

Vikas Chaudhary

v.

State Of Nct Of Delhi & Anr

(Supreme Court Of India)

HON'BLE MR. JUSTICE ALTAMAS KABIR HON'BLE MR. JUSTICE MUKUNDAKAM SHARMA

Vikas Chaudhary v. State Of Nct Of Delhi & Anr

Special Leave to Petition (Criminal) No. 8628 Of 2009 | 11-08-2010

Altamas Kabir, J.

1. Certain issues of legal importance, which call for examination, have surfaced in this otherwise sordid tale.

2. On 18th January, 2003, one Shri Vimal Chadha, resident of C-2/46, Ashok vihar, Phase II, Delhi, filed a Missing Persons Report with the Ashok Vihar Police Station, Delhi, stating that his son, Parakh Chadha, had left home and had not returned. The next day he lodged F.I.R. No.34/03 at the Ashok Vihar Police Station which was initially registered under Section 364A of the Indian Penal Code on the allegation that a call had been received from an unknown caller demanding Rs.35 lakhs as ransom for the release of his son. The body of Parakh Chadha, who was between the age of 17 and 20 years, was recovered on the same day. Accordingly, on 4th May, 2003 Sections 302/201/120-B, read with Section 34 I.P.C., were added in the First Information Report.

3. It may, however, be noted that, although, the body of the victim was recovered on 19th January, 2003, the fact that the body was that of the victim Parakh Chadha was not known to the complainant or his father. The complainant and his father continued to receive ransom calls for the release of his son even, thereafter, on 20th January, 2003, 1st February, 2003, 10th March, 2003 and 11th March, 2003. In fact, the said phone calls made to the complainant were also intercepted by the police and the same were also recorded by the complainant. Subsequently, the voice of the callers was identified by the Central Forensic Science Laboratory Reports as being those of the Petitioner, Vikas Choudhary, and the co-accused, Vikas Sidhu. On 4th May, 2003, the Petitioner was arrested and on a personal search being conducted, a seizure memo of the recoveries made from his house was prepared and the disclosure statement made by him was recorded. From the seizure memo it is seen that the wrist watch worn by the deceased Parakh Chadha was recovered from the Petitioner while the gold chain which had been worn by the deceased was recovered from the co-accused Vikas Sidhu. It appears from the disclosure statement made by the different accused that after killing the victim his body was thrown in a drain and was set on fire after sprinkling petrol thereupon. It is on 9th May, 2003, after the accused had been arrested that they disclosed the place where the victim's body had been burnt and from where some burnt clothing and shoes of the deceased had been recovered and kept in Malkhana of P.S. Kotwali City, Ghaziabad. The complainant identified the clothes and shoes to be that of his son and subsequently also identified

the gold chain and the wrist watch which had been worn by his son on the day of his disappearance and had been recovered from the possession of the Petitioner and the co-accused, Vikas Sidhu, as belonging to his son.

4. On completion of investigation, a charge-sheet was filed against the Petitioner and Vikas Sidhu under Sections 364A/302/201/34/120-B, while the names of Joginder, Yogesh Rawat and Anil Pratap were mentioned in Column 3 of the charge-sheet as accused.

5. Recording of evidence of the prosecution witnesses was commenced on 3rd May, 2005, and on 31st May, 2005, for the first time, the Petitioner herein moved an application before the learned Single Judge for transfer of his case to the Juvenile Justice Board on the ground that he was a juvenile at the time of commission of the offence. A matriculation certificate produced on behalf of the Petitioner showed his date of birth to be 20th December, 1985.

6. The aforesaid application filed by the Petitioner was dismissed by the Additional Sessions Judge on 24th August, 2005, on the ground that the Ossification Test conducted on the Petitioner showed that he was about 19 years and 5 months of age when the offence was committed.

7. The Petitioner thereupon filed Criminal Revision (P) No.751 of 2005 before the Delhi High Court, which, by its order dated 31st August, 2006, remanded the matter to the Additional Sessions Judge to consider the matter afresh. Upon remand, the learned Sessions Judge by his order dated 20th January, 2007, held that the Petitioner was not a juvenile on the date of the offence. The Court took note of the fact that neither any birth certificate nor any other certificate was produced on behalf of the Petitioner in support of the date of birth which appeared from the School Leaving Certificate.

