

SUPREME COURT OF INDIA

Akram Khan

Vs.

State of West Bengal

Crl.A.No.2248 of 2011

(P.Sathasivam and J. Chelameswar,JJ.,)

05.12.2011

JUDGMENT

P.Sathasivam,J.,

SLP(Crl.)No. 1321 of 2011

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 29.06.2010 passed by the High Court at Calcutta in C.R.A. No. 198 of 2006 whereby the High Court acquitted three out of seven accused persons giving them the benefit of doubt and affirmed the conviction and sentence of the appellant herein and other three accused persons awarded by the Additional Sessions Judge, 6th Fast Track Court, Calcutta by order dated 17.02.2006 in S.C. No. 80 of 2000 and S.T. No. 4(3) of 2001.

3. Brief facts:

“(a) The prosecution case, in short, is that in the afternoon of 17.03.2000, which was a Bakrid day, a minor boy named Vicky Prasad Rajak (PW-2) was found missing. Mahendra Prasad Rajak (PW-3)-father of the boy (the Complainant) reported the matter in the Park Street Police Station which was recorded vide GD Entry No. 1504 dated 17.03.2000. Later on, the boy’s father received telephone calls from unknown persons demanding ransom of Rs.10 lakhs and Park Street P.S. Case No. 117 dated 20.03.2000 under Section 363A of the Indian Penal Code, 1860 (in short “IPC”) was amended to Section 364A IPC and a case was registered against unknown persons.

(b) On 21.03.2000, again the complainant received a call where the caller told him that he had the money because of the sale of the shop, however, the ransom demanded was reduced to Rs. 7 lakhs. The caller also threatened him that if the ransom is not

paid, his son would not remain alive. There were further telephone calls on other dates and, ultimately, on 01.04.2000, the ransom was reduced by the caller to Rs. 3 lakhs.

(c) Again on 04.04.2000, the Complainant received a telephonic message asking him to go to Jamalpur Railway Station with Rs.3 lakhs wearing a black coloured shirt. He informed the same to the Lalbazar Police Station. He along with his relative and the police in civil dress, went to Jamalpur Railway Station but none approached. On enquiry from his wife, he learnt that another call had been received whereby the caller asked him to go to Sahebgunj Station by Danapur Express. Then they proceeded to Sahebgunj Station by that train and during the journey one Afsal @ Fazo asked the Complainant to get down at the next station i.e. Ghoga, where he would have to hand over the ransom but he refused to get down and went to Sahebgunj but none approached, they came back. Again on 13.04.2000, the complainant received a message from the caller to come at Ghoga Railway Station. When they went there, none came. At night, a raid was conducted by the Calcutta Police along with the help of Bihar Police and they arrested five accused persons, namely, Md. Kalim @ Kalu, Akram Khan, Afsal Khan @ Fazo, Md. Javed and Md. Mehtab from different places in Bhagalpur and the kidnapped boy was rescued from the house of Mehatab. Later, one of the associates of the accused persons, namely, Md. Zakir Khan was arrested in Calcutta. It was revealed that Zakir Khan was an ex-employee of the father of the kidnapped boy in his tailoring shop which he had sold. Two more associates, Nazamul Khan and Md. Dilshad, who took part in the commission of offence, were also arrested.

(d) The police filed charge sheet against all the eight accused persons for the offence punishable under Sections 364A/120B read with 34 IPC. On 13.11.2000, the case was committed by the Metropolitan Magistrate, 9th Court, Calcutta to the Court of Sessions. Vide judgment dated 17.02.2006, the Additional Sessions Judge sentenced seven accused persons to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for one year each for commission of offence under Section 364A IPC and further imprisonment for life and to pay a fine of Rs.3,000/- each, in default, to suffer rigorous imprisonment for one year each for commission of offence under Section 120B IPC and both sentences were to run concurrently. However, Md. Nazamul Khan, one of the accused was acquitted as not found guilty.

(e) Against the said judgment, all the seven accused persons including the appellant herein filed an appeal being C.R.A. No. 198 of 2006 before the High Court at Calcutta. By the impugned judgment dated 29.06.2010, the High Court acquitted Md. Javed, Md. Dilshad and Md. Mehtab giving them the benefit of doubt and affirmed the conviction and sentence imposed on Akram Khan-appellant herein, Afzal Khan @ Fazo, Md. Zakir Khan and Md. Kalim @ Kalu.

