

SUPREME COURT OF INDIA

Surajsinh Alias Sonu Surajsinh Collectorsinh Alias Sevaram Rajput

Vs.

State of Gujarat

Crl.A.No.695 of 2016

(A.K.Sikri and Ashok Bhushan,JJ.,)

18.04.2017

JUDGMENT

Ashok Bhushan,J.,

1. This appeal has been filed, challenging the judgment of the Gujarat High Court dated 01.02.2016 dismissing the Criminal Appeal filed by the appellant, questioning the order of conviction recorded by Ahmedabad City Sessions Court under Section 364(A) read with Section 114 of IPC.

2. The present appellant and another accused Kamlesh were convicted and sentenced to life imprisonment and a fine of rupees five hundred by City Sessions Court. Both the accused had filed appeals before the High Court which have been dismissed. We have been informed that only one of the convicts has come up in this appeal.

3. The prosecution case in brief is: On 23.05.2010, one Anurag aged seven years, son of the complainant alongwith his sister-in-law and her children had gone to attend a marriage reception of one Dinesh Sharma's sister at Shakriba Party Plot. After the dinner got over, sister-in-law of the complainant, Smt. Rekhaben when called for the children to return Anurag was found missing. Smt. Rekhaben and others started searching for Anurag. Smt. Rekhaben called the complainant on his mobile phone between about 10 to 10.30PM informing about the missing of Anurag. Complainant and his wife immediately rushed to Shakriba Party Plot. In spite of rigorous search throughout, Anurag was nowhere found. On the next day i.e. 24.05.2010 in the afternoon complainant alongwith his brother-in-law and friends went to Ramol Police Station and informed about the missing of Anurag. A missing complaint was registered being Complaint No. 99/2010. When the inquiry was going on during that time on 24.05.2010 in the morning around 9 AM – 9:30 AM someone called Mr. Dinesh Sharma from mobile No. 8128381274 on his mobile No. 9825270948 and told him that he had the information about the boy who went missing from the marriage reception on 23.5.2010, but he did not want to reveal the information to him and told him that he will talk to his aunt only and asked about the mobile number of complainant's sister-in-law. The

conversation didn't take place as the aunt of the boy was not at home and was searching for him. Afterwards around 11 O'clock brother-in-law of the complainant Satyendrasingh and his nephew Vikas told her that she will receive a call on her phone from someone who wanted to talk to her, but no call was received till 11.30 AM. After that, around 01.45 PM a call was received on complainant's mobile by No. 8128381274 and told him that if you wanted back the boy (Anurag) then he should keep ready Rs. 10, 00,000/- and at which place you have to bring money he will call you again. The complainant told him that he was a poor person please ask for lesser amount, but the person from other side told him that nothing can be done. If you wanted the boy, you should keep ready Rs. 10, 00,000/- cash or they will kill the boy. Afterwards the person again called the complainant, but as the aunt of the boy had returned home she talked to that person, who also made her talk to Anurag. He again demanded Rs. 10,00,000/- cash for releasing the boy, which she told after disconnecting the phone.

4. The complainant, thereafter, went to the Police Station and FIR No. 144/2010 under Section 364(A), 114 of IPC was registered on 24.05.2010. Investigation was taken over by one Police Inspector, Jadeja, who after recording the statement of witnesses and taking the call details of the mobile number from which call was received, located the caller at Rajasthan. Thereafter, a police team was sent to Rajasthan and inquiry was also made from one Jayeshbhai Anilbhai Makwan in whose name the SIM Card was found to be registered. He told, he had lost his ID Card few months ago, which might have been misused.

5. A team of Gujarat Police went to Rajasthan in search of accused persons. The complainant alongwith few other persons also proceeded to Dausa, Jaipur. On 28.05.2010, the Rajasthan Police could recover the boy and also succeeded in arresting the appellant and other accused Kamlesh. The Rajasthan Police alleging that accused fired on the police party also registered a case against both the accused under Section 307, 332, 353 and 34 IPC.

