

(2005) 03 P&H CK 0200

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 500-DB of 2003

Jatinder Kumar and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 24, 2005

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34, 364A

Citation: (2005) 15 CriminalCC 1074

Hon'ble Judges: Surya Kant, J; Mehtab S. Gill, J

Bench: Division Bench

Advocate: Rahul Vats, Amicus curiae, for the Appellant; S.S. Randhawa, D.A.G., Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment dated 8.5.2003 passed by Sessions Judge, Ludhiana, Whereby he convicted Jatinder Kumar @ Bawa and Nirmal Singh @Nimma under Sections 302/364-A/201 and 120-B read with Section 34 of the Indian Penal Code. The third accused Amit Kumar was a juvenile on the date of occurrence. He was tried by the Juvenile and Justice Court.

2. In this appeal, we are dealing with appellants Jatinder Kumar and Nirmal Singh only. They were sentenced to undergo rigorous imprisonment for life under Sections 302/34 and 364-A/34 of the Indian Penal Code and to pay a fine of Rs.5,000/- each. In default of payment of fine, they were further ordered to undergo rigorous imprisonment for six months each. Appellants were further sentenced to undergo rigorous imprisonment for six months each. Appellants were further sentenced to undergo rigorous imprisonment for six months each. Appellants were further sentenced to undergo rigorous imprisonment for two years each u/s 201 read with Section 34 of the Indian Penal Code and to pay a fine of Rs.500/- each. In default of

payment of fine, they were ordered to undergo rigorous imprisonment for one month each. Appellants were further sentenced to undergo rigorous imprisonment for three months each u/s 120-B read with Section 34 of the Indian Penal Code and to pay a fine of Rs.500/- each. In default of payment of fine, they were ordered to undergo rigorous imprisonment for one month each. All the sentences awarded to the appellants were ordered to run concurrently.

3. The case of the prosecution is unfolded by Avtar Singh (PW-12). In his statement given to Parminder Singh, Assistant Sub Inspector (PW-14), he stated that he is a resident of Phase II Dugri Urban Estate, Ludhiana. He is in business and is running a factory in the name of Autos Tractor Spare Parts. His factory is also known as "Advance Autos". He came back to his house on 26.3.1999 at 3.00 P.M. His son Harman Singh, aged 9 years, who was a student of Class III in Atam Singh, Atam Public School, Atam Nagar, Ludhiana, went out to play with his friends in the park in front of his house. 26.3.1999 was a holiday. At about 7.30 P.M., complainant received a telephonic message, the caller stated that he had abducted his (Avtar Singh's) son and ransom of Rs. 10 lacs were demanded by the caller. On receipt of this telephonic message, Avtar Singh started looking for his son, but was not successful. He gave the description of his son Harman Singh being height 4 feet, wheatish complexion, thin body, he was wearing a blue T-shirt with white strips, half nicker of blue colour, leather shoes with green socks and a patka (headgear) on his head. This information was given on telephone No. 100. After some time, Parminder Singh, Assistant Sub Inspector, came and recorded that statement of Avtar Singh.

4. Prosecution to prove its case brought into the witness box Dr. Gurjit Singh (PW-1), Kiranjit Kaur (PW-2), Harmander Singh (PW-3), Sukhwinder Singh (PW-4), Constable Harbans Singh (PW-5), Surjit Singh (PW-6), Arjan Singh (PW-7), Gurbachan Singh (PW-8), Mohinder Pal Singh (PW-9), Constable Gurdev Singh (PW-10), Head Constable Harmesh Lal (PW-11), Avtar Singh (PW-12), Rajinder Kumar (PW-13), Parminder Singh, Assistant Sub Inspector (PW-14) and Baldev Singh, Inspector (PW-15).

5. Learned counsel for the appellants has stated that circumstantial evidence brought forward by the prosecution, cannot be believed. The chain of events is not complete. Gurbachan Singh (PW-8), who is the Principal of the Senior Secondary School, Ludhiana, has stated in his testimony that he found the accused Jatinder Kumar @ Bawa, Nirmal Singh @ Nimma and Amit Verma sitting near a wall of the tubewell building. They were conspiring together and planning to kidnap a minor child Harman Singh, so that they could collect a big amount of ransom. It is strange that though Gurbachan Singh, an educated person, who was holding the post of a Principal of a School, did not take this alleged conspiracy, seriously. He has stated that he thought it to be just childish thinking on the part of the appellants. Thus, he ignored them and went away. If Gurbachan Singh (PW-8) would have over-heard this conspiracy that a child Harman Singh was going to be kidnapped by the appellants, the least, he could have done was to admonish (sic) them nor did he inform the

police or the father of the deceased.

