
(2005) 09 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 734 and 877-DB of 2004

Vinod Kumar and etc.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Sept. 7, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 41(1)
- Penal Code, 1860 (IPC) - Section 363, 364, 364A, 365

Citation: (2006) CriLJ 170 : (2005) 4 RCR(Criminal) 474

Hon'ble Judges: Pritam Pal, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Gorath Math and Liza Gill, for the Appellant; S.K. Garg, Addl. A.G., for the Respondent

Judgement

Pritam Pal, J.

By this judgment, we will dispose of two Criminal Appeals i.e. CrI. Appeal No. 734-DB of 2004 and CrI. Appeal No. 877-DB of 2004, filed by appellants Vinod Kumar and Ravinder Kumar, respectively. Since both these appeals arise out of one and the same judgment and order passed in Session Case No. 8 of 2003, therefore, they are being decided by this common judgment.

2. Both the appellants were convicted under Sections 363, 364-A and 365 of I.P.C. vide judgment dated 22-7-2004 and sentenced vide order dated 2-1-7-2004 as under :

Under Section 363, IPC both the appellants were sentenced to undergo R.I. for five years and to pay a fine of Rs. 5000/- each and in default thereof to further undergo R.I. for three months;

Under Section 364A, IPC they were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each and in default thereof to further undergo R.I. for six

months each;

Under Section 365, IPC they were ordered to undergo RI for five years and to pay a fine of Rs. 5000/- each and in default thereof, to further undergo R.I. for three months each. However, all the substantive sentences were ordered to run concurrently.

3. In nut-shell, the fact culminating to the commencement of these appeals may be recapitulated thus :

On 28-5-2000, Miss. Disha, aged about 3 years, daughter of Ashok Kumar, complainant (PW-3), a shop-keeper, had gone from her house in the street for playing, but she did not turn up in the evening. Then, he (Ashok Kumar) kept on searching her, but no clue was found. Ultimately, he got lodged a report vide D.D.R. No. 15 dated 27-5-2000 (Ex.DB) at about 11 a.m. before Sh. Chamela Ram, Sub-Inspector in Police Station, City Panipat, in the above narration of facts. Since no offence was made out from the statement of Ashok Kumar, so, no case was registered at that time. However, information regarding missing of the child was sent to different police stations.

4. It was on 30-5-2000, that a telephonic message was received from some un-known person by Smt. Sudha (PW-2), mother and Ashok Kumar, (PW 3), father, of Disha, a victim in this case. The caller had made a demand of ransom to the tune of Rs. 10 lacs so that the girl child could be released. At that time, it was also stated by the caller that in case, the aforesaid amount was not given in the manner told on the telephone, then his daughter would be killed. Further, they were also warned not to intimate the police. On receipt of the call in the above narration of the facts, complainant Ashok Kumar rushed to the police station and informed the police, upon which, a formal FIR Ex.PK was recorded by Raghbir Singh Inspector at 9.15 a.m. on the same day under Sections 364 and 365, IPC. Thereafter, the investigation of this case was entrusted to PW5 S.I. Dhoop Singh, who inspected the place from where Disha was kidnapped. In that behalf, he also prepared a rough site plan Ex.PC with his correct marginal notes in his hand. At this place, it would be pertinent to mention that on 1-6-2000, PW-7 S.I. Sunil Kumar, Incharge of Police Station, Santrason, Paharganj, Delhi, on receipt of secret information regarding the presence of a person who had kidnapped a girl child from Panipat, had gone to the STD booth, situated at Gali Hari Mandir near VIP Hotel and there, he arrested a boy who was standing outside the booth. Upon asking, he disclosed his name as Vinod, as one of the appellants. Thereafter, he was apprehended and interrogated, whereupon he suffered a disclosure statement Ex.PE, which was signed by him and other witness. Upon his personal search, the bills of STD and one paper having code words relating to that kidnapping were also recovered vide recovery memo Ex.PF. In his disclosure statement, he (Vinod Kumar) stated that after kidnapping the girl, he had left her with his co-accused Ravinder Kumar, at Haridwar and he could identify the place and get recovered the said child. Then in pursuance of his said disclosure

statement, he led the police party to Haridwar and there, the appellant pointed out Nandeshwar Prachin Shiv Mandir, from where his co-accused namely, Ravinder Kumar was seen coming from opposite direction, having the custody of Kumari Disha. At the spot, he (Ravinder Kumar) was arrested. Custody of the child was taken vide memo Ex.PH. Thereafter, the police party came back to Delhi. In the meantime, Kumari Disha was also got medicolegally examined in the Lady Harding Hospital, Delhi. Both the appellants were challaned u/s 41(1) of Cr.P.C.