6. After investigation, the police submitted a charge sheet against both the accused. Trial proceeded and prosecution examined as much as nineteen witnesses in support of its case whereas fifteen documentary evidences were also produced by the prosecution in support of its case including statement of call details. The complainant was examined as PW. 3 where as Anurag the child witness was also examined as PW. 6. PW. 13 Pradosh Nandram Meena belonging to Rajasthan Police and PW. 14 Pradhan Ramjilal Luhar of Dausa as Panch witness were also examined by prosecution. Jayeshbhai Anilbhai Makwan in whose name the SIM Card was registered was also examined as PW. 11 and Micky alias Gopi from whose shop the SIM Card was purchased, has also been examined as PW.7. Smt. Rekhaben, sister-in-law of complainant was examined as P.W.4.

7. Father of the owner of the Bike No. GJ-1-ED-686 was also examined to prove that bike on which the boy was kidnapped was stolen on 20.05.2010. The accused did not lead any evidence in support of their defence. Statement of the accused under Section 313 Cr.P.C. was recorded whereas they denied the charge.

8. Additional Sessions Judge, Ahmedabad, Gujarat after hearing the learned counsel for the parties found both the accused guilty for offence under Section 364(A) and 114 IPC and sentenced them life imprisonment. Aggrieved with the judgment of the Additional Sessions Judge, Ahmedabad, Gujarat both the accused filed Criminal Appeal No. 884 of 2011 and Criminal Appeal No. 961 of 2011. Both the appeals have been dismissed by the High Court vide its judgment dated 01.02.2016. This appeal has been filed by one of the accused Surajsinh alias Sonu challenging his conviction.

9. On the request of this Court, Shri Amarendra Sharan, Senior Advocate assisted by Shri Amit Anand Tiwari Advocate have appeared as amicus curiae and ably assisted the Court. We have also heard learned counsel for the State. Shri Amarendra Sharan learned senior counsel has taken us to relevant materials on record. Shri Sharan in support of the appeal has raised following submissions: Against the appellant alongwith the other accused an FIR was registered at Dausa, Rajasthan dated 28.05.2010 under Section 307/34, 332 and 353 and 3/25 Arms Act. It was alleged that accused committed the above offences and had fired on the police party on 28.05.2010. It is submitted that appellant had been acquitted in the above case by judgment and order dated 30.4.2012 of Additional District & Sessions Judge(Fast Track) Dausa, Rajasthan in Sessions Case No. 67/2010. Hence, the entire incident of Dausa, Rajasthan as alleged is not proved. It is further contended that SIM Card bearing No. 8128381274 from which it is alleged that ransom call was made, was registered in the name of other person and no recovery of the said SIM Card was made from the appellant. It is further submitted that with regard to motorcycle by which the boy was alleged to have been kidnapped, a case under Section 379 IPC was foisted on appellant in which case also the appellant was acquitted. Shri Sharan submitted that the testimony of the boy Anurag P.W.6 is not reliable and liable to be discarded as it has number of discrepancies. He further submits that in case of testimony of a child witness, it is trite that an independent corroboration must be looked for. He has referred to statement of P.W.9 who had stated that he had recorded the kidnapper's voice when the ransom call was made which was given to P.W.18. He submits that examination of kidnapper's voice could have clinched the issue. He has further referred to contradiction with regard to timing as suggested by the prosecution with respect to recovery of boy at Dausa. He submits that P.W.5 has stated that he received a phone call from Dausa Police Station and reached on 28.05.2010 at around 09 : 00 to 09 : 30 AM, he saw the victim P.W.6 sitting with the police. He further stated that he had also seen the Appellant and Accused No. 2 in the Police Station. Shri Sharan also submits that the arrest of the Appellant and Accused No.2 at Dausa Police Station for the offences u/s 307/34, 332, 353 and 3/25 Arms act is shown as 12.15 hrs. Shri Sharan has also expressed serious doubt in the prosecution case with respect to SIM Card being purchased by the appellant bearing no. 8128381274. It is submitted that prosecution miserably failed to prove the guilt against accused beyond the reasonable doubt and hence the conviction deserved to be set-aside.