6. Arjan Singh (PW-7) has stated that appellants Jatinder Kumar @ Bawa and Nirmal Singh @ Nimma, who were known to him earlier, made a confession before him that they had kidnapped Harman Singh. Appellant Jatinder Kumar had brought a scooter in pursuance of the conspiracy. They parked the scooter near a temple in the urban Estate Phase I, Dugri. Appellant Jatinder Kumar and accused Amit Kumar went to the park, where Harman Singh was playing cricket and gave him allurements that they would purchase a prize Book of Cricket Players to him. Appellants Jatinder Kumar, Nirmal Singh and accused Amit Verma took him (deceased) away on a scooter. They had also taken a rope along with them, with which they tied Harman Singh. Later on, they feared that Harman Singh would recognize them if he is released. Thus, they strangled him. In this disclosure statement, nowhere it was mentioned by the appellants to Arjan Singh (PW-7) that they had made a ransom call to the father of Harman Singh to pay them Rs. 10 lacs, if he wanted his son to be released.

7. Rajinder Kumar (PW-13) has stated in his testimony that he is a Medical Practitioner and is running a Homeopathic clinic near Punjab Agriculture University, Ludhiana. Appellants Jatinder Kumar and Nirmal Singh came to him on 11.4.1999 along with accused Amit Kumar at about 10.00 A.M. Appellant Nirmal Singh told him that he along with Jatinder Kumar and Amit Kumar had kidnapped the son of Avtar Singh (PW-12), so that ransom could be demanded. He further stated that they strangled Harman Singh by tying a rope around his neck. Nirmal Singh requested that, as Rajinder Kumar was having good relations with the Station House Officer of Police Station Sarabha Nagar, Ludhiana, they be produced before him. Appellant Jatinder Kumar and accused Amit Kumar also made the same request. He asked them to come to him, the next day, but they did not do so. This witness has not been given the ransom, as to why he called the appellants on the next day. In the natural course of events, he would have produced the appellants before the Station House Officer, Sarabha Nagar, Ludhiana on that very day, as the confessional statement had been made not in the late evening but at 10.00 A.M.

8. Mohinder Pal Singh (PW-9), who had last seen Jatinder Kumar, Nirmal Singh and Amit Kumar on a scooter on which Harman Singh was also sitting, he has stated that on 26.3.1999 at about 6.30 P.M., when he was going from his house in Dugri, he saw that one scooter Chetak, Bajaj had passed near him, which was being driven by Jatinder Kumar. Number of the scooter was PW-10-AC-2203. Scooter was being driven by appellant Jatinder Kumar. Along with him, Harman Singh was sitting. The scooter stopped nearby a turning, where Nirmal Singh @ Nimma and Amit Kumar were standing by the side of the road. Jatinder Kumar talked to them and then took the scooter towards the uninhabited quarters in Phase III Dugri. This witness Mohinder Pal Singh (PW-9) then on the same night, left for Delhi and from there, he went to Kerala. When he returned from Kerala on 9.4.1999, he learnt that Harman Singh deceased was missing. On 10.4.1999, he went to the police and informed

them about the occurrence. Learned counsel has stated that no satisfactory reply has come from the side of this witness giving the reason, as to why he went to Kerala on the same night. His conduct was unnatural. It is strange that he noticed only this scooter and noted down the number, though scooters must have passed that way.

9. Learned counsel for the appellants argued that all the witnesses cited by the prosecution, are witnesses, who were tutored. No disclosure statement were made before Arjan Singh (PW-7) Gurbachan Singh (PW-8) and Rajinder Singh (PW-13) by the appellants. The last seen evidence brought forward by Gurbachan Singh (PW-8), does not inspire confidence.

10. Learned counsel for the State has stated that the chain of circumstances is complete by the events coming forward by the testimony of the prosecution witnesses. Gurbachan Singh, Ludhiana and a responsible citizen, heard the three accused conspiring. He lives in the same locality as that of Avtar Singh (PW-12), the father of deceased Harnam Singh. Gurbachan Singh (PW-8) took the conspiracy lightly as a childish act on the part of the accused. Mohinder Pal Singh (PW-9), who had last seen the deceased in the company of the appellants, noted the action of Jatinder Kumar. This witness lives in the same locality as that of Harman Singh deceased. He also did not take this action on the part of the appellants by taking Harman Singh on the scooter, seriously and had left for Kerala. The extra-judicial confession was made by the appellants before Rajinder Kumar (PW-13). It is on the statement of appellant Jatinder Kumar that the dead body of Harman Singh was recovered. Arjan Singh (PW-7) produced the accused before the Station House Officer of Police Station Sarabha Nagar, Ludhiana. Recovery of the scooter was made from Jatinder Kumar. Jatinder Kumar was the owner of the scooter. A gold chain with a locket, on which the name of the deceased was scribed, was recovered on the disclosure statement made by appellant Jatinder Kumar. Nirmal Singh made a disclosure statement regarding recovery of a gold ring. These articles were identified by Mohinder Pal Singh, Goldsmith (PW-9), who had made these articles. All the prosecution witnesses and Avtar Singh, the father the deceased lived in the same locality. They knew each other. Appellants Jatinder Kumar, Nirmal Singh and accused Amit Kumar also stayed in the area of Dugri, Urban Estate, Ludhiana. Appellants knew that Avtar Singh was a rich man, who was the owner of a factory. Motive, in this case, to demand a ransom of Rs. 10 lacs, cannot be over looked.

