

**Vipln Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Apr-03-2007

**Reported in :** 139(2007)DLT470

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

**Acts :** Indian Penal Code (IPC) - Sections 120B, 201, 302 and 364A; Code of Criminal Procedure (CrPC) - Sections 73; [Constitution of India](#) - Article 20(3)

**Appeal No. :** Criminal Appeal No. 468 of 2002

**Appellant :** Vipln Kumar

**Respondent :** State

**Advocate for Def. :** Ravinder Chadha, APP for ; Jagdish Prasad, Adv.

**Advocate for Pet/Ap. :** Rakhi Nigam, Adv. in Criminal Appeal No. 468 of 2002 and V.K. Raina, Adv. in Criminal Appeal No. 196 of 200

**Disposition :** Appeal dismissed

**Judgement :**

**R.S. Sodhi, J.**

1. Criminal Appeal Nos. 468 of 2002 and 196 of 2002 seek to challenge the common judgment and order of the Additional Sessions Judge, Delhi, in Sessions

Case No. 127/1999 arising out of F.I.R. No. 908 of 1998, Police Station Dabri whereby the learned Judge vide his judgment dated 15.9.2001 has held the appellants, Vipin Kumar and Ramesh, guilty for the offence under Sections 120-B, 364-A, 302 and 201 IPC. Further, by his order dated 19.9.2001, the learned Judge sentenced both the appellants to life imprisonment under Section 302 IPC with a fine of Rs. 25,000/- each and in default of payment of fine further rigorous imprisonment for one year each; imprisonment for life under Section 364-A IPC with a fine of Rs. 25,000/- and in default of payment of fine further rigorous imprisonment for one year each; rigorous imprisonment for seven years under Section 201 IPC with a fine of Rs. 20,000/- and in default of payment of fine further rigorous imprisonment for nine months each. All the sentences were directed to run concurrently.

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

Avdhesh, the only son of PW2 Mohar Singh went to school as usual on 23rd December '98. He was 8 years old and was student of 11th Class in RM Convent School, Kailash Puri at 1.30 p.m. At the time of closing of school, Mukesh who used to bring Avdhesh from the school went to bring him back home. Avdhesh was not found there. Mukesh enquired from the Principal. Principal told him that some known person had come to the school at 'CHUTTI' time and taken him. Avdhesh did not reach home. He was searched here and there around the school, in the Mohalla, but no trace was found. Late in the day, a letter is delivered by a child to Pinki, sister of Avdhesh, who gives this letter to her father. In the letter, it is written that Avdhesh was in possession of writer of the letter. Money should be arranged by the parents. they should not worry about the child. PW2, father of Avdhesh takes this letter to the police station. FIR No. 906/98 of kidnapping of Avdhesh u/s 364 IPC is recorded at police station at 4.15 p.m. The letter written by the kidnapper is seized by the police vide a seizure memo. Police starts investigation, meets the Principal-cum- Manager of the school, makes further enquiries from the father of the child, takes a photograph of the child, makes efforts for search of the child and a 'Hue and Cry' notice is issued and published and displayed in the area. All relatives of Mohar Singh are visited but up to the

evening of 24th December '98, no trace of the child is found. In the evening of 24th December '98, Mohar Singh received another ransom letter through one Amar Nath who is a shop keeper of the area and at whose place somebody left this letter for Mohar Singh. Mohar Singh takes this letter also to the police. Police seizes this letter. In the letter, a ransom amount of Rs. 3 lakh is demanded. This letter reads as under:

To

Mohar Singh

You must have received information that your son is with us. Do not try to play trick otherwise it will be disastrous. You leave all other work and arrange money of Rs. 3 lakh. This money should be arranged by 26th December '98 and I shall collect this money on the same day, which is Saturday. Your son Avdhesh shall be left at the school on 27th December '98. You will not inform police, nor you will play tricks as these shall harm you. Rest on Saturday.

