

Anil Vs. State

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Court : Delhi

Decided On : Jan-16-2007

Reported in : 2007CriLJ1725; 137(2007)DLT289

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 307 and 364A; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Criminal Appeal No. 175 of 2003

Appellant : Anil

Respondent : State

Advocate for Def. : Ravinder Chadha, Additional Public Prosecutor and ; Jagdish Prasad, Adv. in Criminal Appeal Nos. 175, 2

Advocate for Pet/Ap. : Sundeep Srivastava, Adv. in Criminal Appeal Nos. 175, 242 and 305 of 2003 and 400 of 200

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal Nos. 175, 242, 305/2003 and 400/2004 seek to challenge the judgment dated 16.01.2003 and order dated 20.01.2003 of the Additional Sessions Judge, Delhi in S.C.No.48/2000, whereby the learned Judge has held Rishi Ram, Guddu, Anil and Sarvesh guilty of the offence punishable under Section 364A/307/34 IPC while acquitting Rajpal giving him benefit of doubt. Further, by a separate order the learned Judge has awarded each of the convicts a sentence under Section 364A/34 IPC to undergo rigorous imprisonment for life with a fine of Rs. 20,000/-(rupees twenty thousand) each and in default of payment of fine to further undergo rigorous imprisonment for a period of six months each. The convicts were further sentenced under Section 307/34 IPC to undergo rigorous imprisonment for five years with a fine of Rs. 5,000/- (rupees five thousand) each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month each. Both the sentences were directed to run concurrently.

2. Brief facts of the case as have been set down by the learned Additional Sessions Judge are as follows:..that on 11.12.99 the complainant Jai Ram made a statement before the police that his son Chander Prakash @ Chandu was studying in 6th standard in Govt. School. He had gone to school at 12 p.m. On 10.12.99 but he did not return home and on inquiry he came to know that his son has gone somewhere even before the school was off. On that day at about 7 a.m. some unknown person telephoned him that if he wanted his son alive he should arrange Rs. One lakh. On the statement of Jai Ram, police registered the present case.

3. The prosecution, in order to support its case, examined as many as 12 witnesses. PW-1 is Jai Ram, who is the father of the kidnapped boy while PW-2 is Chander Prakash @ Chandu, a minor child who was about 11 years of age when he was kidnapped. PW-3 is constable Bailey Ram, who deposes to be on duty in PCR Van C-77. While on patrol, he saw a boy having his throat slit and was unable to speak. The boy was PW-2, Chander Prakash. The constable informed the Police Station Bawana and took the child to Hindu Rao Hospital. Head Constable Udaivir was in-charge of the PCR van when they spotted injured Chander Prakash at about 8.30 a.m. They also contacted their control room and came to know that the boy is kidnapped from the area of Samaypur Badli about

three days prior to his being recovered.

4. PW-4 is SI Z.H Khan. He deposes to the effect that on 13.12.1999, he arrested Rishi Ram from DTC stand, Bawana and on a disclosure statement made by the accused, Exhibit PW-4/A, recovered Vikram Tempo No. DL-1L-B/3299. PW-5, Devender Kumar, the record clerk of Hindu Rao Hospital has proved the MLC, Exhibit PW-5/A, prepared by Dr. Manju Sati in respect of Chander Prakash on 13.12.1999.

5. PW-6 is Head Constable Udayvir Singh who deposes that on 13.12.1999 he was in the PCR van which was near Ganga Tolly Mandir where Chander Prakash was spotted in an injured condition having a cut on his neck. The boy was taken to Hindu Rao Hospital and the police informed.

6. PW-7, SI Jatinder Singh had partly investigated the case. PW-8 is Dr. Subrata Roy. He had examined the MLC, PW-5/A in respect of Chander Prakash and opined that the injury was grievous. PW-9 is Constable Rajbala who deposes to the effect that on 11.12.1999 on the basis of PW-1/A from S.I. Farooqi, an F.I.R., Exhibit PW-9/A, was recorded.

