

Mohd. Nooruzzama Vs. State

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Court : Delhi

Decided On : Jan-19-2007

Reported in : 2007CriLJ2125; 137(2007)DLT325

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

Acts : Indian Penal Code - Sections 34 and 364A; Code of Criminal Procedure (CrPC) - Sections 313 and 428

Appeal No. : Criminal Appeal No. 73 of 2006

Appellant : Mohd. Nooruzzama

Respondent : State

Advocate for Def. : Ravinder Chadha, Additional Public Prosecutor and ; Jagdish Prasad, Adv. in Criminal Appeal No. 73 and

Advocate for Pet/Ap. : V.K. Raina, Adv. in Criminal Appeal No. 73 of 2006 and; Purnima Sethi, Adv. in Criminal Appeal No. 395

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal Nos. 73 and 395/2006 seek to challenge the judgment dated 21.04.2005, whereby the learned Additional Sessions Judge in Sessions Case No. 94/2001, F.I.R.No.540/2001, registered at Police Station Uttam Nagar, convicted the appellants Mohd. Nooruzzuma and Vinay @ Raja under Section 364A IPC and further by his order dated 25.04.2005, sentenced the appellants to undergo imprisonment for life with a fine of Rs. 1000/- and in default of payment of fine to further undergo simple imprisonment for a period of three months. They were both awarded the benefit under Section 428 Cr.P.C.

2. Brief facts of the case as have been noted by the Additional Sessions Judge are as follows:

That on 13.07.2001 a lady named Babita R/o C-162, Binda Pur, Pocket-4, Uttam Nagar, Delhi lodged a complaint with the police. In her complaint she stated that she is a house wife and three years back a boy aged 20/22 years had worked with her as a servant for about 10 days. A week back he again came to her and asked for a job. She told him that there is no job with her but he insisted on the same. In the meantime he started making enquiries about the girl in her lap. He thereafter left her house. She further stated that yesterday on 12.7.2004 the said boy named Raja came to her again at 7.30 PM at her house. Her husband was present in the house. He started fondling the child in his lap. He thereafter gave a toffee to the child. He then left the house along with the child without an intimation. The child was 17 months old. Police carried out investigation and filed a charge sheet against the said accused Vinay @ Raja and the co-accused Mohd. Nooruzzama. One of my Ld. Predecessors framed charge under Section 364A IPC against both the accused on the grounds that they kidnapped the girl child Anjali for ransom and detained her for compelling her parents to deliver Rs. 2 lacs to them for releasing the child. They put the parents of the child under fear to cause hurt or death to the child Anjali. They were charged for the commission of offence under Section 364A IPC R/w Section 34 IPC.?

3. The prosecution in order to prove its case examined as many as thirteen witnesses. Of these PW-4, Constable Ghasi Ram, states that on 13.07.2001, he was posted at Uttam Nagar Police Station when Smt.Babita came and had her

statement recorded by S.I. Rang Lal who then made an endorsement on the same and handed over the rukka which this witness took to the police station for recording of a formal F.I.R. by the duty officer.

4. PW-5, Head Constable Dayanand, states that on 14.07.2001, he joined investigation along with S.I. Ram Kumar Maan. He reached Nanakpura Chowk on motor-cycle with Constable Suresh Kumar where he met S.I. Ram Kumar Maan. In the meantime, Shammi, PW-3 had also reached there in his red colour Car. They proceeded to Safdarjung Hospital and thereafter reached Jawahar Lal Nehru Stadium and further to Gurudwara Raqab Ganj where Vinay @ Raja was apprehended by Constable Jagdish. Vinay, then took them to Birla Mandir where at his pointing out, accused Nooruzzama was arrested and baby Anjali was recovered from a three wheeler scooter no. DL-1RC-7496. Both the accused were taken to Police Station Uttam Nagar. Anjali was identified by PW-3. In his cross-examination he said that he did not remember the number of the red colour Maruti Car.