5. On 1-6-2000, after effecting the arrest of Vinod Kumar appellant, an intimation was also given to police of Panipat. On 2-6-2000, custody of the girl was handed over to her father. On the same day, S.I. Dhoop Singh (PW-5) who is the Investigating Officer in this case recorded the statements of the police officials who had recovered the prosecutrix from the possession of the accused. Thereafter, custody of both the appellants was taken by the Investigating Officer. It was on 3-6-2000 that both the appellants were taken out of the police lock up for identification of the place of occurrence and identification memo Ex.PD was prepared. After completion of the formal investigation of this case, report, u/s 173, Cr.P.C. was filed against the appellants by Inspector Raghbir Singh, the then S.H.O., Police Station, City Panipat.

6. Both the appellants were charge sheeted for commission of offences punishable under Sections 363/364-A and 365 of I.P.C. by the learned trial Court vide its order dated 4-2-2001, to which they pleaded not guilty and claimed trial.

7. The prosecution in order to substantiate its case, examined as many as 11 witnesses, namely, PW-1 HC Rajinder Singh, he proved his affidavit Ex.PA regarding the special report taken to the Ilaqa Judicial Magistrate; PW-2 Smt. Sudha, she is mother of the victim and had received a telephonic call at her house from unknown person; PW-3 Ashok Kumar, he is the complainant and father of Kumari Disha; PW-4 HC Azad Singh, he is a witness to the recovery of identification of the place of occurrence, at Panipat; PW-5 SI Dhoop Singh, he is the Investigating Officer in this case; PW-6 HC Balwan Singh of Police Station, Nai Subzi Mandi, Azadpur, Delhi, he had accompanied the police party, who had apprehended Vinod Kumar appellant from Paharganj on 1-6-2000; PW-7 SI Sunil Kumar, Police Station, Paharganj, he had arrested the appellant Vinod Kumar on 1-6-2000 and recorded his disclosure statement Ex.PE. He also arrested other appellants Ravinder Kumar on 2-6-2000 from Haridwar; PW-8 Inspector Raghbir Singh, he had recorded the F.I.R. Ex.PK and then made his endorsement thereon as Ex.PK/1; PW-9 HC Mehtab Singh, he proved DDR No. 15 dated 27-5-2000; PW-10 Constable Rajesh Kumar, he prepared the scaled site plan Ex.PL of the place of occurrence from where Kumari Disha, was kidnapped and PW-11 Tirlok Singh, he is the owner of STD booth situated at Paharganj, New Delhi, where appellants Vinod Kumar was found standing by the police.

8. After closure of the prosecution evidence, the accused were examined in terms of Section 313, Cr.P.C., wherein they denied all the incriminating evidence appearing

against them. The appellants also examined DW-1 Dr. Raj Kumar Sharma. He deposed with regard to the announcement pertaining to the missing of 21/2 years old child, namely, "Nisha" on 27-5-2000 at 8.45 p.m. However, his testimony could not be linked with the victim of the case in hand.

9. The learned trial Court after appraising the evidence brought on the file and hearing the learned Counsel for the parties, convicted and sentenced the appellants, as indicated in the opening part of this judgment. This is how feeling aggrieved, the appellants have come up in these appeals before this Court.

10. We have heard learned Counsel for the parties and with their assistance have gone through the file carefully.

11. At the outset of their arguments, learned Counsel for both the appellants submitted that in the instant case, provisions of Section 364-A, I. P. C. could not have been attracted by the learned trial Court inasmuch as provisions of said section could be invoked only when the offence is committed against the Government or any foreign State or international, inter governmental organisation. Here, in this case, the case was got registered by a private individual, so none of the appellant could have been convicted and sentenced u/s 364-A, I. P. C. In support of this contention, reliance was placed in the case of Balwant Singh v. State of Haryana (2002) 2 RCR 369.

12. The second and last point of their argument is that in this case, there are contradictions regarding the extent of demand of ransom in the statements of PW-2 Smt. Sudha, mother and PW-3 Ashok Kumar, father of the victim. Besides that, recovery of Disha from the custody of appellant Ravinder Kumar, as set up by the prosecution, is also doubtful as no independent witness was joined at Haridwar while effecting the recovery of the child. It was also submitted that in this case link evidence regarding reaching of Panipat police of Delhi for taking the custody of the child is also missing. After putting-forth the aforesaid points of arguments, learned Counsel for the appellants contended for their acquittal.

