

(2010) 03 AHC CK 0265

Allahabad High Court

Case No: Criminal A. No's. 1065, 1285 and 1386 of 2009

Raju Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: March 18, 2010**Acts Referred:**

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

Citation: (2010) 2 ACR 1911 : (2010) 7 RCR(Criminal) 1412**Hon'ble Judges:** S.C. Agarwal, J; Poonam Srivastav, J**Bench:** Division Bench**Advocate:** S.B. Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Poonam Srivastav and S.C. Agarwal, JJ.

These three appeals arise from the judgment of conviction recorded in Session Trial No. 135 of 2007, dated 12.2.2009 by the Additional Sessions Judge, Fast Track Court No. 3, Ghaziabad. The three appeals have been filed by three different Appellants. The Appellants are convicted u/s 364A read with Section 34, I.P.C. and sentenced to undergo life imprisonment with a fine of Rs. 10,000 each.

2. The allegations levelled by the prosecution is that a young boy Rishabh aged about 4-5 years was found raising w.e.f. 15.9.2006 at 5 p.m. An information regarding gumshudagi was given at police station Sihani Gate, Ghaziabad by Sanjeev Kumar P.W. 2. The information was recorded in G.D. No. 21 time 9.40 dated 16.9.2006. The report in the G.D. is that the informant's son Rishabh did not come back till 5 p.m. on 15.9.2006. A detailed description of the missing child was given.

3. On perusal of G.D. entry No. 16, time 7.30 dated 4.10.2006 of police station Sihani Gate shows that the information of missing child was given at the police station on 16.9.2006 and the same is recorded.

4. A first information report was registered on 4.10.2006 at Case Crime No. 777 of 2006, u/s 364A, I.P.C. According to the narration of the report, the complainant's son Rishabh aged 4-5 years was missing since 15.9.2006 at about 5 p.m. Information was already given at the concerned police station on 16.9.2006. On 24.9.2006 at 6 p.m., someone made a call from the Mobile No. 09758454966 on the mobile of the tenant of Sanjeev Kumar namely Musafir Prasad being Mobile No. 9213776579 intimating that the missing child is with the person who was making the call and thereafter disconnected his mobile. Despite efforts, no information could be gathered about the call or the missing child but every evening a call was received. On 3.10.2006 at 7.50, the unknown caller gave a missed call on the mobile of Musafir Prasad mentioned aforesaid. The first informant tried to contact him from S.T.D. when a demand of ransom of Rs. 11 lacs was made.

5. The prosecution after completing investigation submitted a charge-sheet and charge were framed by the learned Sessions Judge.

6. The prosecution in support of its case has examined Kamal Kishore as P.W. 1, Sanjeev Kumar P.W. 2 father of the child, S.I. Waseem Ahmad Khan, police chowki, Ghaziabad as P.W. 3, Govind Ballabh Sharma P.W. 4, S.I. Sanjeev Kumar Shukla P.W. 5, S.I. Jai Karan Singh P.W. 6 and Hari Shankar P.W. 7 who was appointed as clerk at police station Sihani Gate at the time when the report of the missing child was given.

7. Sri. Dileep Kumar advocate appearing on behalf of the Appellants has challenged the prosecution case and conviction of the Appellants. He asserts that there is not an iota of evidence to substantiate the missing, or recovery of the child, demand of ransom and the Appellants having any connection whatsoever with the entire episode.

8. The statements of the witnesses have been assailed by Sri. Dileep Kumar pointing out relevant extracts of their testimony in support of the aforesaid contention. P.W. 1 Kamal Kishore is uncle of the victim Rishabh. He has admitted in his cross-examination that his brother Sanjeev Kumar P.W. 2 (father of the victim) had received an information from the police station on 4.10.2006 at 4 a.m. The police had informed that the child Rishabh is at the police station and had called over Sanjeev to take him back. The entire family including P.W. 1 had gone alongwith Sanjeev to the police station to bring back the victim Rishabh. He further admits that he had no knowledge how and from where the police had recovered the child and this fact was neither disclosed by the police nor he tried to ask the police regarding details of recovery of the child.

