

Tej Pal Vs. State

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Court : Delhi

Decided On : May-24-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Code of Criminal Procedure (CrPC) (CRPC) - Sections 161, 313; Indian Penal Code (IPC) - Sections 363, 364-A

Appeal No. : CRL.A. 112/1999; CRL.A. 173/1999

Appellant : Tej Pal

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Adv.

Advocate for Pet/Ap. : Mr.S.D.S.Rathore, Adv.

Judgement :

1. Vide impugned judgment and order dated 18.11.1998, appellants Hans Raj and Tej Pal have been convicted for the offence of having kidnapped for ransom Master Wasim, for which offence they have been sentenced to undergo imprisonment for life and pay fine in sum of `1000/-; in default to undergo simple imprisonment for a period of six months.

2. A synoptical resume of the case set up by the prosecution against the appellants is that a missing persons complaint Ex.PW-2/A was registered on

03.06.1995 at Police Station Krishna Nagar when Mohd. Shammi PW-2, went to the police station and informed the Duty Officer that his son named Wasim, aged 41/2 years, was missing since 06.30 P.M. on 02.06.1995 and could not be located.

3. Attempts were made by the local police to try and locate Master Wasim but without success.

4. Since Master Wasim could not be located till 04.06.1995, SI Raj Singh who was assigned to look into the complaint made an endorsement beneath the complaint Ex.PW-2/A and vide DD No.5A, got FIR No.240/1995, Ex.PW-1/A, registered for the offence of kidnapping at about 09.00 A.M. on 04.06.1995.

5. On 06.06.1995 a telephone call from an unknown person was received by one Shailender a neighbour of Mohd.Shammi, and he was told to convey to Mohd.Shammi that Wasim was in the custody of the caller and that he should pay ransom in sum of `20,00,000/- for the return of the child. After about 2-3 days Mohd.Shammi received a telephone call from a person named Munna at his residence. The caller again demanded `20,00,000/- (Rupees Twenty Lacs) to release Wasim and threatened that Wasim would be harmed if the money was not paid.

6. Between the period from 06.06.1995 to 14.06.1995 Mohd.Shammi received several ransom calls at his residence. On 14.06.1995 the telephones installed at the residence and shop of Mohd.Shammi and his neighbour Shailender were put under surveillance.

7. On 17.06.1995 the investigation of the present case was entrusted to SI Pankaj PW-8, who constituted two teams to crack the case. The first team consisting of SI Pankaj PW-8 and Const.Devender was stationed at the residence of Mohd.Shammi. The second team consisting of HC R.I. Khan and Const.Yogender was stationed at Laxmi Nagar telephone exchange to trace the location of the telephone from where the ransoms calls were being made.

8. On 19.06.1995 at about 2:40 P.M. a ransom call was received at the residence of Mohd.Shammi, which call was traced to a telephone installed in a public

telephone booth in Kabul Nagar, Shahdara. As soon as the said ransom call was traced, SI Pankaj PW-8 and Const.Devender who were stationed at the residence of Mohd.Shammi proceeded to the said telephone booth but by that time the ransom call got disconnected due to which they were not able to find the caller making the ransom call. Thereafter SI Pankaj PW-8, constituted a third team consisting of HC Satinder PW-5, SI Manoj Dixit PW- 7, Const.Mukesh and Const.Yoginder, which team was stationed in the vicinity of the telephone booth from where the last ransom call was made.

9. On the same day i.e. 19.06.1995 at about 07:05 P.M. a ransom call was received at the residence of Mohd.Shammi, which call was again traced to the same telephone booth from where the ransom call received in the afternoon was made. As soon as the said call was traced, SI RI Khan transmitted a wireless message to SI Manoj Dixit PW-7, intimating him the location of the booth from where the ransom call was made. Mohd.Shammi engaged the caller in a dialogue in the meanwhile. On receiving the aforesaid wireless message, SI Manoj Dixit PW-7, accompanied by HC Satinder PW-5, Const.Mukesh and Const.Yoginder proceeded to the telephone booth in question where they saw that appellant Hans Raj was using the telephone installed in the said booth whereupon they apprehended him. In the meantime, SI Pankaj PW-8, Const.Devender and Mohd.Shammi reached the telephone booth in question.

10. On being interrogated by SI Pankaj PW-8, in the presence of HC Satinder PW-5, SI Manoj Dixit PW-7 and Mohd.Shammi PW-3, appellant Hans Raj made a disclosure statement Ex.PW- 3/A wherein he stated that along with appellant Tej Pal he had kidnapped Master Wasim and that he can get the child recovered. Pursuant thereto, appellant Hans Raj led the aforesaid persons to the house of Kamla who is the cousin sister of appellant Tej Pal. Wasim was recovered from the house. The police apprehended appellant Tej Pal and recorded his confessional statement contents whereof need not be noted as no recovery was effected pursuant thereto and thus the confession is inadmissible in evidence.

11. Conducting investigation as to where all the child was kept, the police traced Sayed Mahaboob who ran a hotel and he disclosed that the appellants had

checked into his hotel and were accompanied by a male child and whose statement was recorded under Section 161 Cr.P.C. and the relevant guest register seized.

