

Pappu and Etc. Vs. State

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Court : Delhi

Decided On : May-25-2005

Reported in : 133(2006)DLT290

Judge : Manmohan Sarin and; R.S. Sodhi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 73; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302, 362 364A, 365, 368 and 384; Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 164, 313 and 428

Appeal No. : Criminal Appeal Nos. 715 of 2000, 374 of 2001 and 210 of 2003

Appellant : Pappu and Etc.

Respondent : State

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : S.N. Pandey,; Sachin Chopra and; R.K. Bali, Advs

Judgement :

Manmohan Sarin, J.

1. I have had the benefit of perusing the judgment of my learned brother R. S. Sodhi, J., by which the appeals filed against the judgment and order dated 31st August, 2000 and 21st September, 2000 of the Additional Sessions Judge, New

Delhi in Sessions Case No. 102/ 97, arising out of FIR No. 480/95, Police Station, Ambedkar Nagar, are sought to be dismissed. The learned Additional Sessions Judge held the appellants guilty under Sections 364-A and 368, IPC and sentenced appellants Harnam Singh, Pappu and Vijender to life imprisonment with a fine of Rs. 10,000/- each and in default further rigorous imprisonment for three months each.

2. For the reasons and appreciation of evidence, as given hereinafter in the judgment, I am of the view that the prosecution has failed to prove the case beyond any reasonable doubt of kidnapping being for payment of ransom, so as to fall within Section 364-A, IPC. However, I find that the prosecution has proved the case for offence under Sections 365 and 368, IPC.

3. The prosecution's case may be briefly summarised as under :-

One Lakhpat Singh vide his statement made on 29th July, 1995 Ex.PW2/A informed that the appellant accused Harnam Singh had taken his child Vinod on 28th June, 1995, after he returned home from School. Complainant Lakhpat Singh stated that when he returned home at 7.00 p.m., he was informed by his wife that Vinod had been taken by Harnam Singh, a cousin of the complainant. Lakhpat Singh searched for Vinod but could not trace him. Lakhpat Singh received letters firstly demanding ransom of Rs. 4 lacs and, thereafter, a sum of Rs. 2 lacs. Prosecution claims that on 15th September, 1995, child Vinod was recovered from the possession of appellants Harnam Singh, Pappu and Vijender and Parvati. The fourth accused Parvati is stated to have died during the proceedings. On the minor child being recovered from the possession of the accused persons, he was handed over to the complainant by the U.P. Police. The statement of the child was recorded under Section 164, Cr.P.C. by the Metropolitan Magistrate. Minor Vinod named the accused persons as the persons responsible for kidnapping and keeping him in illegal confinement. On the above allegations, appellants were charged and prosecuted for the offences under Section 364-A read with Section 34 and Section 368, IPC.

4. Prosecution had examined PW-2 Lakhpat Singh i.e., the father of child, PW-3 Vinod the kidnapped boy, PW-4 Ravinder Dudeja, Metropolitan Magistrate, before

whom the statement under Section 164, Cr.P.C. was recorded. The minor child deposed that Harnam Singh had taken him away on the pretext of getting him Jalebis and brought him to Vijender. He was thereafter shifted from one place to another. He had described frequent beatings by Vijender and frugal feeding by Vijender, Harnam Singh, Pappu and Parvati. The witness had duly identified the appellants in Court. The child had also deposed regarding Ram Prakash, a relation of the complainant, who had also been accused. He declined to identify Ram Prakash as also the suggestion that Ram Prakash also used to beat him or had shown him the pistol. The child also stated that police had recovered him from the possession of Harnam Singh, Pappu, Vijender and Parvati, since deceased. Vijender tried to run away hiding between the goats but was caught. The minor child had withstood cross-examination and the trial Court found his statement trustworthy. I am in agreement with the findings of the learned Additional Sessions Judge, insofar as, kidnapping of the minor by the appellants Harnam Singh, Vijender, Pappu and Parvati and his confinement is concerned. However, I find that the prosecution has failed to prove that the kidnapping was for payment of ransom, as required under Section 364-A, IPC.

5. To attract the provision of Section 364-A, IPC what is required to be proved is :-

- I) That the accused kidnapped or abducted the person;
- II) Kept him under detention after such kidnapping and abduction;
- iii) The kidnapping or abduction was for ransom.

In the present case the question being considered is whether the last ingredient has been proved by the prosecution? For succeeding, the prosecution was required to prove that the letters demanding payment of ransom emanated from the accused or were sent at the behest of the accused.

6. Let us consider the evidence as led by the prosecution in respect of proving the ransom note and the demand of ransom. The deposition of Lakhpatt Singh in this regard is as follows :-

'On three occasions, the police went to Aligarh District to look for my son but he was not traceable anywhere at that time. Thereafter, I received four ransom letters from Harnam Singh, demanding a ransom of Rs. 2 lacs in the first instance thereafter he demanded ransom of Rs. 4 lacs. Ex. PW2/B, Ex.PW2/C and Ex.PW2/D are the said four ransom letters received by me from Harnam Singh. The original envelopes in which the above letters were received by me are Ex.P1 to Ex.P4.'

