

Raj Kishore vs.state

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Court : Delhi

Decided On : Apr-05-2018

Appellant : Raj Kishore

Respondent : State

Advocate for Pet/Ap. : Ms. Aishwarya Rao, Mr. Kewal Singh Ahuja, Mr. Biswajit Kumar Patra, Mr. Syed Meesam

Judgement :

\$~3 to 5 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 1337/2013
4 + 5 + MANISH CHAND Appellant Through: Ms. Aishwarya Rao, Advocate.
versus STATE GOVT. OF NCT OF DELHI Respondent Through: Mr. Kewal
Singh Ahuja, APP for State CRL.A. 1369/2013 DAL CHAND Through: Mr. Biswajit
Kumar Patra and Mr. Syed Meesam, Advocates Appellant versus STATE NCT
OF DELHI Respondent Through: Mr. Kewal Singh Ahuja, APP for State
CRL.A. 716/2014 RAJ KISHORE STATE Through: Ms. Appellant Inderjeet
Sidhu, Advocate (DHCLSC) Versus Respondent Through: Mr. Kewal Singh
Ahuja, APP for State CORAM: JUSTICE S.MURALIDHAR JUSTICE I.S.MEHTA
Crl.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 1 of 18 %
JUDGMENT0504.2018 Dr. S. Muralidhar, J.:

1. These appeals are directed against the judgment dated 8th July, 2013 passed by the learned Additional Sessions Judge, North West-II, Rohini Courts in Sessions Case No.63/2013 arising out of FIR No.179/2011 registered at Police

Station (PS) Adarsh Nagar convicting the Appellants for the offence under Section 364-A read with 120-B IPC and the order on sentence dated 16th July, 2013 whereby each of them were sentenced to Rigorous Imprisonment (RI) for life with the fine of Rs. 10,000/- in default to undergo Simple Imprisonment (SI) for the period of one month for the aforementioned offence. The charge 2. The charge against the aforementioned three Appellants i.e. Dal Chand (Accused No.1: A-1), Raj Kishore (A-2), Manish Chand (A-4) along with another co-accused Sanjay Yadav (A-3) [who was a juvenile in conflict with the law (JCL) and whose trial therefore got separated and conducted before the JJB]. was that before 11th July, 2011 they entered into a criminal conspiracy. The second charge was that pursuant thereto on the said date at around 5 pm they kidnapped Prince, aged six years from Jhuggi no.E-15 at Lal Bagh, Azad Pur, Delhi and thereafter made a ransom call to his father stating that if a sum of Rs. 20 lacs was not paid, Prince would be killed. They were accordingly charged with having committed the offences punishable under Section 120 B IPC per se and Section 364 A IPC read with CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 2 of 18 Section 120 B IPC. The child goes missing 3. The process of law was set in motion when Dharambir (PW-8) came to PS Adarsh Nagar at around 4.30 p.m. on 12th July, 2011 stating that his son Prince aged six years had gone missing from around 5 pm on 11th July, 2011. In a statement (Ex.PW-8/A), PW-8 stated that his son was playing outside the jhuggi and had not returned home.

4. Inspector Arvind Pratap Singh, (PW-16) who was at the time Sub- Inspector (SI) at PS Adarsh Nagar registered a case on the basis of the above statement and then accompanied PW-8 to his house and thereafter to the Azadpur Bus Terminal and the railway station in order to trace the child but could not find him. A wireless transmission message was sent to all SSPs and DCPs in Delhi and all over India. Details were entered in the Zip net and hue and cry notices were issued. The ransom calls 5. On 14th July, 2011 while PW-16 was at the PS, PW-8 came there at around 9 am and informed him that PW-8 had received a ransom call on his mobile bearing no.9953716681 (hereafter 6681) on 13th July, 2011 at around 8 pm from a mobile No.9058435350 (hereafter 5350) from an unknown person. The caller stated that the child was with him and in case PW-8 wanted the child to remain alive he should pay a ransom of Rs.20 lacs. PW- 8 purportedly told the

caller that he did not have the financial capacity to pay such an amount and sought some time to arrange for the funds. Crl.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 3 of 18 6. PW-8 then told PW-16 that he again received a call at 1 pm on 14th July, 2011 from another mobile No.9528839799 (hereafter 9799) where the caller again threatened to kill Prince in case PW-8 informed the police or anyone else. PW-8 told the caller that he was ready to pay the ransom but he should be made to talk to his child to ensure that the child was alive. The caller told him that he would be made to talk to the child in the evening.