12. Armed with the aforesaid materials, the police filed a charge sheet against the appellants.

13. Needless to state, the appellants were sent for trial. Charges were framed against the appellants for having committed offences punishable under Sections 363 and 364-A IPC.

14. At the trial, the prosecution examined 8 witnesses. We need note the testimony of the various police officers who took part in the investigation for they have deposed facts regarding the respective role played by them during investigation which have already been succinctly stated by us in the preceding paragraphs and in respect whereof not much submissions were made during arguments in the appeals.

15. Mohd. Shammi PW-3, father of Master Wasim, deposed that his son Wasim had gone missing at about 06:30 P.M. on 02.06.1995. When he was not able to locate his son he went to the police station where he lodged missing persons report Ex.PW-2/A at about 01:00 A.M. on 03.06.1995. Between the period from 06.06.1995 to 19.05.1995 he received several ransom calls from a person named Munna at his residence. The caller used to threaten him that Wasim would be harmed if ransom was not paid. The telephone installed at his residence was put under surveillance by the police. On 19.06.1995 at about 06:45 P.M. he received a ransom call at his residence and the police officers stationed in his house informed him that the said call was traced to a telephone installed in a telephone booth in Kabul Nagar, Shahdara. Thereafter he accompanied by the police officers stationed in his residence went to the said telephone booth where some other police officers who were already present there had apprehended appellant Hans Raj. Appellant Hans Raj made a disclosure statement Ex.PW- 3/A in his presence wherein he stated that he along with appellant Tej Pal had kidnapped his son and that he can get recover him. Pursuant thereto, appellant Hans Raj led them to a house in Sultan Puri where his son Wasim and appellant Tej Pal were present.

The police apprehended appellant Tej Pal and gave the custody of his son Wasim to him. Be it noted here that the testimony of the witness on the point that Master Wasim had gone missing from his house and was kidnapped was not controverted by the defence in the cross-examination. Though a suggestion was given to the witness in his cross- examination that he had falsely implicated the appellants in the present case no motive was assigned to him for falsely implicating the appellants.

16. Sayed Mahaboob Ali PW-4, deposed that on 03.06.1995 at about 06.20 P.M. the appellants along with Master Wasim had had checked in his hotel and that they checked out from there at about 08.00 A.M on 05.06.1995. While checking in is hotel, the appellants gave their names as Chander Pal and Mukesh and made entry Ex.PW-4/A in the Guest Register maintained by him. On being questioned about the entry Ex.PW-4/ recorded in the Guest Register the witness stated that Particulars against Sl. No.311 are not in my handwriting. Vol. if a customer is educated he himself fills up the requisite particulars in register. If customer is unable to write his particulars, then his particulars are written either by me or by my servant, who looks after the hotel .Particulars against Sl. No.311 are not in handwriting of my servant. Said entry were got made by my servant from the persons who had stayed in my hotel and brought it before me, however the same were not filled up by my customers in my presence.

17. In their statements under Section 313 Cr.P.C. the appellants denied everything and pleaded false implication.

18. In defence, the appellants examined Kamla, cousin sister of appellant Tej Pal. She deposed that no child was ever recovered by the police from her house.

19. Vide impugned judgment dated 30.11.1998 the learned Trial Judge has held that the prosecution has successfully established the facts that appellant Hans Raj was caught red- handed by the police when he was making a ransom call to the father of kidnapped child Master Wasim and that Master Wasim was recovered from the custody of appellant Tej Pal at the instance of appellant Hans Raj, which facts in turn establish beyond any reasonable doubt that the appellants had kidnapped Master Wasim for ransom and thus convicted the appellants.

20. During the hearing of the present appeals, it was argued by the learned counsel for the appellants that there are lacunas in the investigation conducted by the police in the present case which cast a serious doubt on the veracity of the case of the prosecution against the appellants. The lacunas pointed out by the counsel in the investigation of the present case are that :-

(i) the police did not seize the call records of the telephones installed at the residence of Master Wasim and the telephone booth from where appellant Hans Raj allegedly made ransom calls to the father of Master Wasim and was apprehended by the police;

(ii) the police did not join the owner of the telephone booth from where the appellant Hans Raj allegedly made ransom call to the father of Master Wasim and was apprehended by the police in the investigation of the present case;

(iii) save and except the photocopies Ex.PW-6/A and Ex.PW-6/B of the applications allegedly made by SI Devender to the telephone exchange in question which were inadmissible being photocopies, no official from the telephone exchange or any document was produced by the prosecution to establish that the telephone installed at the residence of the kidnapped child was put under surveillance; and

(iv) the police did not obtain the specimen handwriting of the appellants and compared the same with the handwriting contained in the entry Ex.PW-4/A recorded in the guest register for Sayed Mahaboob Ali had deposed that the said entry was made by the appellants. Counsel urged that the failure on part of the police to collect the best available evidence to nail the appellants is fatal to the case of the prosecution. Going a step further, the counsel reversed the said argument by contending that the fact that best available evidence has not been collected by the prosecution raises a big question mark on the availability of the said evidence. According to the counsel, the afore-noted lacunas in the investigation of the present case strongly suggest that there was no exchange of calls between the telephones installed at the residence of Master Wasim and the telephone booth from where appellant Hans Raj allegedly made ransom calls to the father of Master Wasim and that the appellants along with

Master Wasim did not stay in the hotel of Sayed Mahaboob Ali.

