleeing from the hide out would loom large in the horizon. It hardly matters that Sunil was not present in the house where victim was lodged when the ransom call was made. He would be liable for all acts of co-accused for the reason Section 34 of the Indian Penal Code would make him liable for the said act in furtherance of the common intention. It has to be kept in mind that Sunil was the principal architect. He knew the victim being class mates. Without his active participation nothing could have happened. He obviously would be the beneficiary of a share in the booty.

18. Turning to Afroz we find that Ct.Dharmvir Tyagi PW-6 has not identified him. Ct.Dilbagh Singh PW-10 has deposed that he did not know the names of the accused. Ct.Ranjeet PW-11 also said so. Picking thereon learned counsel for Afroz said that he being apprehended, as claimed by the prosecution when he along with Sanjeev, Pooran and Praveen allegedly came in the car to the house

where Sachin was kept confined and attempted to flee, does not inspire confidence. It was further urged that in his statement made to the investigating officer under Section 161 Cr.P.C. and before the learned Metropolitan Magistrate under Section 164 Cr.P.C. Sachin did not name him.

19. The argument on behalf of Afroz is neither here nor there because no suggestion has been put to Sachin that while he was in custody all accused used to call each other by name in his presence. Thus, Sachin not naming him is neither here nor there. Three police officials not remembering him by name is also irrelevant as long as the police officers and Sachin identified him during testimony in Court; Sachin deposing that he was present in the house where he was confined and other police officers deposing that after they had recovered Sachin from the house four persons came in the white maruti car to the house and attempted to flee when they saw the police and thereafter identified Afroz as one of the said four persons would be sufficient evidence against him.

20. Similar arguments were advanced by Pooran and Praveen drawing parity with Afroz. For the reason above we reject their arguments noting that the two had made one further submission of the two being identified by the victim after six years of the incident. The reason for rejecting the said argument is that the victim was kidnapped around 6.00 P.M. on November 11, 2000. He was recovered late night on November 13, 2000. He had enough hours to see his tormentors whose facial features would be well etched in his memory. The feeble argument that the two were not subject to a TIP is neither here nor there for the reason TIP has to be held when a witness has a fleeting glance of an accused for the reason it would lend credence to the dock identification by the witness on the reasoning that soon after the incident he could identify the accused at a TIP. But where a witness sees an accused over a long period of time, the reassurance which underlines a TIP would be missing and hence no need for a TIP. Besides, a TIP relates to investigation and what matters at a trial is dock identification.

21. Dealing with Samual Massey the argument was that he was arrested by the prosecution on November 14, 2000 and his name surfaced when PW2 supplementary statement under Section 161 Cr.P.C. was recorded on December

31, 2000.

22. We highlight that in his testimony Sachin has said that when Sunil and Sanjeev brought him to the house at Vasundhara, four and five persons were present in the house and he pointed towards Samuel, Firoz, Siri Ram and Praveen. He said that on November 13, 2000 Pooran Singh and Afroz came with pistols and intimidated him. He said that when the maruti 800 car came to the house whereas Sanjeev, Afroz and Pooran, Samuel escaped. We find that said fact has not been said by Sachin either in his statement recorded under Section 161 Cr.P.C. soon after he was rescued and in the statement made by him before the learned Metropolitan Magistrate. We find that he had named Samuel in his supplementary statement recorded on December 31, 2000. We note that in his statement under Section 161 Cr.P.C. recorded on November 13, 2000 soon after he was rescued Sachin said that when Sunil and Sanjeev Chopra enticed him to go with them to Vasundhara four-five boys were already in the room. He repeated said fact before the learned Magistrate when his statement was recorded on November 14, 2000. We find that in both statements he has not said that after he was rescued from amongst those who came in the maruti car but attempted to flee on seeing the police, one managed to flee. The six police officers who were a part of the raiding party have categorically deposed that only four boys were present in the car and were arrested. They identified the said four boys as Sanjeev, Pooran, Praveen and Afroz. Keeping in view said fact i.e. that Sachin did not give a definite number of the boys present in the room when he was enticed to go to Vasundhara as also that in his contemporaneous statement made to the investigating officer and the Magistrate he did not state that one boy managed to escape, we are of the opinion that benefit of doubt needs to be extended to Samuel Massey. Likewise, same benefit of doubt has to be extended to Siri Ram and additionally for the reason we find that in the third supplementary statement of Sachin recorded on February 14, 2001 the investigating officer has recorded that Sachin of his own was present in Karkardoom Court and when he saw Siri Ram being produced in some Court he told the investigating officer by pointing out Siri Ram as one of the co-accused. No case was fixed requiring Sachin's presence in Karkardooma Court when Siri Ram was apprehended on February 13, 2001 and was produced before the Magistrate the next day. We find it strange that Sachin was present at Karkardooma Courts

on February 14, 2001. We also note the fact that as per the police Siri Ram is a history-sheeter and the possibility of the police falsely implicating Siri Ram in the instant case cannot be ruled out.

23. The testimony of Sachin and his father clearly bring out that threats were extended of Sachins being killed if ransom was not paid. It may be true that the pistol recovered was a toy pistol, but a khukri being recovered cannot be overlooked. Besides, requirement of law is threats to be extended that the victim would be either killed or injured if ransom is not paid or of conduct being proved giving rise to a reasonable apprehension that such person may be put to death or hurt. The acts of such accused who are being convicted clearly constitute an offence punishable under Section 364A IPC.

24. Bringing the curtains down we dismiss Crl.Appeal No.1120/2012, Crl.Appeal No.512/2012, Crl.Appeal No.602/2012 and Crl.Appeal No.614/2012 filed by Praveen, Sunil, Afroz and Pooran Singh. We maintain their conviction and the sentence imposed. We acquit Siri Ram and Samual Massey. They are acquitted of the charge framed against them and consequently the sentence imposed upon them is set aside. The two shall be set free if not wanted in some other case.

25. Copy of this order be sent to Superintendent Central Jail Tihar.

26. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE AUGUST21 2014 skb

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