5. PW-6, Constable Sita Ram joined investigation on 14.07.2001. He along with other police personnel left Police Station East Uttam Nagar at 9.00 a.m. to reach Nanakpura Chowk. There they met S.I. Rang Lal and other police members. PW-3, Shammi had also reached there. He came in a red Car. From there they went to Safdarjung Hospital and from Safdarjung Hospital they reached Jawahar Lal Nehru Stadium and then proceeded to Gurudwara Raqab Ganj. Accused Vinay @ Raja was apprehended by Constable Jagdish. Thereafter, at the pointing out of Vinay, near Mandir Marg they apprehended accused Nooruzzama, present in the court and recovered baby Anjali. Then they all returned to Police Station Uttam Nagar with the accused persons. Accused were taken to Din Dayal Upadhaya Hospital for a medical examination. In his cross-examination it was elicited that from him that the vehicles were parked at about fifty yards distance from where Vinay @ Raja was arrested in Gurudwara Raqab Ganj and that Nooruzzama was sitting in the back seat of the TSR.

6. PW-7, Constable Kabool Singh supports the statement of PW-6. PW-8, ASI Vinod Sharma proved the F.I.R. copy of which is Exhibit PW-8/A. PW- 9, Head

Constable Anil Kumar supports PW-7 and PW-6. PW-10, Constable Pritam Singh states that on 13.07.2001 he was posted at police post East Uttam Nagar when on an application he was told to keep a tab on telephone No. 5509420 at Janakpuri Telephone Exchange. In his cross-examination he states that he collected details of telephone No. 5509420 in the evening of 14.07.2001.

7. PW-11, S.I. Ram Kumar Maan states that on 13.07.2001 Babita had come to the police post and gave a statement to S.I. Rang Lal on which F.I.R. No. 540/2001 was registered. At 3.30 p.m. telephone was received on telephone No. 5509420 in which the caller had made a ransom demand and informed Babita that the amount and the place of delivery would be intimated later on. This witness directed S.I. Rang Lal to keep telephone No. 5509420 under observation in Janakpuri Telephone Exchange. Another call was received by Babita where the caller asked Babita to reach Fun and Food Village, Kapas Hera. This witness then instructed Shammi, husband of Babita to reach Dabri Morh along with the said ransom money. The staff was briefed and S.I. Rang Lal and Constable Jagdish were directed to hide themselves in the Car of Shammi. The party reached Fun and Food Village, Kapas Hera but nobody came there. On 14.07.2001 he received information from police post that Shammi was asked to bring money and reach Safdarjung Hospital. He directed S.I. Rang Lal to ask Shammi to reach Gurudwara Nanak Pura. Constable Jagdish and S.I. Rang Lal concealed themselves in the Car. Constable Dayanand and Constable Suresh left on the motor-cycle while Head Constable Anil and Suresh left on the other motor-cycle to reach Safdarjung Hospital. The red colour Car of Shammi was parked near bus-stop. They waited there for a long time but nobody came. S.I. Rang Lal thereafter informed this witness to reach Jawahar Lal Nehru Stadium, upon which all of them reached there. In the meantime a call was received from Shammi and he was asked to reach Gurudwara Raqab Ganj in his car with the ransom money. At Gurudwara Raqab Ganj a boy approached Shammi and started talking to him. The boy was overpowered by S.I. Rang Lal and Constable Jagdish, whose name was revealed as Vinay @ Raja. The accused was interrogated and he stated that Baby Anjali was with his co-accused Nooruzzama. A call was received on the mobile of PW-3, Shammi. The caller wanted to know whether Vinay @ Raja had reached. Shammi replied in the negative, after which the raiding party reached Birla Mandir where

accused Nooruzzama was apprehended with baby Anjanli in TSR No.DL-1RC-7496. Personal search memos of both the accused were prepared, they are Exhibit PW-3/E and PW-3/F. Arrest memos are Exhibit PW-3/C and PW-3/D. Recovery memo of baby Anjali is PW-3/A. The recovery memo of the three wheeler scooter is Exhibit PW-2/A and the disclosure statement of Nooruzzama is PW-3/B and Vinay @ Raja is Exhibit PW-11/A. In cross-examination, the case narrated by this witness in his examination-in-chief was got reiterated.