10. Learned counsel appearing for the State refuting the submission of the amicus curiae contends that prosecution has successfully proved the offences by cogent evidence which had been correctly appreciated by the trial court which recorded conviction against the appellant. It is submitted that taking of the boy Anurag on 23.05.2010 was proved and further receipt of ransom call from above mentioned mobile number to the different persons including the

complainant is proved by the call details, brought on record by the prosecution. After obtaining the location of the mobile, police party from Gujarat went to Rajasthan. Boy was recovered and accused were apprehended at Dausa, Jaipur on 28.05.2010 by the Rajasthan Police. Accused and boys were thereafter handed over to Gujarat Police. The trial court had found the guilt proved and High Court has also considered all submissions made on behalf of the appellant and has affirmed the conviction.

11. We have heard the submission of learned counsel for parties and perused the record.

12. The arrest of the accused on 28.5.2010 and the recovery of boy from Dausa, Jaipur has been proved by PW. 13, belonging to Rajasthan Police and PW. 14, Panch witness. PW. 7 the child witness has narrated the entire sequence of events from his kidnapping on 23.5.2010 till 28.5.2010 when he was recovered by Rajasthan Police. Boy was aged seven years at the time of incident. He has narrated the entire incident and could not be shaken in the cross-examination. The testimony of child witness was held to be natural and true by the court below.

13. Learned amicus curiae has placed much reliance on judgment of Additional District & Sessions Judge (Fast Track) Dausa, Rajasthan in Sessions Case No. 67/2010 in which the appellant was acquitted. The copy of judgment of Additional District & Sessions Judge (Fast Track) Dausa, Rajasthan dated 30.04.2012 has been filed as Annexure P. 4. The case was registered against both the accused at Police Station, Dausa on 28.5.2010. Boy was recovered and handed over to Gujarat Police. Accused were also handed over to the Gujarat Police on transfer remand.

14. The perusal of the above judgment would indicate that the Court has not disbelieved the incident and arrest of the accused on 28.5.2010. The Court, however, held that the prosecution could not prove charges under Section 307, 332 and 353 IPC.

15. Before the Additional District & Sessions Judge(Fast Track) Dausa, Rajasthan Anurag had also appeared as PW. 17 and had identified the accused. The Court, however, disbelieved the story of firing on police by the accused. But the Court has convicted other accused Kamlesh. It is useful to extract the last paragraph of the order of the Additional District & Sessions Judge(Fast Track) Dausa, Rajasthan which is to the following effect:

“Considered the arguments of both the sides, the accused Rajesh alias Kamlesh had kidnapped the child from Gujrat and brought him in Dausa from where the kidnapped child was recovered from his custody and a Katta 315 Bore Fire Arms was recovered from him. There is serious charge of demanding ransom of 10 lakh rupees, in which the Gujrat Court has given him life imprisonment punishment. On seeing the serious charges of kidnapping and recovery of dangerous arms such as recovery of Katta from the accused Rajesh alias Kamlesh, I am of the opinion that in such serious type of offence there will be no just to have any leniency towards the accused.”

16. The other accused from whom country made Katta was recovered, was awarded sentence of two years imprisonment and a fine of rupees ten thousand. The appellant was acquitted by giving the benefit of doubt. Thus, the judgment of Additional District & Sessions Judge(Fast Track) Dausa, Rajasthan does not help the accused insofar as offence for which he has been charged in the present case and which has been found proved by the evidence on record.

17. The fact that appellant was acquitted from charges under Section 307, 332 and 353 IPC by giving benefit of doubt does not in any manner help the appellant insofar as conviction recorded against him under Section 364(A) and 114 IPC is concerned.

18. Learned counsel, further contended that appellant was also acquitted in the case under Section 379 IPC which was registered against him, alleging theft of the bike which is claimed to be used in kidnapping. The copy of the order by which accused was acquitted from 379 IPC is not on the record except Letter dated 01.03.2016 written by Deputy Superintendent, Ahmedabad Central Prison, Ahmedabad to the appellant giving information under the Right to Information Act, 2005 with regard to case under Section 379 IPC.

19. The use of motorcycle which was found at Dausa, Rajasthan, when accused were apprehended in no manner is affected by acquittal of appellant from charges of theft.