7. PW-10 is Constable Kuldeep Raj. He was a formal witness. PW-11 is SI Suheb Ahmed Farooqi. He is the Investigating Officer. PW-12 is Shri S.S. Malhotra, Metropolitan Magistrate who deposes in the court that he conducted TIP proceedings of the accused Raj Pal, Sarvesh, Anil, Rishi Ram and Guddu on 17.01.2000. Sarvesh, Anil and Rishi Ram refused to participate in the TIP, which proceedings are noted in Ex.PW-12/B. This witness recorded the statement of Chander Prakash under Section 164 Cr.P.C. on 13.01.2000.

8. PW-1, Jairam has deposed that he has two sons and two daughters. The younger son is Chander Prakash. He was a student of Class VI studying in a school at Libas Pur. On 10.12.1999 the child was sent to school as usual. At about 12.00 noon he did not return home up to 5.00 p.m. A search was organized which went into late night without any success. On 11.12.1999 at about 7.30 a.m. a telephone call was received demanding Rs. 1,00,000/- (rupees one lakh) for the delivery of the child and extending the threat to the life of the child in case the

money was not arranged. The witness goes on to say that thereafter he lodged a report at police station, Exhibit PW-1/A, signed by him. At the time of kidnapping of his son the child was in Class V and was 11 years of age. The police kept his telephone under observation. He received other calls asking him whether the money had been arranged and that the money to be delivered at Jahangir Puri at light point, but the caller did not turn up at the appointed place. The witness testifies that he cannot identify the voice of the caller. He goes on to depose that on 11.12.1999 he received about five calls intimating him that money would be collected in the evening but nobody came to receive the money nor were any further calls received from the kidnappers. Further he was informed by the police that his son had been recovered and was in Hindu Rao Hospital. He along with the SHO went to Hindu Rao Hospital and found his son there with injuries on his neck. His son was treated at the Hindu Rao Hospital for about fifteen days and thereafter transferred to AIIMS where he was kept for three days. The witness deposes that he was informed about recovery of his child on 13.12.1999 and the recovery memo of the child is Exhibit PW-1/B. This witness was examined by accused Anil, only to the effect that Anil's voice could not be identified by this witness and also that Anil lived in the neighborhood for the past eight to nine months prior to the incident.

9. The next witness of importance is PW-2, Chander Prakash. He was questioned by the court and after satisfying himself that the boy was capable of making a statement he was allowed to be examined as witness. On oath, Chander Prakash States that he is studying in Class VI in Nagar Nigam Prathmik Vidyalaya. On 10.12.1999, he was studying in Class V. On that day he went to school at 12.30 p.m. From his house he attended school and while returning home when he was near go-down, accused Rishi Ram, Sarvesh and Anil, whom the witness identified in Court met him and dragged him to Vikram Tempo and put him in the tempo. They took him to jhuggis at Bawana where they detained him for two days. On the third day he was taken out from those jhuggis in a TSR and taken to the fields in Bawana, where his throat was slit by a sharp weapon and he was thrown in the fields in an injured condition at around 12.00 midnight. In the morning two persons came and found him in an injured condition and offered him tea and milk. PCR van was called by those persons and he was taken to Hindu Rao Hospital. In the

hospital he got treated and remained under treatment for five months. He was also taken to AIIMS after discharge from Hindu Rao Hospital and remained there for three days. His statement was recorded by the police and before the Magistrate. He was taken to jail for identification of the accused. According to him he identified Guddu and Raj Pal. He further goes on to depose that the statement recorded under Section 164 Cr.P.C. is Exhibit Pw-2/C, which the witness states that when he was kidnapped by accused Rishi Ram and Sarvesh and taken to the jhuggis, Guddu and Raj Pal present in court used to come to the jhuggis and threaten him with a knife and warned him not to raise an alarm lest he would be killed. While he was being taken to Vikram Tempo by Anil, Rishi Ram and Sarvesh, they threatened him not to scream otherwise he would be killed. While he was taken on TSR from the jhuggis to the fields he was strangulated by accused Rishi Ram and accused Sarvesh slit his throat with a sharp edged weapon. His school uniform was removed and he was put into fresh clothes. The uniform was used to tie his hands when he was taken in the fields. His mouth was gagged with a handkerchief. He does not remember for how long he remained admitted for treatment in Hindu Rao and AIIMS.