Police examined Amar Nath through whom the second letter was received and records his statement. Police again makes attempt to locate kidnapped boy but is not successful. The complainant is again questioned about the persons who have been visiting the family and who had become familiar and acquainted with the child. Then police learnt that one Vipin Kumar had visited the house of Mohar Singh about 10-15 days prior to the incident, on his Bajaj Chetak Scooter Along with a distant relative of Mohar Singh and had stayed at home of Mohar Singh for about two days and had taken the child to leave him to school for these two days. On coming to know this, police searches for this Vipin and went to his house at Sadar Pur Colony, Noida. Vipin is not found at his house. Police goes to his native place Etah. He was not found there also and police found that he was missing from his house since kidnapping of child. On 2nd January '99, police received secret information that suspect Vipin Kumar has come to his house at Noida. On receiving this information, police comes into action and Vipin Kumar is apprehended from his residence in Noida, at the identification of the Mohar Singh. He is interrogated and he revealed that on 23rd December '98, it was he who had gone with one Ramesh to the school and picked up the child from the school.

Ramesh stood Along with scooter in the Gali. His interrogation reveals that child had already been murdered on the same day and dead body was thrown into canal. Disclosure statement of accused was recorded in which he disclosed the entire plan. He disclosed that a room was hired in Harijan Basti, Nasir Pur in H. No. 59, Gali No. 5, two days prior to kidnapping. After kidnapping, the child was taken to that room. The clothes of the child were changed and then the child was given sleeping pills in milk and was taken to Agra Canal where he was killed and thrown. He disclosed that school bag, clothes, etc., of the child were still lying in the same room. They had planned to recover ransom amount by showing school bag and the clothes of the child. The accused Ramesh was arrested at the pointing out of accused Vipin. Room of accused Vipin was searched, in that room in one Almirah/shelf some books and some notebook were found. IO found that in the notebook there was some sort of planning scribed about kidnapping of child and area map of the location of school of child was made and was there. IO seizes this notebook. Both the accused persons, thereafter, led the police to the wooden bridge wherefrom the dead body of the child was thrown into canal. IO interrogated the persons living in the surrounding area but could not find trace of the dead body nor got any clue about dead body. He also searched the record of police station Badarpur and police station Sarita Vihar within which this canal came but could not find any record of recovery of dead body of a child. Accused persons then led police to the house which was rented by them. House owner Suresh Kumar was interrogated. He told IO about the taking of room on rent by the accused persons and bringing a child there on 23rd December '98 for few hours. He stated that he had not seen the accused persons after that day and saw them only with the police on that day. He was shown the photograph of the child and on seeing photograph he stated that it was the same child who was brought to the room and thereafter taken away from the place after locking the room by accused persons. Lock of the room was broken in presence of Suresh and Mohar Singh and room was entered and at the instance of accused persons, police recovered school bag of the child containing lunch box, Class IInd books and notebooks of the child from upper shelf (Tand). The clothes of the child namely one Navy woolen cap, one Navy blue jersy, blue and white strip Tie, white shirt, white pant, white socks and white colour PT shoes were recovered. Accused persons also got

recovered, from the room, one empty strip of Larpose-2 tablets (sleeping pills) from which five tablets had been removed. IO seized this empty strip, school bag, books and clothes of the child. Mohar Singh had identified them as that of child.

The accused disclosed that Larpose-2 tablets were given to the child in the milk to make him unconscious.

The body of the child could not be found out, but the police was able to catch the culprits.

Both the accused persons were charged with the offence of hatching up a conspiracy to commit kidnapping for ransom and to commit murder u/s 120B. They were also charged with the offence u/s 364A and 302 IPC for kidnapping the child for ransom and threatening to kill him as well as for murder of the child. They were also charged u/s 201 IPC for eliminating the evidence of the crime. Both the accused persons pleaded not guilty to the charge and claimed trial.