8. PW-12, Moizuddin is the owner of the TSR DL-1RC-7496 which was being plied by Yakoob. PW-13 is S.I. Rang Lal who states that on 13.07.2001 he was posted as ASI and police post East Uttam Nagar, New Delhi, when Babita made a statement, Exhibit PW-1/A. He made an endorsement, Exhibit PW-13/A and got the case registered as F.I.R.No.540/2001, PW-8/A. He reached the spot at C-162, Pocket 4, Binda Pur, Matiala, Uttam Nagar, New Delhi and interrogated a few persons during which time Constable Ghasi Ram brought the rukka together with a copy of the F.I.R. To the spot. The witness was informed thereafter that Babita had received a ransom call for Rs. 2,00,000/- (rupees two lakh) on telephone No. 5509420 and the caller asked her to arrange money for release of the child Anjali. The caller also informed her that he would call later. The witness recorded a supplementary statement of Babita and amended the F.I.R. On 13.07.2001 at about 4.30 p.m. a call was received by Babita asking her to reach Fun and Food Village, Kapas Hera with Rs. 2,00,000/- (rupees two lakh). The caller instructed Babita to bring a red colour Maruti Car. The witness organized a raiding party and they all assembled at Dabri Morh and proceeded to Fun and Food Village, Kapas Hera, Delhi. The party waited for two hours but nobody turned up. On 14.07.2001 complainant, Babita received a call in which she was instructed to send PW-3, Shammi with a ransom money in a red car at bus-stop, Safdarjung Hospital. PW-3, Shammi was sent to South West Delhi along with ransom money in a red car. This witness along with other police officials reached Gurudwara Nanakpura and information was also passed to S.I. Ram Kumar Maan to assemble his staff. They reached Nanakpura at 12.00 noon and organized a raiding party. The witness along with Constable Jagdish went into the car of Shammi while all the other staff members were sitting in private vehicles. From there they reached Safdarjung Hospital and waited for sometime. In the meantime, Shammi received a call from

his house that they should meet the caller at Jawahar Lal Nehru Stadium with the ransom money. The information was transmitted to S.I. Ram Kumar Maan. All members reached the agreed place at Jawahar Lal Nehru Stadium and waited when another call was received that they should reach Gurudwara Raqab Ganj. This information was also transmitted to S.I. Ram Kumar. In the meantime, Shammi received a call on his mobile that the caller was waiting at the gate of Gurudwara Raqab Ganj. Shammi went and stood at the gate of Gurudwara Raqab Ganj when one person approached Shammi, who gave an appropriate signal. On this that person was overpowered whose name was stated to be Vinay @ Raja present in court. On interrogation he revealed that baby Anjali was with his friend Nooruzzama near Birla Mandir in a TSR. At this time Shammi received a call asking him whether Vinay was with him. The raiding party along with the accused Vinay @ Raja reached Birla Mandir and on the pointing of Vinay accused Nooruzzama was arrested along with baby Anjali. The child was taken into safe custody. Both the accused searched but the driver of the TSR was not present when accused Nooruzzama was arrested. He came later on and his name is Yakoob. Baby Anjali was given to her father Shammi, PW-3 on superdari on an application Ex. PW- 13/B. The superdarinama in this regards is Ex.PW-3/G. Both the accused were sent to the hospital for medical examination. They were later locked in police station Vikas Puri. The Bill of mobile No. 9811208835 9811208835 was collected on 26.07.2001 which is marked B. Bill of telephone No. 5509420 was also collected which is marked A. Upon completion of investigation charge-sheet was filed in Court. In cross-examination this witness states that no information was received from MTNL as to from where the call was made. He states that he did not take down the telephone number from which Shammi had received a call on his way to Birla Mandir.