20. The submission of learned counsel for the appellant that SIM Card of the mobile number from which the ransom call was given has neither been recovered nor the SIM Card was registered in the name of the accused, hence the theory of the demand of ransom ought not to have been believed.

21. The trial court had elaborately considered the evidence on record and had noted that from the mobile no. 8128381274 several calls were made for ransom. Call was received from the said number to the owner of Shakriba Party Plot as well as Shri Dinesh Sharma whose sister's marriage function was organised on the date of incident. Complainant received several calls on his mobile. The demand of ransom by telephonic calls has been proved by oral evidence. Complainant as well as his sister-in-law talked to callers on mobile. Call details of the mobiles were produced before the court below which was mentioned at Item No. 11 and 12 of the documentary evidence as extracted by the High Court in para 6 of the judgment.

22. Court did not commit any error in believing the PW. 11 whose identity card was used for obtaining SIM Card who appeared and has stated that he had lost his ID Card and Driving Licence six to seven months ago, which was utilised for obtaining SIM Card. The Court has rightly believed the PW.11 whose no connection was found with the entire episode of kidnapping and ransom call.

23. Learned amicus curiae submitted that the shop keeper PW. 7 Micky alias Gopi who had identified the accused in the court, stating that they had purchased the SIM Card from his shop, had himself in his cross-examination stated that he visited the police station and was

shown the accused since before. Even if, we ignore the evidence of PW. 7, the guilt of the accused has been proved by other relevant and material evidence as noticed by court below.

24. Learned amicus curiae has tried to point out some inconsistencies between the oral statements of witnesses to contend that entire incident is not proved, as alleged. The following inconsistencies in the statements of witnesses i.e. victim have been pointed out:-

” a. The boy was of age 7 when he gave his testimony and being a child witness was prone to being tutored and influenced.

b. In the very first statement the victim did not name the appellant (pg 106, Vol.2) and (pg 8, Vol. 3).

c. The victim in his examination U/S 164 Cr.PC (pg 44, Vol.2) before the Ahmedabad Court has stated that the Dausa Police had fired at the present Appellant and Accused No.2. Whereas in the proceedings in Dausa he states that accused fired and threw chili powder in the Dausa police(pg 138, Vol.2).

d. The victim states in the proceedings in Ahmedabad (Pg 49, Vol.2, Para 14) states that the Appellant and Accused No.2 was brought after one, one and a half hour to Dausa Police Station and while in the proceedings at Dausa(pg.140, Vol.2) he states he has seen the accused for the first time in the Police Station.

e. Ld. Trial Court at Dausa has rightly disregarded his statement due to serious contradictions. In fact this led to entire prosecution case regarding recovery of child from accused persons as doubtful."

25. Now, we look into above inconsistencies as pointed out by Shri Sharan. The submission is that the boy being aged 7 years only, he was prone to being tutored and influenced. The Trial Court has found that complainant and accused were not known to each other and there was no reason for complainant and his relatives to give false evidence against the accused.

26. In the cross-examination of P.W.6, not even a suggestion was given that he was giving evidence on tutoring by someone. It is further submitted that the victim has not named the appellant in his first statement. Shri Sharan refers to statement of victim u/s 161 CPC recorded by I.O. The question "by what name they call to each other". The child witness answered "the person who drives the bike call Kamlesh to other person". In his statement before the court, P.W.6 has specifically named both the appellant and accused being present in the court by narrating the entire incident of 23.5.2010. P.W.6 made following statement:

"...that person offered for Ice-cream, but I did not accept it, but he caught hold of my hand and thereafter he put me on bike and closed on my mouth, that vehicle was

driven by Sonu From there they look me to Dhaba and after taking food slept there I had taken food there... "

27. Further he stated in his evidence "...I recognise that whose names are Sonu and Kamlesh". We thus are of the view that appellant was named by accused.

28. Learned Counsel further states that victim in his examination before Ahmedabad Court has stated that the Dausa Police has fired at the present Appellant and the Accused No.2. Whereas in the proceedings in Dausa he states that accused fired and threw chilli powder at Dausa Police.