3. Prosecution to substantiate its case examined 15 witnesses. Of these PW-2, Mohar Singh, is the father of Avdhesh Kumar. He testifies that Avdhesh was eight years of age and was a student of 2nd class in R.M. Convent School, Kailashpuri. On 23.12.1998, Avdhesh went to school around 7:45 a.m. and as usual Mukesh went to pick him up at 1:30 p.m. but the Principal of the school told him that the boy had already been taken away. Mukesh reported this matter to Mohar Singh who began searching for the child. During this time, a letter was delivered to Pinki, his daughter, which letter was in the nature of a ransom note. Mohar Singh reported the matter to the police and an F.I.R. Exhibit PW 2/B was registered. He goes on to state that he had informed the police that 10-12 days prior to 23.12.1998, Vipin Kumar, present in court, along with one Naresh had come to stay at their house for about two nights. Naresh was related to Mohar Singh and had introduced Vipin as his friend. Vipin had taken Avdhesh to school on one of those days on his scooter. Naresh was identified by this witness as being the same person. The witness proved the ransom note Exhibit PW 2/A and the seizure memo Exhibit PW 2/C. Mohar Singh further deposes that on 24.12.1998 at about 8 p.m., a shopkeeper handed over another letter in which there was a demand of Rs. 3 lacs as ransom. This letter was also handed over to the police Exhibit PW

1/C, the envelope Exhibit PW 1/B and the seizure memo Exhibit PW 1/A. He further testifies that on 02.01.1999, he had gone with the police to Noida when accused Vipin was arrested from his room. His personal search was conducted vide memo Exhibit PW 1/D. Vipin made a disclosure statement Exhibit PW 2/E which was signed by him. A notebook was seized from the room of Vipin which had a sketch of Sagarpur area on it as also particulars as to when the child was to be lifted. The notebook was Exhibit PW 2/F and the writing on the notebook was Exhibit PW 2/G. Vipin disclosed the involvement of Ramesh in the crime. On this, the police caught up with Ramesh at the house of his uncle Harish. Ramesh was arrested and his personal search was conducted vide memo Exhibit PW 2/H. Ramesh, on interrogation, made a disclosure statement Exhibit PW 2/J. Thereafter, both Ramesh and Vipin lead the police party to the canal where they had thrown the child Avdhesh after killing him. The pointing out memo is Exhibit PW 2/K. They then lead the police party to a room in Nasir Pur, Harijan Basti, which was lying locked. The lock was broken open in the presence of the landlord Suresh Kumar and from the room, school bag of Avdhesh was recovered. In the bag, there was a lunch box, geometry box and class II books as also notebooks. Clothes of the deceased, namely, a jersy, shoes, cap, etc., were also recovered at the instance of Vipin. These articles were seized vide memo Exhibit PW 2/N. Vipin also got recovered an empty packet of tablets which was seized vide memo Exhibit PW 2/P. The articles recovered were identified as Exhibit P-1 to P-10, pair of socks Exhibit P-11/1 and 2 and pair of shoes Exhibit P-12/1 and 2. Mohar Singh was extensively cross-examined. In cross-examination, he states that Vipin and Naresh had come to his house prior to kidnapping of Avdhesh on a two-wheeler scooter. He confirms that Naresh was also interrogated by the police. He goes on to testify that he did not know the address of Vipin prior to his coming and staying with him. He testifies that he had also made inquiries from the Principal of the school. He also testifies that initially he did not suspect anyone. He further testifies that on the following day when he went to the school, he was told by the children that Avdhesh had been taken by some person on a two-wheeler scooter of green colour which was quite new. It is only hereafter that he began suspecting Vipin Kumar.