10. In his cross-examination, PW-2, Chander Prakash, states that he had covered a short distance from school when he was kidnapped and picked up, dragged and put into a tempo. The tempo was blue colour. It was being driven by accused Anil. The witness could not raise an alarm as his mouth was gagged by the accused with his hands. The tempo traveled for one-and-a-half hours, where after it reached a jhuggi and the witness was confined in a room on the first floor. There was no one else in the room at that time. The other two, namely, Guddu and Raj Pal used to come regularly to that room thereafter. The accused persons used to stay in the room turn by turn. This witness further states that the accused persons had telephoned his father in his presence only once and at that time Rishi Ram had telephoned his father from a shop. The other persons were not present at that time. Rishi Ram dialed the phone and asked him to speak to his father. The witness could only say that he had been kidnapped, but before he could give the name of the accused the phone was snatched away. He further states that he had stated to the Magistrate the name of the person who had strangulated him and who slit his throat. The witness was conscious at the field but not able to speak.

The dhabha where he was taken from the field was a long distance, where he was still not able to speak when he took tea. Police came there. His statement was recorded by the Police after six, seven days when he had named the accused persons to the police. He admitted that he could not correctly identify Raj Pal at the Tihar Jail as he was nervous at that time.

11. It was argued by counsel for the appellants that Chander Prakash, PW-2, ought not to be believed as he is a child witness and amenable to tutoring. It was also argued that there is discrepancy between the statements of PW-2, Chander Prakash and PW-1, Jai Ram, inasmuch as Jai Ram does not state that he had talked to Chander Prakash while Chander Prakash was being detained. Counsel also submits that Chander Prakash failed to identify Raj Pal in the Tihar Jail but chose to identify him in Court which goes to show that Chander Prakash has been tutored.

12. We have heard learned Counsel for the parties and have bestowed careful attention to the material on record as also the arguments advanced by learned Counsel. We find PW-2, Chander Prakash who has been cross-examined at length has reiterated his statement made in his examination-in-chief. In other words, the defense in their cross-examination has been able to establish the truth of the version of Chander Prakash, which he has narrated in his examination-in-chief.

13. The Trial Court had ample opportunity to see the witness ascertain his capacity to understand the situation and it is only thereafter, that the witness was thought fit to be administered oath. There is nothing in the statement of Chander Prakash, PW-2, that should suggest that he has been tutored or that there is an improvement in his version before the Metropolitan Magistrate or the Court. No doubt he did not identify Raj Pal earlier but that in itself is not sufficient to disregard the entire statement of Chander Prakash, PW-2. Raj Pal has already been given the benefit of doubt which has not been challenged by the State, therefore, much need not be made of this.

14. Having examined carefully the statement of Chander Prakash, we find that Chander Prakash is a reliable and a sound witness. He has narrated the entire

incident that took place including the slitting of his throat and throwing him into the fields, presumably, as dead and thereafter being taken by the police to the hospital. The witness, to say the least, has squarely proved the case of the prosecution.

15. PW-2, Chander Prakash's statement finds corroboration from the statement of PW-1, Jai Ram who has deposed that Chander Prakash went missing on 10.12.1999 and that on 11.12.1999 a telephone call was received making a demand of Rs. 1,00,000/- (rupees one lakh) for the delivery of the child as also the threat extended to the life of the child in case money was not arranged.

16. There is hardly anything in the statement of PW-1, Jai Ram that should suggest that he has introduced any falsehood or that he had any motive to implicate any of the accused persons much less his desire to tutor PW- 2, Chander Prakash. In this background having held PW-1, Jai Ram and PW-2, Chander Prakash as reliable witness we have no hesitation in holding that the prosecution has been able to bring home the guilt of the accused. The Trial Court after a careful analysis of the material before it has returned a finding holding the appellants guilty. The analysis of the Trial Court of the material placed before it has been re-examined by us and we find that the reasoning of the Trial Court suffers from no infirmity.

17. Criminal Appeal Nos. 175, 242, 305/2003 and 400/2004 are dismissed.

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