8. Aggrieved by the judgment of the Court of Sessions, the Petitioner once again moved the Delhi High Court in Criminal Revision (P) No.156/07, which was allowed by the Delhi High Court on 11th September, 2007. The Delhi High Court directed the trial of the Petitioner to be separated from the case of the other accused. On 18th September, 2007, the trial of the Petitioner was separated and he was directed to appear before the Juvenile Justice Board on 10th October, 2007, when he was granted bail by the said Board. The trial against the other accused continued before the learned Additional Sessions Judge and only 4 witnesses could be examined since on 2nd November, 2007, this Court granted stay of the trial court proceedings. By judgment and order dated 27th May, 2008, passed in Criminal Appeal No.966/08, this Court set aside the order of the High Court dated 11th September, 2007, allowing the revisional application and remanded the matter to the trial court for fresh consideration in the light of Section 472 of the Code of Criminal Procedure ('Cr.P.C.' for short), which provides for continuing offences and in case of a continuing offence, a fresh period of limitation begins to run at every moment of time during which the offence continues. While remanding the matter to the trial court, this Court observed in paragraph 14 of its judgment as follows:

"14. It may be true that the prosecution proceeded on the basis that the entire offence had taken place on 18.1.2003. We have, however, been taken through the charge-sheet, from a perusal

whereof it appears that the appellant had been getting calls for payment of ransom despite the fact that the deceased had, in the meanwhile, been killed. It is one thing to say that a missing report has been filed on a particular date but it is another thing to say that in a case of this nature when the actual offence(s) had taken place would remain uncertain. Giving calls for payment of ransom is an offence. In case of murder coupled with abduction in a given case it may be considered to be a continuous offence."

9. The learned Additional Sessions Judge, by his order dated 29th July, 2008, was of the view that the proper authority to consider the matter on remand, was the Court of Sessions and not the Juvenile Justice Board and consequently, it ordered for the production of the Petitioner before it. On 6th October, 2008, the Petitioner, who was on bail, surrendered before the Additional Sessions Judge and was taken into custody and is in custody since then. By its judgment dated 2nd January, 2009, the Additional Sessions Judge held that the offence of murder coupled with abduction could be considered to be a continuing offence and in such circumstances, the dates when the ransom calls were made were significant. It was held that the last date on which the ransom call had been made, namely, 11th March, 2003, would have to be taken as the relevant date from which the age of the petitioner was to be counted to determine as to whether he was a minor within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as "the Juvenile Justice Act".

10. Aggrieved by the aforesaid order of the learned Additional Sessions Judge, the Petitioner filed Criminal Revision P.61 of 2009 before the Delhi High Court along with an application for grant of bail under section 439 Cr.P.C. The High Court, by its judgment dated 13th March, 2009, dismissed the Revision Petition and the accompanying applications upon holding that the making of ransom calls on 19th January, 2003, 10th March, 2003 and 11th March, 2003, even after the murder of the victim, clearly constitutes an offence under Section 364A. It also held that if there was any error in framing of the charges, the same could be cured under Section 464 Cr.P.C. The trial Court, therefore, amended the charges on 16th April, 2009. The 4 witnesses who had been examined earlier in the absence of the Petitioner, were recalled on 5th May, 2009, and their statements were recorded in the presence of the Petitioner accused.

11. The instant Special Leave Petition has been filed against the said judgment and order dated 13th March, 2009 of the Delhi High Court in CrI.R.P.No.61/09.

12. The main thrust of the arguments advanced on behalf of the Petitioner was that no case had been made out against the Petitioner on the basis of Missing Report made by the complainant on 18th January, 2003. A point of equal importance was also urged by Mr. K.B. Sinha, learned Senior Advocate, appearing for the Petitioner, to the effect that a ransom call could not have been made in respect of a dead person. He urged that a ransom call could certainly follow after an abduction, but once the victim of the abduction had been eliminated, the very question of an offence under Section 364A I.P.C. relating to ransom calls was no longer maintainable and at best, the offence could be said to have been committed under Section 364 I.P.C. On reference to the various definitions of the

expression "demand of ransom", a further submission was made that in all cases the expression had been used in respect of a living person since the object of the ransom was release of the abducted person after payment of such ransom. Reliance was placed on the decision of this Court in *State of Bihar vs. Deokaran Nenshi & Anr.* [AIR 1973 SC 908], in support of the contention that once the very object of an offence under Section 364A I.P.C. ceased to exist, it could not be contended that an offence under Section 364A continued to survive. In the said decision, it was observed that continuing offence is distinguishable from an offence which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, an offence is committed. Accordingly, the offence as contemplated under Section 364A I.P.C. came to an end upon the death of the victim and could not be said to be a continuing offence. It was urged that in view of the amendments effected to the definition of "juvenile" in Section 2(k) of the Juvenile Justice Act, which has been clearly considered and explained in *Hari Ram vs. State of Uttar Pradesh* [(2009) 13 SCC 211], the petitioner was entitled to the benefit of Sections 12 and 15 thereof.