13. On the other hand, Mr. S. K. Garg, learned Addl. A. G. appearing on behalf of the State of Haryana, contended that here in the instant case, the appellants were arrested by the police of Delhi, which had no interest or any motive in the success of this case, which was registered in the State of Haryana. He then made reference to the testimony of material witnesses, namely, PW-3 Ashok Kumar, PW-5 S. I. Dhoop Singh and PW-7 S. I. Sunil Kumar and then contended that the case of the prosecution stood fully proved in this statements, which are consistent on all the material points of this case. 14. We have given our thoughtful consideration to the rival contention raised on behalf of the parties and find no merits in any of the above pleas except the first one pertaining to the charge framed u/s 364-A of I.P.C., raised on behalf of learned Counsel for the appellants inasmuch as it has come in the evidence of PW-2 Smt. Sudha and PW-3 Ashok Kumar (complainant), mother and

father, respectively of the victim that at the initial stage, they had received the call of unknown person regarding demand of ransom to the extent of Rs. 10 lacs. Later on, the unknown caller had asked for ransom of Rs. 8 lacs and ultimately, it was settled down at Rs. 6 lacs. In this view of the explanation given by the aforesaid two witnesses, no sanctity can be attached to the contradictions/variations pertaining to the demand of ransom. Recovery of the child was effected in pursuance of the disclosure statement Ext. PE. After making the said statement, appellant Vinod Kumar had straightway taken the police party of Delhi to the place disclosed by him at Haridwar and there, he got recovered the child from the custody of other appellant namely, Ravinder Kumar. In that behalf, recovery memo Ex. PH was prepared at the spot. No doubt, at the time of effecting the recovery of the child no independent witness was joined at Haridwar, but the said recovery memo has been duly proved in the statements of PW-6 HC Balwant Singh and PW-7 S. I. Sunil Kumar. Moreover, the said recovery memo is also signed by both the appellants. No discrepancies could be pointed out in the statements of the aforesaid witnesses by learned Counsel for the appellants. It is also well proved on the file that after effecting the recovery of the child, an information was sent to that effect in the police station at City Panipat, whereupon, the complainant party alongwith PW-5 S. I. Dhoop Singh, the Investigating Officer had gone to police station Delhi, where custody of the child was entrusted to her father (PW-3 Ashok Kumar).

15. In this view of our foregoing discussion, we find no merits in any of the above points of arguments raised by learned Counsel for the appellants. Even otherwise, such points do not go to the root of this case.

16. Now adverting to the main point of argument pertaining to the conviction and sentence of the appellants recorded u/s 364-A of I. P. C., in this regard, as submitted above, there is no evidence on the file to show if any Government or any foreign State or international inter-governmental organisation, was compelled by the appellants to do or abstain from doing any act, or to pay a ransom, hence, the provisions contained in Section 364-A of I. P. C. could not have been attracted. Faced with such a situation, the conviction and sentence awarded u/s 364-A of I. P. C. by the learned trial Court, was found to be unsustainable by this Court in Balwant Singh's case 2002 (2) RCR 369 (supra). Here, in the instant case, it is the private individual namely, Ashok Kumar (PW-3) who categorically deposed that on 30-5-2000, a telephonic message was received at his house, which was first attended by his wife, then she had handed over the telephone to him. According to him, that telephone was of unknown person, who had demanded Rs. 10 lacs for releasing his daughter. He further testified that the said unknown caller had also told that he would again contact him on the following day and so, he again asked if he (Ashok Kumar complainant) had arranged the said amount. At the same time, he (caller) had also told that if he (complainant) had arranged Rs. 10 lacs, he could give that amount to his wife (PW-2 Sudha) so that she could come in Dadar Express Train to Narela, where after getting the money, they (appellants) would hand over her

daughter. He further testified that it was also stated by unknown caller that if money was not paid to them, then his daughter Disha would be killed by them. The aforesaid version of PW-3 Ashok Kumar also finds corroboration from the statement of his wife. PW-2 Smt. Sudha. In his cross-examination, nothing could be elicited from the mouth of PW-3 favouring the appellants.

17. In this view of our foregoing discussion and also relying upon the observations made in Balwant Singh's case 2002 (2) RCR 369 , we have no hesitation to hold that the offence u/s 364A of IPC, is not made out against any of the appellants. However, an offence punishable u/s 364 of IPC, which is a lessor offence of Section 364-A of IPC, is clearly proved to have been established against both of them. Thus, they are acquitted of the charge framed against them u/s 364-A of IPC, but at the same time, they are convicted and sentenced u/s 364 of I. P. C. So both the appellants are sentenced to undergo R. I. for 10 years with a fine of Rs. 10,000/- each u/s 364 of IPC. In default of payment of fine, they shall further undergo R. I. for six months. The conviction and sentence recorded under Sections 363 and 365 of I.P.C. by the learned trial Court are maintained.

18. In the result, both the appeals are partly allowed, only to the extent as indicated above.