7. On 14th July, 2011 at 8.40 p.m. PW-8 received another call from the same number. He spoke to Prince. He also requested the caller to decrease the ransom amount and asked for 3-4 days time. The caller then gave him two days time to arrange for the money.

8. At this stage, a supplementary statement of PW-8 was recorded by PW-16 and the CDRs were also obtained in respect of the numbers that PW-8 gave him.

9. According to PW-16, from the CDRs it was revealed that the calls were made from Etawa, UP. It is also informed that one of the numbers 9990834556 (hereafter 4556) was in constant touch with both PW-8 as well as the other person who had called the mobile of PW-8 i.e. the number ending with 6681 on 13th July, 2011.

10. When PW-16 asked PW-8 about the mobile number ending with 4556 he was informed by PW-8 that it belonged to A-1 who happened to be related to PW-8. Upon learning this, PW-16 accompanied by PW-8 went to the Jhuggi of A-1 but could not find him and were informed that he had gone to his native place. PW-8 informed PW-16 that A-1 was a native of village Crl.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 4 of 18 near Mainpuri and had relatives living at Etawa, UP. The rescue of the child 11. PW-16 then constituted a police team and left for Etawa at 11.45 p.m. on 14th July, 2011. While they were at Etawa on 15th July 2011, at around 6.30 pm PW-8 conveyed to them through the duty officer at the PS in Delhi that he had received another ransom call from the same number 9799. PW-16, who was at Etawa, asked PW-8 to reach the Etawa police lines. Meanwhile PW-16 came to know that one of A-1s relatives was residing at Chakva Khurd, Etawa and

A-1 frequently visited that place.

12. The police team reached PS Basrehar, Etawa on 16th July, 2011 and made a DD entry regarding their arrival. PW-8 met them there. PW-16 constituted a ready party and also associated local police officials. At 4.35 pm they left PS Basrehar for Chakva Khurd. On the way, they met a secret informer near a petrol pump who disclosed that a child had been kidnapped from Delhi and brought to village Chakva Khurd.

13. The police team reached the outskirts of the village and parked their vehicles. The informer told them that the child was in the house of A-4. When the police party reached the house of A-4, they noticed a person sitting outside who upon seeing them ran inside the house. They followed him into the house and found that another person was standing outside the room there. Inside the room they found Prince and another person with him. The person standing outside the room was identified as A-1. The person found sitting inside the room was identified as A-2. Incidentally, A-1 and A-2 are stated to be related. On enquiry from A-1 and A-2 it was learnt that CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 5 of 18 there was one more person A-3 who had gone back to his house and that the person who was keeping watch outside the house was A-4 who had run away. Arrests of the accused 14. A-1 and A-2 were arrested and subjected to personal search. A-1 is stated to have taken the police party to the house of A-3 who was then arrested. All the three i.e. A-1, A-2 and A-3 was brought back to PS Basrehar and interrogated. The police party reached Delhi on the morning of 17th July, 2011 with the three accused and the child and their disclosure statements were recorded. On the same day, the child was handed back to the custody of his parents after being produced before the learned MM.

15. According to PW-16, on 19th July 2011, A-1 then got recovered a Nokia Mobile containing a sim of Idea bearing No.4556. This was then seized. The child's statement before the MM16 The statement of the child was also recorded on 19th July 2011 before the learned MM under Section 164 Cr PC. In the said statement (Ex.PW-16/C) the child disclosed that A-1, who was living nearby, came there while he was playing outside his house on 11th July, 2011 and told him that his

mother was calling him. As soon as the child went near A-1, he took him away to some place far away where Sanjay (A3), Manish (A4) and one more person were present. Those four persons then made him sit in a bus and took him to Etawa. They had kept him for four days in a Jhopri. When he told them that he wanted to return to his parents they told him that his father would come there on his own. Thereafter the police came there and took him CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 6 of 18 away. Recovery of mobile phones 17. PW-16 further stated that on 20th July, 2011 they again visited village Chakva Khurd accompanied by A-3 who got recovered two mobiles, one of make Lava bearing a number ending in 9799 and another of make G-Five bearing a number ending in 1176 from a black coloured box in his house there. The Lava mobile bearing a number ending in 9799 was the mobile phone from which the ransom calls had been made. According to A-3, the other mobile phone bearing a number ending in 1176 belonged to A-2 and was used by him to communicate with both A-3 and A-1. Thereafter they went to the house of A-4 but did not find him there.

