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Court : Delhi

Decided On : May-31-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Appeal No. : Crl. A. 566/2010

Appellant : Shishir Kumar @ Chunnu

Respondent : State

Advocate for Def. : M.N. Dudeja, APP

Advocate for Pet/Ap. : Lal Singh Thakur and; Nikhlesh Kumar, Advs. brother of Shishir Kumar, Adv.

Judgement :

Pradeep Nandrajog, J.

1. We have perused the impugned decision which is most inchoate and verbose; not only the counsel for the appellant but even the counsel for the State agree that they cannot make any head or tail out of the impugned decision. The contours of the conspiracy set forth have been penned by the learned trial judge in para 2 of the decision which we find is not only prolix but rolled all over. A sentence spanning nearly two pages has been written. So complex is the wording of para 2, that even the learned Trial Judge has not understood

of 6 what he was supposed to focus upon.

2. As we understand and as stated by the learned Counsel for the parties, the case of the prosecution was that Kishan Kumar (P.O.) entered into a conspiracy with co-accused Shambhu Nath and Shishir Kumar to extract money from Ram Sanjeevan and in furtherance thereof Shishir Kumar lured away Prateek S/o Ram Sanjeevan and made a ransom call. Rs. 30 Lacs were demanded. Ram Sanjeevan did not have the money. Kishan Kumar told him that he could get financed a sum of Rs. 5 lacs from Vijender Sharma PW-2 and could arrange for another sum of Rs. 13 lacs from Dinesh Kumar PW-6 to whom Ram Sanjeevan would have to sell his house bearing No. 294, Pocket-I, Phase-II, Sector-13, Dwarka. As per the conspiracy Kishan Kumar had already handed over two bags to Dinesh and Vijender who did not know what the contents of the bag were.

3. On 18.08.2004 i.e. the day when Prateek went missing a ransom call was received. Kishan Kumar took Ram Sanjeevan to Vijender who handed over the bag to Kishan Kumar. Thereafter they went to Dinesh who handed over the other bag to Kishan Kumar. It is the case of the prosecution that Kishan Kumar made Ram Sanjeevan take the jewellery of his wife, to be pawned to Vijender, when he would advance loan in sum of Rs. 5 lacs to Ram Sanjeevan. It is the case of the prosecution that on 18.08.2004, Ram Sanjeevan was taken to the house of Vijender who handed over the bag which was entrusted to him the day prior. Ram Sanjeevan thought that he was being advanced loan of Rs. 5 lacs by Vijender. Thereafter at the house of Dinesh the bag which was previously kept with Dinesh by Kishan Kumar was handed over. Ram Sanjeevan thought he was being given money for sale of his house. It is further the case of the prosecution that these two bags along with some jewellery of the wife of Kishan Kumar was then handed over to Shishir by Ram Sanjeevan and his son Prateek was set free.

4. From a perusal of the testimony of Vijender and Dinesh we find that neither has stated that they got executed any document from Ram Sanjeevan. Both of them simply state that a bag entrusted to them a day prior was simply handed over by them on 18.08.2004. Dinesh does not say that he received any title documents. The police has not recovered any title document from Kishan Kumar or any other

person.

5. Various issues arise for consideration. Learned Trial Judge has not dealt with any.

6. It is urged by the learned Counsel for the appellant that not a single submission urged has not been dealt with. Counsel urges that it was submitted before the learned Trial Judge that why would Shishir Kumar carry with him useless papers ostensibly handed over to him on 18.08.2004 till Shishir Kumar was arrested on 20.08.2004. Counsel further highlights that as per the conspiracy, it was known to the conspirators that the two bags had useless papers in it. It be noted that Ram Sanjeevan was made to pay, as per the prosecution, the ransom amount by pawning the jewellery of his wife and handing over the title deed of his property and in return was handed over bag containing useless papers but he being made to believe that money was being given. Obviously, Ram Sanjeevan being a blind man was sought to be exploited.

7. If this be so, the conspirators knew that bag which Ram Sanjeevan would be handing over was containing useless papers.

8. It is unfortunate that the learned Trial Judge has not bothered to consider the contours of the conspiracy as projected and ostensibly proved.

9. Lest we express any opinion on the various issues which arise, we refrain from noting the same, but to ensure that the learned Trial Judge deals with the issue, we propose to direct that written submissions would be filed so that the learned Trial Judge deals with the contentions urged.

10. Indeed, grievance of learned Counsel for the appellant is that the learned Trial Judge has noted issues as per his convenience and not the ones which were urged at the hearing.

11. We dispose of the appeal setting aside the impugned judgment and order dated 02.01.2010 as also the order on sentence on 06.01.2010, but only limited to the appellant.

12. We make it clear that admittedly, there is no evidence against Shambhu Nath and thus qua him, order of acquittal is maintained. It is clarified that impugned decision dated 02.01.2010 is set aside vis--vis appellant Shishir Kumar.

13. We remand the matter to the learned Trial Judge granting liberty to the learned Counsel for the appellant to file written submissions and with directions to the learned Trial Judge that at the remanded stage each and every contention urged in the written submission would be dealt with.

14. The case is restored before the learned Trial Judge, to be listed on 04.06.2010.

15. Learned Counsel for the appellant and the brother of the appellant have noted the said date. Learned Counsel for the State submits that he would inform his counterpart.

16. On 04.06.2010, the learned trial judge would fix a date of hearing not beyond 09.07.2010 and on said date written submissions would be filed. Arguments would be reheard and fresh decision be taken latest by 31.08.2010.

17. TCR be returned today itself.

18. Copy of this order be supplied dasti to the parties under the signature of Court Master.

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