4. PW-3 is Manjeet Solanki, who is Principal-cum-Manager of R.M. Convent School. He testifies that Avdhesh was studying in his school in IInd class. On 23.12.1998 at about 1:35 p.m., when school was getting over, someone came and called Avdhesh outside the school. The person who took Avdhesh informed this witness that he was uncle of Avdhesh. Avdhesh also confirmed the same. This witness identifies accused Vipin as the person who came and picked up Avdhesh on 23.12.1998. PW-4, Amar Nath, is the shopkeeper who handed over the ransom note Exhibit PW 1/C to Mohar Singh. He states that he was running a grocery shop in Gali No. 2, Shivpuri. On 24.12.1998, a person came to his shop, inquired about the address of Mohar Singh and handed over a letter to be delivered to Mohar Singh. Initially, this witness was reluctant but the person left the letter at the shop and went away. This witness on the same day delivered the letter at the house of Mohar Singh. The witness identifies Ramesh as the person who came to his shop to deliver the letter.

5. PW-6 is Suresh Kumar, owner of House No. 59, Harijan Basti, Village Nasirpur. He testifies that on 23.12.1998, both Vipin and Ramesh took a room on rent @ Rs. 400/- per month. They came on a two-wheeler scooter. On the next day, he found both of them in the room along with a child around eight years old. On inquiry, Vipin told him that the boy was his nephew. At that time, the boy was in school uniform. At about 7:30 or 7:45 p.m., both Vipin and Ramesh went away with the child and never came back. It was only on 2/3.01.1999 that the accused persons came to the house along with the police and father of the child. He identified the child from the photograph shown to him and testifies that the accused persons had brought the same child to the room whose photograph had been shown to him. In his presence, Vipin and Ramesh pointed out towards the room they were staying in. Pointing out memos were Exhibit PW 2/L and PW 2/M. The lock of the room was broken open and from the room, the police seized a bag Exhibit P-1, a geometry box Exhibit P-2, a lunch box Exhibit P-3, books and copies collectively Exhibit P-4, an Identity Card Exhibit P-5, a jersey Exhibit P-6, a cap Exhibit P-7, a pant Exhibit P-8, a shirt Exhibit P-9, a tie Exhibit P-10, pair of socks Exhibit P- 11/1 and 2 and pair of shoes Exhibit P-12/1 and 2. These articles were seized vide memo Exhibit PW 2/N. The police also seized one empty packet of medicine Exhibit PW 2/P. In cross-examination, the witness states that he had kept no

documents prepared to show Vipin and Ramesh as his tenants. He also denied that he was known to the father of the deceased. Pinki, daughter of Mohar Singh, is PW-7. She states that on 23.12.1998, a girl and a boy standing outside their house, had handed over a letter to her which she gave to her father. The same is Exhibit PW 2/A.

6. PW-8, Constable Jai Parkash, is a formal witness. He testifies to the delivery of the copy of F.I.R. He also testifies that the father of the victim handed over letter Exhibit PW 2/A to S.I. Udham Singh in his presence. PW-14, Inspector Udham Singh, is the Investigating Officer. He has graphically given picture of the investigation done, accused arrested, disclosure statements made and articles recovered pursuant to the disclosure statements. He also testifies about the articles. PW-15, Ms. Deepa Verma, is the handwriting expert. She testifies that she had compared the specimen writing along with questioned writing, i.e., ransom notes and she had come to the conclusion that the ransom letters were in the handwriting of the same person who had written specimen writing PW 2/T-1 to T-6. Her report is Exhibit PW 15/A.

7. Learned Counsel for the appellants has stated that the appellants have been falsely implicated in this case and that their conviction is based on circumstantial evidence which does not complete the chain establishing unerringly the guilt of the accused. He contends that identification of the accused persons was illegal. He also contends that the taking of the specimen handwriting of the accused persons was illegal.