9. PW-1, Smt. Babita has deposed that on 12.07.2001 at about 7.30 p.m. Raja @ Vinay came to her house. She knew the accused since he had served as a domestic servant with them three years prior. The accused wanted employment. At that time her husband was also present in the house. Her daughter Anjali came to her. The accused enquired about Anjali. Thereafter the accused took Anjali and started fondling her. He also gave her a toffee. The witness thereafter went to the kitchen and upon enquiry by her husband as to where Anjali was she replied that

the child was with Raja @ Vinay. They both searched but Raja nor Anjali was to be found. Neighbours and relatives joined in the search but to no avail. They then lodged a report at the police post Uttam Nagar on 13.04.2001. The witness goes on to state that on 13.07.2001 at about 3.30 p.m. she received a telephone call from accused, Raja, who informed her that the child, Anjali was with him and he demanded a sum of Rs. 2,00,000/- (rupees two lakh) as ransom. He told her that he would call again. At about 7.30 p.m. another call was received asking them to reach Kapas Hera with the money. By this time the police had arranged for keeping the telephone under observation. Police officials were also deputed at their house. They went to Kapas Hera but nobody came their. On 14.07.2001 she again received a telephone call inquiring of her as to why she had come with police. Caller threatened her that he would kill Anjali in case their demands were not met. Her husband talked to the accused and wanted to be sure that Anjali is safe. Upon this the accused made the child cry over the phone. According to this witness a deal was struck and her husband thereafter left with the said amount to the assigned place to meet the kidnappers. She again received a call from the accused confirming whether her husband had left the house with the money. She came to know that at the assigned place nobody turned up. On 14.07.2001 at about 4.00 p.m. the witness again received a call from her brother informing her that the accused had been arrested and Anjali had been recovered. The witness identified Raja @ Vinay. Nothing useful was elicited from this witness in cross-examination.

10. PW-2, Yakoob stated that he was driver of three wheeler scooter No. DL-1RC-7496 owned by Fakruddin. He was near Sai Baba Mandir where two persons carrying a child gave a signal to stop and asked him to go to Connaught Place. One of the passengers got down near Raqab Ganj Gurudwara and the other along with the child went to Birla Mandir. He was asked to stop the rickshaw at Birla Mandir where the passenger got down but the child remained in the scooter. In the meantime, one red colour car came their and some persons got off the car and caught hold of the passenger while another person from the car took away the child. The witness identifies accused Nooruzamma as being the passenger along with the child and identified Vinay @ Rana as the passenger who got down at Connaught Place. In his cross-examination he stated that he was about 16 years

of age at the time of the incident. It was also elicited that when his passenger, Nooruzamma was caught he was beaten up by persons in the red car. He had also admitted that he had never seen Vinay @ Raja prior to the incident.

11. PW-3, Shammi, is the father of Anjali and husband of PW-1. He deposes that on 12.07.2001 while he was at home along with his wife and daughter Anjali, the accused Vinay @ Raja who had earlier worked with them as domestic help had come to the house looking for a job but since they did not need any domestic help they declined the accused. However, he began playing with baby Anjali. After sometime this witness looked for his daughter but found neither the accused nor his daughter. He along with his wife searched with the help of their relatives and friends but to no avail. On 13.07.2001, a report was lodged. On the same day at about 3.30 p.m. Raja @ Vinay made a telephone call at their residence informing his wife that Anjali was in his custody and demanded a sum of Rs. 2,00,000/- (rupees two lakh) to be delivered at Safdarjung Hospital. This information was passed on to the police and thereafter he took Rs. 2,00,000/- (rupees two lakh) and went along with the police. They reached Safdarjung hospital. In the meantime, Raja made a telephone call at the house complaining as to why they had not reached. This information was given to him by his wife through a telephone call. He also asked his wife to tell the accused to ring him up directly. Thereafter accused Vinay @ Raja made a call on his mobile and asked him as to why he had come their with the police. He threatened that his daughter would be cut to pieces. Again a call was received from the accused asking him to come alone to Kapas Hera Border. The witness went to the police. At Kapas Hera Border the police officials got down from the Car. Raja spotted them and ran away. On 14.07.2001, at about 2.30 p.m. they again received a call from Raja. He asked them to come along with the ransom amount and warned them about informing the police. He was asked to come to Nanakpura Gurudwara. The witness again informed the police party. They went to Nanakpura Gurudwara with cash, but the accused did not turn up. On telephone he was again instructed to reach Raqab Ganj Gurudwara. The police was waiting near Nanakpura Gurudwara. The police and the witness then went to Raqab Ganj Gurudwara. He stood in front of the car with cash. After about one-and-a- half hour Vinay @ Raja reached there with a bag to receive cash. He did not bring Anjali with him. This witness told the accused