7. The Public Prosecutor sought to cross-examine him. This part of the statement is as under :-

'It is correct that I had stated in my statement under Section 161, Cr.P.C. dated 29th September, 1995 that the accused demanded Rs. 1 lakh as ransom. It is also correct that on 15th September, 1995, I had handed over 5 ransom letters to the police officials of Patiali District Etah (UP), where I informed him regarding kidnapping of my son Vinod. It is correct that the police recovered my son Vinod from the above four accused persons, namely, Pappu, Vijender and Parvati. Accused Ram Prakash was also present with them.'

As noted, there is no deposition in examination-in-chief of any demand for ransom by any accused. In cross-examination also no particulars of demand of ransom of Rs. 1 lac being oral, telephonic through someone or which accused demanded and from or through whom. Here also reference appears to be in context of ransom notes.

8. Thereafter, he was cross-examined by counsel for the accused-Harnam Singh and during the cross-examination he denied the suggestion that he owed a sum of Rs. 10,000/- to Harnam Singh. He stated that Ram Prakash had been implicated in this case on the fact that his name was mentioned demanding ransom. He deposed that the ransom letters are in the hands of appellant accused-Pappu, Pappu is the son of the sister of Chachi (Paternal aunt of accused-Harnam Singh). In his cross-examination, he further stated, 'the ransom letters were received by me through registered post and not by hand. The case set up is that demand for ransom was through ransom letters and not an oral or telephonic demand by any of the accused made either to the complainant or to the kidnapped child.'

8A. Ransom letters which were tendered in evidence by Lakhpat Singh are Ex. PW-2/B, PW-2/C and PW-2/D i.e. three in number, Lakhpat Singh in his examination-in-chief stated that he received the letters from Harnam Singh, but in cross-examination he stated that he received the letters through registered post. Harnam Singh is not the sender in any of the letters. The original have been carefully seen by me. The first envelope Ex.P1 is addressed to one Ram Prasad Nagar Tailor. The sender's name as given on the envelope is Rakesh Babu Badora. There is, however, no ransom letter, which is stated to have been exhibited or received through this envelope proved on record. The first exhibit out of the ransom document is Ex. PW2, which is not mentioned in the statement of Lakhpat Singh, as recorded. This is a photocopy of an Inland letter and appears to have been sent by some detenu in prison and does not disclose any bearing to the present case. The envelope Ex.P2 is addressed to Lakhpat Singh and purported to have been sent by Ram Prakash Tailor. Ex.PW2/B are four pages of hand written letters. Ex. PW2/C are two pages of hand written letter on lined pages of copy book. Ex.PW2/D is another hand written letter on lined pages of copy book.

9. On a mere visual examination of these three exhibits, namely, PW2/B, PW2/C and PW2/D, it is obvious to the naked eye that these are not written by one person. These aspects appear to have been totally overlooked by the learned Additional Sessions Judge, who contrary to the deposition of complainant that these were in the hands, of Pappu, concluded that these were writ-, ten by Harnam Singh. Additionally, there is another page, which is again in a different hand writing, which is tagged on to these without being given any identification.

10. The question to be considered in these circumstances is whether on the mere bald averment of the complainant that the ransom letters are in the hands of Pappu, the same ought to be accepted as proved. This statement is also made during cross-examination by Lakhpat Singh. Rather it was asked of the witness i.e. Lakhpat Singh by counsel of accused Harnam Singh, as to in whose hand writing the ransom notes were? The answer given was that the ransom letters were in the hands of accused-Pappu. The witness did not even state that he was familiar with the hand writing of Pappu or that he had ever seen him writing or had received any other communication from Pappu. No sample hand writing of Pappu was taken, so

as to have its comparison by handwriting expert. It was not even put to Pappu in his statement recorded under Section 313, Cr.P.C, that ransom notes were in his handwriting. It was only put to the accused under Section 313, Cr.P.C. that ransom notes were received by complainant, which was stated to be incorrect.

11. It may also be noted that on the date when statement of Lakhpat Singh was recorded, it was only the counsel of Harnam Singh, who was present. In fact, accused Pappu, Vijender and Paravati were not represented through counsel and it was only subsequently on 15th September, 1997 that Mr. Ranjit Singh was appointed as the Amicus Curiae on their behalf. Subsequently, on the next date, amices Curiae, so appointed, was not available. The amices Curiae continued to be not available and the matter was adjourned and on 20th March, 1998, Mr. A. U. Khan was appointed as amices Curiae. In short, on 12th August, 1997, when the above cross-examination took place, where Lakhpat Singh is stated to have said that ransom letters were in the hand writing of Pappu, the latter was not represented by any counsel.