The next witness P.W. 2 has also not disputed the assertion of P.W. 1. He further admits that his income is approximately Rs. 4,000 per month from groundnut market, out of which Rs. 2,000 is spent for the household expenditure. He has denied the suggestion that Sanjeev used to work for Raju accused five years back but admits that he did work with him for two days while selling lottery coupon. He

further admits that the accused Kiran used to live in his house but has expressed his ignorance about the phone number from where his child was recovered in Auraiya. He has confirmed that he had gone to the police station to lodge the F.I.R. alongwith P.W. 1 and his tau Nand Kishore after receiving information about recovery of his child. It is thus evident that the F.I.R. was registered subsequent to the recovery of the child. The accused were also known to the first informant.

9. P.W. 3 S.I. Waseem Ahamad Khan states that he had taken over investigation of the case only on 4.10.2006 at 9.40 a.m., i.e., much after recovery of the child. The report about missing of the child dated 16.9.2006 was converted into Crime No. 777 of 2006, u/s 364A, I.P.C. on 4.10.2006. The accused were already brought at the police station from whom police claimed to have recovered the child but surprisingly there is no recovery memo on record whatsoever.

10. We have also examined the statement of Govind Ballabh Sharma P.W. 4 who admits that there is neither endorsement regarding places where the police had gone to search the child nor any such advertisement or procedure adopted by the police to find out whereabouts of the missing child.

11. We have examined the statement of S.I. Sanjeev Kumar Shukla P.W. 5 as well who headed the search party after receiving information that the child is kept at Auraiya. Perusal of his entire statement is nothing but a mockery of the investigation. Neither there his ravanagi is recorded at the police station nor information about the place where he is proceeding to explore with the police party to search the child. No recovery memo of the child or recovery of any article from the place where the child was recovered, has been prepared. The police of Auraiya was not informed about the search party and the explanation given by him is on the face of it is apparently concocted and false. The police has made a complete laughing stock of the entire investigation, the manner in which the child is alleged to have been recovered, is ridiculous and without any corroborative evidence to connect the Appellants.

12. Admittedly no ransom was paid. The learned Sessions Judge was liable to examine that a huge amount of Rs. 11 lacs allegedly demanded by the Appellants from the family members of Rishabh was such an amount which a groundnut dealer would hardly be expected to pay. The entire prosecution story and investigation appears to be a figment of imagination and the Appellants have been roped only on the whims and fancies either of the first informant or the police.

13. On an analysis of the testimony of the prosecution witnesses, it is abundantly clear that the prosecution case rests on flimsy evidence without substantiating the theory of demand of ransom. The mobile numbers from which the calls were made, were not verified neither the alleged recovery is substantiated by the prosecution. The police was sleeping over the information about missing child. There is not an iota of evidence to establish that any effort was made to search the victim or

advertise in local newspapers or even through the media which is a normal procedure adopted after receipt of information about someone missing. Apart from this, the recovery from Auraiya is also not supported by any independent witness, not even the local police of Auraiya were surprisingly present at the time of recovery. No recovery memo was prepared which is a basic essential and requirement during the investigation of such a case. It is apparent that the entire theory of receiving information regarding the whereabouts and location where the victim was detained, is a farfetched imagination for want of any proof. The search party did not make any effort to take the local police of Auraiya in confidence. The half hearted assertion by police of Ghaziabad of locating the exact place where the child was kept in detention, cannot be accepted. We find it difficult to uphold the judgment of conviction without any evidence to connect them with a crime. The entire prosecution case and its evidence is without any basis and the case falls like a pack of cards. We are of the considered view that the prosecution has miserably failed to establish its case by any material evidence. The three Appellants deserve a clear acquittal in the instant case.

14. In view of what has been stated above, the judgment of conviction recorded by the learned Sessions Judge has no legs to stand. The judgment dated 12.2.2009, passed by the Additional Sessions Judge, Fast Track Court No. 3, Ghaziabad in Session Trial No. 135 of 2007, State v. Kiran and Ors. are set at naught. The appeals are accordingly allowed. The Appellants shall be set at liberty forthwith.

Let a copy of this judgment alongwith lower court record be sent to the Sessions Judge, Ghaziabad for compliance.