13. On behalf of the State it was submitted by Mr. Mohan Jain, learned Additional Solicitor General, that what would be the date of an offence in a given case has to be decided in regard to the fact situation thereof. He urged that Section 472 Cr.P.C. contemplates a continuing offence and a fresh period of limitation is to run at every moment of time during which the offence continues and, although, an argument had been advanced that the entire offence had been committed on 18th January, 2003, there is no escape from the fact that it has also been established on evidence that the father of the deceased continued to receive calls for payment of ransom, despite the fact that the victim had been killed in the meantime. Mr. Jain urged that not only was the offence extremely grave, but it was further compounded by the conduct of the accused, in continuing to make ransom calls even after he was alleged to have killed the victim.

14. Mr. Jain submitted that this is one of those rare cases where the offence initially committed must be held to be continuing on account of the nature of the offence and the manner in which it was committed. The learned Additional Solicitor General urged that no interference was, therefore, called for with the judgment of the High Court and the Special Leave Petition was liable to be dismissed.

15. Mr. Sushil Kumar, learned Senior Advocate, appearing for the complainant Mr. Vimal Chadha, submitted that the courts below had rightly held that the making of ransom calls after the death of the victim has to be treated as a part of the same transaction, since one was consequentially dependent on the other. He submitted that once ransom calls were made even after the death of the victim, the offence became a continuous offence and the age of the petitioner would have to be computed from the date on which part of the offence was committed. Accordingly, while the Petitioner was found to have participated in the abduction of the deceased, which resulted in the ransom calls and the death of the victim was very much a part of the initial abduction and was, therefore, a continuing offence which attracted the provisions of Section 472 Cr.P.C., which would have to be read with the principal offence allegedly committed under Section 364A I.P.C.

16. The question which, therefore, calls for an answer is whether the High Court was right in holding that the making of ransom calls, even after the death of the victim was a continuing offence so as to attract the provisions of Section 364A I.P.C.

17. There is little doubt that the main object of the offence committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as will be evident from the subsequent phone calls made right upto 11th March, 2003, asking for ransom. The offence under Section 364A did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed. It is no doubt true that if the initial date of abduction, namely, 18th January, 2003, is taken to be the date on which the offence under Section 364A had been committed, as an isolated event, the Petitioner would have been a minor within the meaning of the Juvenile Justice Act, 2000. However, if 11th March, 2003, being the date on which the last ransom call was made, is taken as the date on which the aforesaid offence was committed, then the Petitioner would have ceased to be a minor and the above-mentioned Act would not apply to him.

18. Section 472 Cr.P.C., supports the submissions made both by Mr. Mohan Jain, learned Additional Solicitor General and Mr. Sushil Kumar. We are unable to accept Mr. Sinha's submission that the offence under Section 364A I.P.C. stood abrogated upon the death of the victim. On the other hand, the continuation of ransom calls being made, even after the death of the victim, converts the offence into a continuing offence within the meaning of Section 472 Cr.P.C. The provisions of Section 364A I.P.C. which are extracted hereinbelow, will make the position clear :

"364A. Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention of the such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

19. Section 364A I.P.C. states that apart from keeping a person in detention after kidnapping or abducting him or threatening to cause death or hurt to such person or by his conduct giving rise to a reasonable apprehension that such person may be put to death or hurt, and also that if the person involved in the kidnapping or abduction, actually causes hurt or death to such person for a ransom, he shall be punishable with death or imprisonment for life and shall also be liable to fine.

20. Section 364A, therefore, contemplates even the death of the abducted person for the purpose of demanding ransom. Section 472 Cr.P.C., which defines continuing offence, reads as follows:

"472. Continuing offence.-In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

21. If Section 364A I.P.C. and Section 472 Cr.P.C. are to be read together, it has to be held that even after the death of victim every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made, i.e., 11th March, 2003, which has to be taken to be the date of commission of the offence and, accordingly, the Juvenile Justice Act was no longer applicable to the Petitioner, who had attained the age of 18 years by then.

22. We, therefore, see no reason to interfere with the order of the High Court impugned in this Special Leave Petition, which is accordingly dismissed.