21. With regard to the submissions advanced by the learned counsel for the appellants we note the decision of the Supreme Court reported as Dhanaj Singh @ Shera v State of Punjab AIR 2004 SC 1920 wherein also the defence of the appellant- accused was predicated upon the defective investigation. While dismissing the appeal preferred by the accused, the Supreme Court observed as under:-

"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P.1)

6. In Paras Yadav v. State of Bihar² it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

7. As was observed in Ram Bihari Yadav v. State of Bihar³ if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh⁴. As noted in Amar Singh case⁴ it would have been certainly better if the firearms were sent to the

Forensic Test Laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.

8. The stand of the appellants relates essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non- examination of weapons of assault or the pellets, etc. in the background of defective investigation has been considered in Amar Singh case⁴. In the case at hand, no crack in the evidence of the vital witnesses can be noticed."

22. From the aforesaid dictum of law, it has to be held that the fact that there lacunas in the investigation of the present case does not mean that the incriminating evidence, if any, appearing against the appellants has to be ignored.

23. Having dealt with the submissions advanced by the learned counsel for the appellants, we proceed to determine whether the prosecution has been successful in establishing the guilt of the appellants.

24. The witnesses; Mohd.Shammi PW-3, father of Master Wasim, Sayed Mahaboob Ali PW-4 and the police officers associated with the investigation of the present case namely HC Satinder PW-5, SI Manoj Dixit PW-7 and SI Pankaj PW-8, were cross-examined at length but nothing could be elicited therefrom which could cast a doubt on their evidence. Mohd.Shammi PW-3, father of Mohd.Wasim had no reason whatsoever to falsely implicate the appellants in the present case. As already noted herein above, no motive was assigned to Mohd.Shammi for falsely implicating the appellants when he was cross-examined by the defence. It is beyond comprehension that Mohd.Shammi would let go the real kidnappers of his son scot free and falsely implicate the appellants particularly when he had no

reason to do so.

25. From a cumulative reading of the evidence of the afore- noted witnesses, following facts emerge: -

- (i) Master Wasim was kidnapped on the evening of 02.06.1995;
- (ii) father of Master Wasim received several ransom calls at his residence;
- (iii) the appellants along with Master Wasim stayed in the hotel of Sayad Mahaboob Ali between the evening of 03.06.1995 and the morning of 05.06.1995;
- (iv) two of the ransom calls received by father of Master Wasim at his residence were traced to a telephone booth in Kabul Nagar, Shahdara and appellant Hans Raj was found using the said telephone when the caller of the ransom call was talking to father of Master Wasim;
- (v) Appellant Hans Raj led the police and father of Master Wasim to Master Wasim and
- (vi) Master Wasim was found in the custody of appellant Tej Pal. The aforesaid six facts, when cumulatively seen, conclusively establish that the appellants are the kidnapers of Master Wasim.

26. The matter can also be looked at from another angle. Let us for a moment consider facts Nos. (v) and (vi) noted above. Three possibilities emerge from the fact that appellant Hans Raj had knowledge about the whereabouts of Master Wasim namely, (i) Appellant Hans Raj had seen the kidnapper (s) of Master Wasim taking Master Wasim to the house from where he was found by the police; or (ii) Appellant Hans Raj had heard the kidnapper (s) of Master Wasim talking that they would be taking Master Wasim to the house from where he was recovered by the police; or (iii) Appellant Hans Raj was the kidnapper of Master Wasim and thus knew about the whereabouts of Master Wasim. Similarly, three possibilities emerge from the fact that Master Wasim was found in the custody of appellant Tej Pal namely, (i) Appellant Tej Pal reached the house from where Master Wasim

was recovered by pure coincidence; or (ii) Appellant Tej Pal was asked by the kidnapper(s) of Master Wasim to go the house from where Master Wasim was recovered; (iii) Appellant Tej Pal was the kidnapper of Master Wasim. It was for appellant Hans Raj and Tej Pal to respectively explain to the court the circumstances in which appellant Hans Raj came to know about the whereabouts of Master Wasim and Master Wasim was found in the custody of appellant Tej Pal. When the appellants chose to remain silent the court is fully entitled to draw an adverse inference against the appellants that they are the kidnappers of Master Wasim in terms of the provisions of Sections 106 and 114 of Evidence Act. Thus, facts (v) and (vi), by themselves, establish that the appellants are the kidnappers of Master Wasim.

27. In view of above discussion, the above captioned appeals are dismissed. The bail bonds and surety bonds of the appellants are cancelled. The appellants shall surrender forthwith to serve the remaining sentence.

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