11. We have heard the learned counsel for the appellants, learned counsel for the State and perused the records.

12. Appellants Jatinder Kumar @ Bawa, aged 26, Nirmal Singh @ Nimmi, aged 22 and accused Amit Kumar (juvenile) are young boys, who kidnapped a minor child Harman Singh, with a view to demand a ransom of Rs. 10 lacs from his father Avtar Singh.

13. Avtar Singh (PW-12), in his testimony before the Court, has stated that he runs a tractor spare part factory in Ludhiana. On returning to his home at 3.00 P.M. from his factory, he found his son Harman Singh, aged 9 years, missing. At about 7.30 P.M. He received a telephonic call from an unidentified person, who told him that his son had been kidnapped by them and he should arrange for a sum of Rs.10 lacs as ransom. His son was wearing a blue coloured T-shirt with white strips, blue colour half shirt, socks of green colour and leather shoes. He was also wearing a gold chain with locket, on which his name Harman was engraved. He was also wearing a gold ring in his left hand, on which name Harman in Punjabi was engraved, (sic). He informed the police at telephonic No. 100. Parminder Singh, Assistant Sub-Inspector (PW14) came to his house and recorded his statement. Exhibit PW12/A.

14. On 14.4.1999, police informed him that a dead body was lying in a multistoreyed building in the area of Phase III of Urban Estate Dugri. He went with the police and identified the dead body of his son Harman Singh. The clothes, as mentioned by him, in his statement, were the same.

15. On 29.4.1999 Avtar Singh along with Kamaljit Singh were present in Police Station Sarabha Nagar, Ludhiana. Appellant Jatinder Kumar made a disclosure statement. Exhibit PW-12/B that he had kept concealed Bajaj Chetak scooter under the stairs of his house. In the diggy of the scooter, one golden chain with locket along with photo copy of the registration certificate of the scooter was lying. Appellant Nirmal Singh @ Nimma made a disclosure statement, Exhibit PW12/C that he had kept concealed a gold ring, after wrapping it in a cloth on the pillow side of his bed in his room under his mattress. Avtar Singh (PW-12) Kamaljit Singh, appellants Jatinder Kumar and Nirmal Singh went along with the police party, who, as per the statement, got recovered a scooter, golden chain, registration certificate and gold ring.

16. Extra-judicial confession made by an accused, is to be scrutinized very carefully, as this is not a strong piece of evidence. It is to be seen before whom the extra-judicial confession was made whether he is a person who could be believed. In the case in hand, the extra-judicial confession was made by appellants Jatinder Kumar and Nirmal Kumar to Arjan Singh, Municipal Councillor, Ludhiana (PW-7). Appellants were known to Arjan Singh earlier, Arjan Singh (PW-7) first talked to appellant Jatinder Kumar separately, who confessed about the commission of the offence. He stated that on 26.3.1999, he along with Amit Kumar, on scooter No.PB-10-AC-2203, in pursuance of the conspiracy hatched among all of them, picked up Harman Singh, who was playing cricket. Nirmal Singh, who was standing in the unhabited area of Urban Estate, Phase III, Ludhiana earlier, also joined them. Deceased was first taken to quarter No.553. He was made to sit on the floor. Ransom demand of Rs. 10 lac was made from the father of deceased Harman Singh by giving him a telephonic call. Appellants started fearing that as they had been identified by the deceased, he would tell everything to Avtar Singh, his father.

Accused then strangulated Harman Singh with a rope. They then went to the P.C.O. and rang up Avtar Singh for ransom amount. This witness has stated that appellant Nirmal Singh, was known to him, as Nirmal Singh did the work of fitting A.Cs in vehicles. Thereafter Arjan Singh (PW-7) took the appellants to Police Station Sarabha Nagar, Ludhiana. He met Inspector Baldev Singh Brar, Station House Officer of Police Station Sarabha Nagar (PW-15) near Sutlej Hospital and produced the appellants before him, who took them in his custody. The extra-judicial confession inspires confidence. Arjan Singh was a representative of the Ward in which the appellants were residing, Arjan Singh was also known to the police.