18. While going to the Railway Station in the evening, they reached near the Subzi Mandi in Etawa when A-3 pointed out a boy who was standing in front of the gate of the Mandi and stated that he was A-4. On this A-4 was also arrested and from his personal search a mobile phone with number ending in 9605 used by the accused to talk to his other associates, was recovered.

19. On the completion of the investigation, charge sheet was filed and by the aforementioned order dated 29th November, 2011 charges were framed against the aforementioned three accused and Sanjay Yadav (A-3) in the manner indicated hereinbefore. The trial 20. The prosecution examined 16 witnesses. The child was examined as PW-1. He was examined without oath with the trial court satisfying itself CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 7 of 18 that he was capable of understanding and speaking the truth. The child more or less stuck to the version given by him in the statement made to the learned MM under Section 164 Cr.PC. The slight discrepancy was that he stated that he was confined in a hut which remained closed and when he asked the accused that he wanted to go to his parents they replied kal lekar jayenge.

21. The child was able to identify all the accused persons present in court with their names. For some reason the child was not subjected to any cross examination whatsoever.

22. The child's father, Dharambir, was examined as PW-8 and he described in detail the steps that were taken after the child had gone missing including his accompanying PW-16 on the visits to the house of A-1 and later going to Etawa and being present at the time of the recovery of the child in the presence of A-1, A-2 and A-3.

23. PW-8 was subjected to some minimal cross examination but nothing much could be elicited for the case of the accused. In fact his cross examination revealed that he was earning Rs. 25,000/- to Rs. 30,000/- annually from agricultural produce; that he had received compensation for some agricultural land that belonged to him as a result of partition of the family property. He also stated that his wife had left for Agra three days prior on 11th July, 2011. He accepted that A-1 was on visiting terms with his family and was living in their neighbourhood.

24. Nothing much emerged from the cross-examination of PW-8 that could CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 8 of 18 assist any of the accused. It must be noticed that PW-8 first deposed in the Court on 2nd April, 2012 by way of examination-in-chief. His cross-examination which commenced on that date continued on 3rd April, 2012; 16th October, 2012 and ended on 2nd April, 2013. Even the cross-examination of PW-16, the Investigating Officer (IO) of the case, did not yield much for the accused.

25. During the trial, the CDRs of the aforementioned mobile phones were all produced by the concerned mobile service providers accompanied by the certificate under Section 65-B of the Indian Evidence Act. These CDRs established that calls were exchanged between the accused throughout and that the entire operation was co-ordinated by A-1. Impugned judgment of the trial Court

26. The trial Court in the impugned judgment concluded that the prosecution has been able to prove its case beyond all reasonable doubt. The trial Court returned a finding against all the three appellants for the offence under Section 364-A read with 120-B IPC and proceeded to sentence the appellants in the manner indicated

hereinbefore. There was no separate conviction for the offence under Section 120-B IPC.

27. This court has heard at length the submissions of learned counsel for the Appellants as well as the learned APP for the State. No denial of fair trial 28. Counsel for all three Appellants were faced with the same difficulty viz., victim child (PW-1) not having been subjected to any cross-examination CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 9 of 18 whatsoever in the trial. The child was examined on 6th February, 2012. The trial ultimately concluded on 28th May, 2013 with the recording of the statements of the Appellants under Section 313 Cr PC. During this entire period no application was made on behalf of any of the Appellants for recalling the child for cross-examination. This opportunity, available to the counsel for the accused, was not availed.

29. It cannot therefore, be said that there was any denial of a fair procedure of trial as has been contended by learned counsel for the Appellants. Evidence of the victim child 30. The key witness in the present case was of course the victim child. As regard the legal position on the appreciation by a Court of the evidence of a child witness, in *Dattu Ramrao Sakhare v. State of Maharashtra* (1997) 5 SCC341 the Supreme Court held:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereto. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. 31. In *Nivrutti Pandurang Kokate v. The State of Maharashtra* (2008) 12 SCC565 the legal position was explained thus: The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 10 of

18 manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness. 32. In *Ranjeet Kumar Ram v. State of Bihar* 2015 (6) SCALE529 it was observed: Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one. 33. In the present case, both at the stage of recording his statement under Section 164 Cr PC and later in the Court during the trial, sufficient precautions were taken to ensure that the child was not under any pressure and fully understood the responsibility of having to speak the truth. The child has been consistent and very clear not only in pointing out who abducted him but also what happened to him, where he was taken and kept. He has also been able to clearly identify each of the accused in the Court.