that he would pay the money only after his daughter was delivered to him. At the same time he gave an appropriate signal. The accused was apprehended by the police. On interrogation he informed that the child was with his co-accused who was standing at Birla Mandir. All of them went to Birla Mandir where the accused Vinay pointed out to his co-accused Nooruzzama who was arrested. The child Anjali was recovered from the three wheeler scooter and documentation prepared. In his cross-examination nothing meaningful was got asserted.

12. It was argued on behalf of the accused persons that there is no evidence on record to show that both the accused persons had kidnapped Anjali. It was contended that to bring the case under Section 364A IPC it is necessary that both the accused should have made a call for ransom. Counsel also argued that the recovery of the child from one of the accused persons would not amount to offence under Section 364A IPC having been constituted. Counsel also attacked the nature of evidence as being too perfect which defies logic and ought not to be relied upon. Counsel have also pointed out certain contradictions.

13. We have heard counsel for the parties and with their assistance carefully examined the record. We have already narrated above the type of evidence that is on record and are of the view that from the testimony of PW-1, Babita and PW-3, Shammi, it is clear that Vinay had been employed by them earlier who now sought re-employment and came to the house of the complainant for that purpose. He was playing with the child Anjali and in the process took her away from the custody of the lawful guardians and thereafter made a demand of ransom for the release of the child Anjali. The police were informed and after a wild goose chase finally Anjali was recovered from near Birla Mandir from his co-accused Mohd. Nooruzzuma. From the testimony of PW-2, it is evident that both the accused persons along with Anjali hired a three wheeler scooter to be taken to Connaught Place where Vinay @ Raja got down while Nooruzzuma proceeded to Birla Mandir. Accused Vinay was arrested at Gurudwara Raqab Ganj and thereafter led the police party to Birla Mandir where Mohd. Nooruzzama was arrested and baby Anjali recovered. All other witnesses narrating their individual acts have supported the procedural aspect of the Prosecution's version. Proper documentation has been placed on record by way of exhibits and there is nothing on record to show

that the prosecution's version as put forth by them should not be believed. The accused persons in their statement under Section 313 Cr.P.C. have merely pleaded their false implication. They have not led any evidence in defense but have chosen to cross-examine material witnesses so as to make them reiterate their statements in examination-in-chief. With this material it is not possible to support the submissions made by learned Counsel on behalf of the accused. There is no gainsaying that both the accused were knowingly and jointly party to the kidnapping of the child; calling for ransom and participating in holding the child from lawful control of lawful guardians. In the event the accused wanted to set up their individual defenses, it was for them to do so for it was only within their special knowledge as to what was their individual act. A bald assertion that they have been falsely implicated would not take their case any further. The law on the subject is clear enough and needs no reiteration. Facts of each case govern the application of law.

14. In the present case, we have already discussed above how both the accused have participated in the kidnapping of Anjali, a seventeen months old child for the purpose of ransom. From the discussion above, we have no hesitation in holding that the Prosecution has brought home the guilt of the accused under Section 364A/34 IPC. The trial court in its judgment under challenge has also appreciated the material on record to come to the conclusion that the appellants are guilty of an offence under Section 364A IPC. We see no infirmity in the order under challenge. In that view of the matter, the judgment dated 21.04.2005 and order on sentence dated 25.04.2005 are upheld. Criminal Appeal Nos. 73 and 395/2006 are dismissed.