8. We have heard learned Counsel and have carefully gone through the record of the case. The criticism of learned Counsel that the identification of the accused is illegal is hardly available to him. The accused persons refused to join the Test Identification Parade on the ground that they had been shown to the witnesses in the Police Station and that the witnesses had identified them at the Police Station. Once the witness correctly identifies the accused persons as the perpetrators of the crime in Court and/or at the Police Station, the factum of the identification stands established. Its value, while appreciating evidence, is left to the Court but certainly would not base its conviction solely on the basis of such identification. In

the present case, Vipin had stayed at the house of Mohar Singh for two nights. It was not as if Vipin had been seen by Mohar Singh by a passing glance. Vipin had come to the house of Mohar Singh with Naresh, the brother-in-law of Mohar Singh. Surely, it cannot be said that Vipin had been wrongly identified as the person who came to his house. Vipin had been identified by the landlord Suresh Kumar as also the Principal, who are independent witnesses. Thus, Vipin's identity stands established as being the person who was last seen along with Ramesh and the child.

9. The further criticism of the counsel that while recording disclosure memos and making recoveries, no public witnesses were associated, is also not correct since the landlord cannot be said to be an interested witness. It was in his presence that the articles were recovered at the instance of the accused. It has also been forcefully argued that it was impermissible for the police during investigation to have taken handwriting samples of the accused. He heavily relies upon a judgment of the Supreme Court in Sukhvinder Singh and Ors. v. State of Punjab : [1994]3SCR1061 . No doubt the Supreme Court, in the facts of that case, has in no uncertain terms held that Section 73 of Code of Criminal Procedure cannot be used during investigation. However, the case in hand is quite different. The specimen handwriting of the accused was not taken pursuant to directions under Section 73 of Code of Criminal Procedure and therefore, the judgment is of no avail. However, this point stands settled by an eleven (11) Judge Bench of the Supreme Court in State of Bombay v. Kathi Kalu Oghad 1961 (2) CrL. L J. 856, which neither makes the taking of handwriting of an accused illegal nor is it hit by Article 20(3) of the [Constitution of India](#).

10. From the analysis of the material placed before us, we find the following circumstances have been proved by the prosecution : (1) Vipin had visited the house of Mohar Singh 15-20 days prior to the incident and became acquainted with the child Avdhesh. He also took the child to school on one of those days; (2) Vipin picked up the child from the gate of the school and informed the Principal that he was the uncle of the child; (3) Ransom letter was received on 23.12.1998 after about two hours of the kidnapping stating that the child has been kidnapped and money should be arranged. The following day, another ransom note was

received demanding Rs. 3 lacs; (4) Vipin and Ramesh lead the police party to the room rented by them where they kept the child. From this room, a school bag and articles of the child were recovered at the instance of the accused persons; (5) It is proved that Vipin and Ramesh hired the room on 22.11.1998 @ Rs. 400/- per month from PW-6. They had brought the child to this room and after few hours, took him away and returned only in custody of police. The child Avdhesh was never seen after 23.11.1998; (6) The accused pointed out the place where they had thrown the dead body of the child; (7) The Principal of the school identified Vipin as one of the persons who picked up the child from the school. Amar Nath identified Ramesh as the person who left the second ransom note at his shop; (8) The handwriting on the ransom note Exhibit PW 1/C, on envelope Exhibit PW 1/B as also another ransom note Exhibit PW 2/A was in the handwriting of Vipin as stated by PW-15, the handwriting expert; and (9) The F.I.R. was lodged soon after receipt of the first ransom letter and the second ransom letter was also handed over to the police in quick succession.

11. With the above circumstances proved, there is hardly any escape. The chain of circumstances unerringly points towards the guilt of the accused. The trial court has dealt with the evidence on record coming to the conclusion that the appellants are guilty of the offences charged. We too independently having assessed the material on record find no error in the reasoning and the judgment under challenge.

12. Consequently, we find no infirmity in the judgment of conviction dated 15.09.2001 as also the order on sentence dated 19.09.2001 and uphold the same. Criminal Appeal Nos. 468 of 2002 and 196 of 2002 are dismissed.

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