34. The minor discrepancy pointed out that as per the victims depositions during trial when he asked to be taken to his parents the accused had replied *Kal Lekar Jayenge*, whereas in a statement under Section 164 Cr PC the CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 11 of 18 child said that the abductors told him that his father would himself come to where he was, is not material enough to discredit the testimony of the child. Consequently, the involvement of the three Appellants before this Court in the abduction of the child is more than adequately proved by the testimony of the child himself. Ingredients of Section 364 A IPC³⁵ It was then submitted by learned counsel for the Appellants that one of the key ingredients of Section 364-A IPC is the threat to the person being held for ransom that he would be hurt or put to death or hurt. It was submitted that the threat

should be administered to the person who is abducted. Reliance was placed on the decision of the Supreme Court in Vishwanath Gupta v. State of Uttranchal (2007) 11 SCC633 to urge that unless the above threat is combined with actually putting the person kidnapped to death, the offence itself is not attracted.

36. The Court is unable to agree with the above submissions for a variety of reasons. To begin with Section 364-A IPC requires to be analysed. It reads as under: 364A- Kidnapping for ransom, etc. Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine. foreign State or international CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 12 of 18 37. One ingredient of Section 364-A IPC is the kidnapping or abduction of a person or the keeping of such person in detention after kidnapping or abduction. In other words A and B might be the persons kidnapping the victim whereas C and D could be the persons detaining such a person after kidnapping. In that event A, B, C and D would all be liable as far as the offence under Section 364-A IPC is concerned.

38. Secondly, the above act of kidnapping, abduction or detention has to be accompanied with a threat to cause death or hurt to such person. The statute does not require the threat to be administered to the abducted person. The threat must be to cause death or hurt to such person. If one takes the example of a one month old baby who is kidnapped or abducted or kept in detention, if Section 364 A IPC were to be interpreted as suggested by the counsel for the Appellants, viz., that the threat of causing death or hurt must be administered to the baby itself, it will defeat the very object of this provision. It will then mean that in the event that children below the age of say five years are kidnapped or abducted and are unable to express in the Court for any reason that they themselves were threatened with hurt or death, no offence under Section 364-A IPC would be attracted. The legislative intent is to provide for a severe punishment where there

is a threat to cause hurt or death to the abducted person, even if the threat is in fact not carried out.

39. The Supreme Court in *Malleshi v. State of Karnataka* (2004) 8 SCC95 explained the ingredients of Section 364A IPC, as under: CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 13 of 18

"12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom....."

40. Particularly when it comes to children, an interpretation has to be placed on Section 364-A IPC that will advance the object of the provision. Invariably in cases where young children are kidnapped or abducted, the threat to cause hurt or death to them would be extended to the persons from whose lawful guardianship they are kidnapped or abducted.

41. As far as the second ingredient of the Section 364-A IPC is concerned, the provision has a number of alternatives. These alternatives are as under: i) There could be a threat to cause or hurt to a person kidnapped. ii) The conduct of the kidnapper would be such as to give rise to a reasonable apprehension that such person kidnapped could be put to death or hurt. iii) The reasonable apprehension could be that the person kidnapped might actually cause, hurt or death to such person.

42. All of the above actions should be with a view to compelling another person (in this case PW-8) to do or abstain from doing any act or to pay ransom.

43. In this case, the threat was administered by the callers to PW-8 who was told multiple times that if he did not pay the ransom the child would be killed. In the considered view of the Court the second ingredient of Section 364-A therefore got fulfilled in the present case. PW-8 has clearly and CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 14 of 18 consistently spoken of the ransom calls received by him from the kidnappers from their respective mobile phones whilst

also clearly saying that he was threatened that if he did not pay of the ransom amount the child would be killed. These have been substantiated by the CDRs. This ingredient is also, therefore, present in the instant case.