12. In these circumstances, I am not persuaded to hold that simply on account of the alleged non-challenged by an accused, who was not even represented by counsel or amices Curiae, when the statement implicating him as author of ransom notes was made on the basis of a question by counsel of a co-accused¹, the prosecution can be taken to have discharged its burden of proving the ransom notes in accordance with law to establish it as a case of ransom for kidnapping.

13. As regards requirement and manner of proof required for proving the handwriting and signatures of the accused persons, reference may usefully be made to Pawan Kumar v. State of Haryana, reported at : 2003 CriLJ3552 . In the cited case the accused persons, who had hired a taxi and gone to a hotel and stayed for night along with the driver, left in the morning asking the waiter to take care of the driver. The driver was found dead. The waiter who was a solitary witness was not examined. The owner of the hotel deposed and stated that he had learnt of the stay of the accused from the waiter. It was held that (Para 7 of Cri LJ)

:-

'The accused persons are said to have made an entry in the register duly maintained by the hotel, in their own pen, and signed the same showing their stay on the fateful night in the hotel in question. So far as this entry is concerned, the same has been exhibited on the basis of statement of PW-6 (owner) though, he has nowhere stated that he knew either the writings or signatures of any of the accused persons. Indisputably the accused never made the entry in the presence of PW-6, but the same is claimed to have been made in the presence of the waiter alone. Thus the entry in the register having not been legally proved is not admissible in evidence. There is no other evidence in relation to stay of the accused persons in the hotel on the night of occurrence and there being no substantive evidence in relation to this very circumstance, the same cannot be proved by the statement of PW-6/owner, which could have been used only by way of corroborative evidence and thus the prosecution has failed to prove this circumstance which was the most important one to hold the accused persons guilty.

It would be seen that in the instant case also Lakshpat Singh did not state that he either knew or was familiar with the handwriting of Pappu. Pappu's handwriting was not even taken for comparison. Rather there was total confusion as to whether the letters were even sent by Harnam Singh or by registered post as claimed, or were in the hand of Harnam Singh as held by the Court.

Reference may also be usefully made to the State of Haryana v. Jagbir Singh, reported at : 2003 CriLJ5054. In the cited case an innocent child of about four years was a victim of unnatural death. As per the prosecution, the respondents murdered the child after kidnapping him. The intended demand for ransom for his release was stated to be the motive for the crime. Accused Jagbir Singh was found to be guilty by the Sessions Judge who convicted him under Sections 302/362/201/ 384, IPC. An appeal was filed and the High Court by its judgment found them not guilty. A ransom note was found to be in the handwriting of Jagbir Singh who is stated to have pointed out the place where the dead body was buried in house and on the basis of his information certain recoveries were also made. State in the appeal before the Supreme Court urged that the High Court had erroneously discarded the 'ransom note' especially when Jagbir Singh

accepted the handwriting to be his handwriting. Sample of his handwriting had been voluntarily given for comparison by the handwriting experts. Opinion was also available. Jagbir Singh had been produced before the Addl. CJM in custody for giving his specimen signatures under Section 73 of the Indian [Evidence Act, 1872](#). The Addl. CJM had also deposed that the accused had admitted the signatures to be his. The Supreme Court held (Paras 19 and 20 of Cri LJ) :-

'In order to enable the exercise of power under Section 73, the pendency of a proceeding before the Court is the sine qua non. thereforee, the comparison of the signature on the alleged ransom note in no way helps the prosecution.

Great emphasis was laid by the learned counsel for the State on the evidence of PW-4, the Additional CJM that the accused had admitted that the signature was his. This statement is of no assistance. The witness has admitted that the statement was made before him by the accused in the presence of the police officials.'

The Supreme Court in the above case, thereforee, held that ransom notes were not proved to be in handwriting and under the signatures of the accused in accordance with law and hence it dismissed the appeal against the acquittal by the High Court.

14. It may also be noted that while the deposition by the complainant was that the ransom letters were handed over by Harnam Singh, subsequently changed to, 'received through registered post' and in the deposition, these were stated to be in the hands of Pappu, the trial Court in para 34 of the judgment concluded these were in the hands of Harnam Singh.

15. In view of the foregoing discussion, I am of the view that the prosecution has failed to satisfy the essential ingredients of kidnapping being for payment of ransom in the absence of proving ransom notes. Prosecution has failed to prove demand of ransom by any of the accused for kidnapping, Prosecution has failed to prove the ransom notes as originating from or at behest of accused.

The prosecution has, however, been successful in proving that the minor had been taken out of custody by the appellants. The prosecution has also successfully proved the confinement of the minor by the accused persons. The minor has been recovered from their possession and custody. Accordingly, the prosecution has proved the offence under Sections 365 and 368, IPC, read with Section 34, IPC. Accordingly, the order passed by the trial Court is modified to sentencing all the accused/appellants to rigorous imprisonment of 7 years instead of life imprisonment along with a fine of Rs. 10,000/- each and in default of fine, appellants shall further undergo rigorous imprisonment for three months each. The benefit under Section 428, Cr.P.C. would also be available to appellants.

The appeals are partly allowed as aforesaid.

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