17. Gurbachan Singh (PW-8), the Principal of the Senior Secondary School, Ludhiana, who was returning from Gurdwara Sukhmani Sahib, Phase II, Urban "Estate Dugri, after paying obeisance in the Gurdwara, heard appellants Jatinder Kumar @ Bawa, Nirmal Singh @ Nigmma and accused Amit Verma, Planning of kidnap Harman Singh, a minor child. They were sitting near the wall of a tubewell building. He did not take much notice, as they thought that it was just a childish prank of the part of the accused, He ignored them and went away. On 12.4.1999, he came to know that Harman Singh son of Avtar Singh had been kidnapped on 26.3.1999. This witness lives in the same locality, i.e.; Urban Estate, Dugri, Ludhiana, where the deceased and the appellants lived. He is a responsible person, holding the post of a Principal in a school. He would not come into the witness box and falsely implicate the appellants. He is a truthful witness and his testimony could not be shattered in cross-examination. Mohinder Pal Singh (PW-9) has stated that on 26.3.1999 at 6.30 P.M. when he was proceeding from Dugri to village Phullanwal in connection with some business, he saw scooter No.PB-10-AC-2203 on which Harman deceased was sitting. Appellant Jatinder Kumar and accused Amit Kumar were sitting along with Harman Singh. When Jatinder Kumar took a turn. Nirmal Singh, who was standing near the turning point by the side of the road, the scooter stopped for a short while. After that, the scooter went to the uninhabited quarters in Phase III Dugri He, not suspecting anything wrong, went to village Phullanwal. Thereafter, he went to Delhi and from there, he went to Kerala. On 9.4.1999, when he returned from Kerala, he learnt about the kidnapping of Harman Singh and he disclosed, what he had seen, to the police. On the same day, he along with Arjan Singh (PW-7), Municipal Councillor, went to the Police Station. Police produced a gold ring and locket. He identified them, which he himself had prepared. Name of Harman Singh was inscribed in Punjabi on both these articles. Ring in Exhibit P-1 and locket chain is Exhibit P-2. Appellants made extra-judicial confession of the commission of the crime not only before Arjan Singh (PW-7) but before Rajinder Kumar (PW-13) also, wherein they reiterated the story, which has already been given above.

18. The testimony of Arjan Singh (PW-7) Gurbachan Singh (PW8), Mohinder Pal Singh (PW-9), Avtar Singh (PW-12) and Rajinder Kumar (PW 13) inspire confidence and a complete chain of events starting from 26.3.1999, when Harman Singh deceased was kidnapped at about 7.30 P.M. till the time, the appellants surrendered before

Inspector Baldev Singh, Station House Officer of Police Station Sarabha Nagar, Ludhiana (PW-15) is complete. Prosecution witnesses and the appellants lived in the same locality. Avtar Singh, the father of deceased Harman Singh, owned a factory and was a rich man. His son was kidnapped for ransom, as the appellants and accused Amit Kumar knew that Avtar Singh was in a position to pay Rs. 10 lacs to them. On realizing that Harman Singh had recognized them, they strangled him with a rope. Though Harmart had been strangled still they (accused) went to a PCO and gave a telephonic of scooter, chain and ring have been made from the appellants on their disclosure statements made before respectables of the area. Extra-judicial confessions made by the appellants to Arjan Singh (PW-7) and Rajinder Kumar (PW 13) inspire confidence. Appellants were to these two witnesses. Appellants also knew that Arjan Singh (PW-7) could produce them before the police, as he was the Municipal Councillor of the area. The ownership of the scooter bearing No.PB-10-AC-2203 was proved by Kiranjit Kaur (PW-2), a clerk from the D.T.O.Office, Ludhiana, who stated that the scooter, on which the crime was committed, belonged to appellant Jatinder Kumar. Dr.Gurjit Singh (PW-1), who conducted the post-mortem stated that the cause of death in this case in the opinion of the Medical Board was that there may be some sort of injury to the neck, but exact cause cannot be ascertained because of mutilation of the body. The body was of 4 feet 6 inches in length. It was lying in the first floor of quarter No.553, Urban Estate, Ludhiana. Police requested that the post-mortem be carried out at the site, which had been endorsed by the higher authorities. The dead body had been identified by Devinder Singh @ Bitta and Avtar Singh father of deceased. Fully grown flies were present around the body. The identity of the dead body could be established from the face, hair and the clothes. As per the statement of Dr.Gurjit Singh (PW-1), it was clear that the dead body was of no other person than that of unfortunate child Harman Singh.

19. In view of the above discussion and observations, we do not find any infirmity in the judgment dated May 8, 1993 passed by Sessions Judge, Ludhiana.

20. Appeal is dismissed.