44. Consequently, the Court is satisfied that the prosecution has been able to show in the present case that all the ingredients of Section 364-A stand fulfilled qua the three accused. Role of A-1 45. A very earnest plea made on behalf of A-1 is that his mobile phone was in Delhi and showed his presence there at all times. Therefore, it was impossible that he could be arrested from Etawa. It is pointed out that on 13th July, 2011 itself the police visited his jhuggi in Delhi but did not find him there. It is argued that the circumstances under which the mobile phone of A-1 was found in Delhi whereas his arrest took place from Etawa raised serious doubts whether A-1 was at all involved in the offence.

46. In the first place it must be noticed that there were no specific questions put to either PW-8 or PW-16 over the manner of arrest of A-1 which throw any doubt of the story of the prosecution in that regard. Secondly, it is quite possible that A-1 did not carry his mobile with him when he went to Etawa. Thirdly, it is not as if A-1 was not at all present in Delhi and or in his jhuggi at any time between 11.00 p.m. on 11th July, 2011 and the date on which they were arrested. It is possible that when the police visited his house he was not found there but used his mobile nevertheless at other times to call CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 15 of 18 the other co-accused and coordinate the movement of the child being kidnapped. A-1 was important to carry out the crime since admittedly he is related to PW-8. The inducement of the child to accompany them could have legitimately come only from A-1 since the child would not have recognised any of the other accused. Without the active involvement of A-1, the plan to kidnap the child could have never succeeded. Role of A-2 47. It was then contended on behalf of A-2 that there is nothing to show that A-2 himself had made any ransom calls to PW-8 and merely because he happened to be related to A-1 he had been roped in by the prosecution. Here again it must be noticed that the presence of A-2 at all times has been spoken to by the child (PW-1) and his presence at the time of recovery of the child from Etawa has been spoken to by PW-8 as well as PW-16. There is nothing in the cross-examinations of PW-8 or PW-16 to give rise to any

doubts about the presence of A-2 at the time of the recovery of the child at Etawa. Clearly the crime of kidnapping the child for ransom involved more than one person and a coordinated action was taken by all of them in transporting the child from Delhi and keeping him in a house at Etawa and it could not have been possible without the active involvement of A-1, A-2, A-3 and A-4. Role of A-4 48. On behalf of A-4, it was submitted that his presence at Etawa was extremely doubtful. With there being no ransom calls made by him, there is nothing in the prosecution case which actually connected him to the crime. CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 16 of 18 49. Apart from the same problems that faced the other two accused viz., the failure to cross examine the child who correctly identified A-4 as one of the abductors, and the failure to elicit anything from PW-8 in his lengthy cross-examination, a reading of the evidence of PW-8 shows that the child was in fact kept in the house of A-4. There is no question of the child being kept there in his house if A-4 did not give his permission.

50. While there could be some inconsistency on whether A-4 actually ran away from the spot when the police reached there, the fact remains that he was arrested only from the Subzi mandi in Etawa when the police party had gone there again to collect evidence and also revisit the residence of A-4.

51. It was then argued that there is no evidence to show that the house where the child was kept in Etawa actually belonged to A-4. With the prosecution witnesses asserting that the house from which the child was recovered belonged to A-4, the burden shifted on to A-3 to show that it was not, in fact, his house. He did not even give a suggestion along these lines to either PW-8 or PW-16 in their cross-examination.

52. The court is also not able to accept the submissions made by the all the counsel for the Appellants that they did not get an effective opportunity to cross-examine the prosecution witnesses. The court has already referred to the number of dates on which PW-8 was cross-examined at length. PW-16 was also cross-examined at length. CrI.A. Nos. 1337/2013, 1369/2013 & 716/2014 Page 17 of 18 Conclusion 53. The Court is unable to find any infirmity in the impugned judgment

of the trial Court convicting the Appellants for the offence under Section 364- A read with 120-B IPC.

54. It was then submitted by all counsel that each of the accused was of a very young age with no previous criminal record and therefore, a lenient view should be taken of the sentence.

55. The Court finds that only two sentences are possible for the offence under Section 364-A IPC. One is the sentence of imprisonment for life and the other is the death penalty. Thus, there is no scope for any further leniency to be shown in the matter with the trial court having sentenced each of the Appellants to imprisonment for life. The fine amount is also not excessive. Consequently, the impugned order on sentence also does not call for interference. The appeals are accordingly dismissed. S. MURALIDHAR, J.

I.S. MEHTA, J.

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