(f) Being aggrieved by the said judgment, Akram Khan- appellant herein alone has filed this appeal by way of special leave before this Court.”

4. Heard Mr. Pranab Kumar Mullick, learned counsel for the appellant-accused and Mr. Chanchal Kr. Ganguli, learned counsel for the respondent-State.

5. Learned counsel for the appellant, after taking us through the evidence led in by the prosecution and the defence, decision of the trial Court and the impugned order of the High Court, submitted that the prosecution has not established its case for offence punishable under Section 364A IPC and, in any event, at the most, it is punishable under Section 363 IPC for kidnapping alone. He further contended that the maximum punishment provided for kidnapping under Section 363 IPC is seven years and inasmuch as the appellant has served 11 years 7 months, the period already undergone would satisfy the prosecution case and he may be ordered to be released forthwith.

6. On the other hand, learned counsel for the respondent- State contended that in the light of the categorical evidence of Naresh Kr. Rajak-PW-6 (close relative of PW-3) and Prantosh Kumar Gupta-(PW-7) (an employee of a Public Telephone Booth), which corroborated with the evidence of PWs 2 and 3, and in view of the fact that the prosecution has established its charge, namely, kidnapping for ransom (Section 364A IPC), the punishment of life sentence imposed by the trial Court as affirmed by the High Court is appropriate and no interference is called for by this Court.

7. We have carefully perused all the relevant materials and considered the rival contentions.

8. It is true that if it is a simple case of kidnapping in terms of Section 363 IPC, the offender shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. Here, the specific charge against the appellant-accused is under Sections 364A and 120B IPC. If it is established that the offender after kidnapping a person keeps the said person in detention or threatens to cause death or hurt in order to pay ransom, undoubtedly, Section 364A attracts. The said provision reads as under:

“364A. Kidnapping for ransom, etc. - Whoever kidnaps or abducts any person or keeps a person in detention after 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.”

9. Now let us consider whether the prosecution has established its case for the offence punishable under Section 364A IPC beyond reasonable doubt?

10. The appellant herein was one of the seven accused who were found guilty under Sections 364A and 120B IPC and they were convicted and sentenced to imprisonment for life and to pay a fine of Rs.5,000/- each for commission of offence under Section 364A IPC. They were also sentenced to suffer imprisonment for life and to pay a fine of Rs.3000/- for commission of the offence under Section 120B IPC and sentences were to run concurrently. No doubt, three accused persons, namely, Md. Javed, Md. Dilshad and Md. Mehtab were acquitted of all the charges by the High Court. The appellant herein is one among the other accused convicted by the High Court. The other accused persons have not challenged the conviction before this Court except the appellant herein.

11. The prosecution case, as stated earlier, relates to kidnapping of a minor boy, Vicky Prasad Rajak from his lawful guardian - Mahendra Prasad Rajak (PW-3) and then keeping him in detention. Thereafter, the appellant and other accused persons, started giving threat calls in order to extort huge amount of money from the father of the kidnapped boy and also threatened him that in the event of his failure to respond to such ransom calls, the boy in custody would be murdered. The victim himself was examined as PW-2. The victim boy was a student of Class IV at the relevant time. He being a child witness, the Court has to satisfy that he is capable of understanding the events. In his evidence, the victim boy - PW-2 has stated that on 17.03.2000 which was Bakrid Day and the school was closed. According to him, when he along with his friend, Kaso, was offering leaves to the goats, a man came there and asked him to accompany him so that he could purchase some chocolates for him. He along with Kaso went with him. At first, they went to the shop of one Mintu in front of their house. The man was having 10 rupees note but the shopkeeper Mintu did not have change. Kaso went back and thereafter they went to the other shop which was closed. They went a bit further and got into a taxi and he was taken to a house in Kalabagan. They stayed there for sometime. Thereafter, he was taken in a bus, route No. 71 to Tikiapara, Howrah and from there he was taken to a room of another person. That person was not in his house at that time but when he came back, he was offered some food. Thereafter, he was taken to Sealdah Station where Zakir was present. Zakir used to work at the tailoring shop of his father. Thereafter, they boarded a train and next morning they got down at a station named Ghoga. From there, they took a cycle rickshaw and went to a house. He further deposed that in that house two men were present inside the room and they were Akram, the appellant herein and Afzal Khan @ Fazo. PW-2 identified them in the Court along with the first person - Md. Kalim @ Kalu. He also deposed that two women were also present there. He was kept there for 5 to 6 days and the accused Md. Kalim @ Kalo was with him in the said house. He also explained that several times he was taken to the STD telephone booth. He also deposed that at the time of making telephone calls, the appellant-accused threatened him. The trial Judge, after satisfying his capacity to depose, accepted his evidence to the extent that he was kidnapped and detained in a house and another person-the present appellant, made telephone calls demanding ransom and also threatened PW-2 on various occasions.

12. The other witness heavily relied on by the prosecution is Mahendra Prasad Rajak (PW-3), the father of the victim boy (PW-2). In his evidence, he stated that he along with his family members including PW-2 were residing at Premises No. 108A, Elliot Road, Calcutta. Apart from the victim (PW-2), he has two minor sons younger to him. He was engaged as a

salesman at A.C. Market at the relevant time and was also owning a shop bearing No. B-3 in A.C. market. Besides this, he had a tailoring shop at 45 Gardner Lane, Calcutta, near Ripon Lane. The said tailoring shop had been sold away in February, 2000. He had two employees in the said tailoring shop by name Ashok Mondal and Zakir Khan. He informed further that three years prior to sale, Ashok Mondal had been relieved from his employment and Zakir Khan had been continuing as an employee. After the sale of the tailoring shop, he paid Zakir Khan cash of Rs. 20,000/-, a sewing machine and a bicycle. On 17.03.2000, which was a Bakrid day, when he went to his shop at 10:00 a.m., at around 01:00 p.m., he received a telephone from his wife stating that their son was missing for the last one hour. After making search, he made a complaint to the police. Even after announcement in the locality, he could not get his son back. While so, on the evening of 19.03.2000, he received a telephone call demanding a ransom of Rs. 10 lakhs for his missing child Vicky Prasad Razak (PW-2). He was informed that his missing son was with him but he had not stated his name or place where his son was stationed. After half an hour, the very same person asked over telephone not to give information to local police about the same. PW-3 further explained that on 20.03.2000, he informed the local police about the two telephonic messages received on the previous day. The same was recorded by the police officer. On 21.03.2000, he received another telephonic message wherein the person on the other side had stated that he had money because of the sale of tailoring shop, however, reduced the quantum of ransom to Rs. 7 lakhs to be paid to him otherwise his missing son would not remain alive. After his threat, the unknown person also arranged to make a call by his son to speak to him (PW-3) over telephone in order to act quickly. On 25.03.2000, he received another telephonic message enquiring whether he had arranged ransom. On 26.03.2000, he received another telephonic message stating that the ransom was reduced to Rs. 5 lakhs and asked him to have a talk with his son Vicky who stated to take him back quickly. On 01.04.2000, he received another telephonic message by which the quantum of ransom was further reduced to Rs. 3 lakhs. PW-3 agreed to pay the said amount but the person on the other side informed that the place of exchange of ransom would be made known to him later. On 02.04.2000, when he was coming back from the temple after offering puja, he found that his inmates were crying on hearing that his missing son had been killed and they had received such information over phone. Again on 04.04.2000, he received a telephonic message from the same person stating that his son was alive and had not been killed. The caller asked him to come to Jamalpur Railway Station with Rs. 3 lakhs wearing a black coloured shirt and accompanying one of his relatives. On 13.04.2000, he received another telephonic message from the miscreants asking him to go to Ghoga Railway Station on 15.04.2000 with Rs. 3 lakhs and a relative wearing a black coloured shirt. He informed all the details to the police and started for Ghoga but when they reached there, none approached. At night, a raid was conducted by the Calcutta Police along with Bihar Police and the accused were arrested and the boy was rescued from the house of one Mehtab. During search, the police also recovered one pistol and two cartridges under the bed of one Afzal Khan @ Fazo. In the evidence, he further informed the Court that he received telephonic messages 8 or 9 times from the miscreants and every time they threatened him that unless the money is brought in, his son would be killed. In his cross-examination, PW-3 explained the statement made before the police officer on various dates i.e. on 17.03.2000, 20.03.2000, 04.04.2000, 11.04.2000 and 18.04.2000, when he got back his son. In his evidence, PW-3 not only disclosed how his minor son was taken by the

accused persons including the appellant herein and kept in a far away place in order to get ransom. PW-3 also explained the threat received from the accused and failing compliance of their demand they threatened that his son would be killed. Inasmuch as PW-3 was subjected to extensive cross-examination and he withstood his stand, the trial Judge as well as the High Court accepted his testimony in toto.

13. Apart from the evidence of PW-3, the prosecution heavily relied on the evidence of PWs 6 and 7. PW-6 is a newspaper vendor. In his evidence, he accepted that PW-3 is his close relative. It was he who accompanied PW-3 in search of PW-2 pursuant to the threat call from the accused. He corroborated the statement of PW-3 in all aspects.

14. The next witness relied on by the prosecution is PW-7, a resident of Ekchari Bazar, Kahelgaon, Bhagalpur, Bihar. He was working as an employee of public telephone booth owned by one Vikas Singh. He deposed that he came to know of Akram-appellant herein from one Javed, who is a resident of the house situated contiguous to their telephone booth. He further deposed that Javed told him that Akram was his maternal uncle and he was a resident of Ghoga. PW-7 further informed the Court that the said Akram visited their booth on 8/10 occasions. On 2 or 3 occasions, he came to his booth along with one child. The other person Javed also visited the booth on 2/4 occasions with a view to make telephone calls. PW-7 also informed the Court that the child accompanied Akram also used to talk over phone as directed by him.

15. From the evidence of PWs-3, 6 and 7, it is clear that the accused persons, particularly, the appellant herein demanded ransom from PW-3 for the release of his child and he also threatened that unless his demand is met, he would kill his son. There is no reason to disbelieve the version of PWs-3, 6 and 7.

16. In *Malleshvi vs. State of Karnataka*¹, while considering the ingredients of Section 364A IPC, this Court held as under:

“12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom ”

To pay a ransom, as stated in the above referred Section, in the ordinary sense means to pay the price or demand for ransom. This would show that the demand has to be communicated.

17. We have already pointed out the evidence of PW-3 that he had received 8 or 9 calls from the accused persons demanding ransom for release of his son and the evidence of PW-7, an employee of a public telephone booth, also corroborates with the evidence of PW-3 who deposed that the calls were made on several occasions by the appellant from the telephone booth and on 2 or 3 occasions along with the child.

18. In *Vinod vs. State of Haryana*², while reiterating the principles enunciated in *Malleshi* (supra), this Court accepted the case of the prosecution and confirmed the conviction and sentence of life imprisonment imposed under Section 364A IPC.

19. Though learned counsel for the appellant submitted that the case falls only under Section 363, namely, mere kidnapping and not under Section 364A i.e., Kidnapping for ransom, in the light of the acceptable evidence led in by the prosecution, relied on and accepted by the trial Court and the High Court, we reject the said contention.

20. Now, we have to see whether the sentence imposed by the trial Court and confirmed by the High Court is appropriate or not? We have already extracted Section 364A in the earlier paras which stipulates that if the prosecution establishes beyond doubt that the kidnapping was for ransom, the sentence provided in this Section is death or imprisonment for life and also be liable to fine.

21. In *Mulla and Another vs. State of Uttar Pradesh*³ after considering various earlier decisions, this Court held as under:-

“67. It is settled legal position that the punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime.”

We fully endorse the above view once again

22. It is relevant to point out that Section 364A had been introduced in the IPC by virtue of Amendment Act 42 of 1993. The statement of objects and reasons are as follows:-

“Statement of Objects and Reasons.—Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973.”

It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. Therefore, we are of the view that in those cases whoever kidnaps or abducts young children for ransom, no leniency be shown in awarding sentence, on the other hand, it

must be dealt with in the harshest possible manner and an obligation rests on the courts as well. In the case on hand, we are satisfied that the High Court was right in maintaining the order of conviction and sentence of the appellant herein and we are satisfied that the impugned judgment of the High Court does not suffer from any infirmity to warrant interference.

23. Consequently, the appeal fails and is accordingly dismissed.

Judgment Referred.