29. We have already noticed that offences against accused u/s 307, 332 and 353 IPC were not found to be proved before Dausa Court. Hence, contradiction in the statement of victim at page 49 before the Ahmedabad Court is of no significance.

30. Learned Counsel has referred to the statement of victim before Dausa Court at page 4 where he stated that 'I had seen the accused for the first time in the police station'. The statement has to be read as a whole. Reading one sentence here and there does not give full purport of evidence. In his statement before Dausa Court he has narrated the entire incident including that when he was standing at Shakriba Party, two gundas kidnapped him and they took him to Rajasthan. The entire incident has been narrated in his statement and in the cross-examination his evidence remained unshaken. Much importance cannot be given to one isolated sentence. As far as recovery of child from accused person, there is no doubt regarding the recovery of child from the accused from Dausa, Rajasthan which has been proved by the Police personnel of Rajasthan and evidence given by complainant and his brother who also went to Dausa after they were called by kidnapper to come to Dausa.

31. The submissions that without any evidence High Court has presumed that custody of victim P.W.6 was with the Appellant and accused no. 2 without any Material witness to corroborate. Both the Courts have come to the conclusion that victim was kidnapped by appellant and accused No.2 with whom he remained till 28.5.2010 which is proved by ample evidence on record.

32. The next submission of amicus curiae that victim being a child witness an independent corroboration has to be looked into. The sequences of event as narrated by child witness are fully proved by the incident which happened at Dausa, Rajasthan i.e. recovery of child along with two accused. Thus, the prosecution case of kidnapping the victim and taking victim from Shakriba Plot Ahmedabad to Dausa Rajasthan has been fully proved and the evidence of child witness has been corroborated by evidence of P.W.3, P.W.5, P.W.13, P.W.14 and evidence of P.W.17.

33. The Amicus Curiae has further referred to contradictions with regard to timing as suggested by the prosecution with respect to recovery of boy. Statement of P.W. 5 has been referred where he has stated that he saw the boy at police station at around 09:00 to 09:30 AM whereas time of arrest of appellant at Dausa Police Station is shown as 12.15 hrs. The

above minor discrepancy in time when PW. 5 reached police station and saw the victim and accused, does not make theory of victim and accused being present incredible. Further the fact that prosecution case is that ransom call was made from Airtel No. 8128381274 whereas this SIM Card was not recovered from the accused and SIM Card bearing No. 9785612832 belonging to Idea along with Nokia Mobile 1600 was recovered. When the call from above Airtel number was made to several mobile numbers i.e. owner of Shakriba Party Plot, Mukesh Sharma and the complainant, the call details of which have been produced before the court, non-recovery of SIM Card is not of much significance. The Nokia phone which was recovered with Idea SIM was the phone which belonged to Mr. Suresh Chand Ramjilal who has stated that the phone was stolen. The above circumstances in no manner make the prosecution story incredible.

34. It is useful to refer to judgment of this Court in *Chandrappa and Others versus State of Karnataka*¹, where this Court has laid down that it is unreasonable to expect from a witness to give picture perfect report of the incident and minor discrepancies have to be ignored. In para 17 and 18 following was stated by this Court:

"17. It has been contended by the learned Counsel for the appellants that the discrepancies between the statements of the eyewitnesses inter se would go to show that they had not seen the incident and no reliance could thus be placed on their testimony. It has been pointed out that their statements were discrepant as to the actual manner of assault and as to the injuries caused by each of the accused to the deceased and to PW3, the injured eyewitness. We are of the opinion that in such matters it would be unreasonable to expect a witness to give a picture perfect report of the injuries caused by each accused to the deceased or the injured more particularly where it has been proved on record that the injuries had been caused by several accused armed with different kinds of weapons.

18. We also find that with the passage of time the memory of an eyewitness tends to dim and it is perhaps difficult for a witness to recall events with precision. We have gone through the record and find that the evidence had been recorded more than five years after the incident and if the memory had partly failed the eye witnesses and if they had not been able to give an exact description of the injuries, it would not detract from the substratum of their evidence. It is however very significant that PW 2 is the sister of the four appellants, the deceased and PW 3 Devendrappa and in the dispute between the brothers she had continued to reside with her father Navilapa who was residing with the appellants, but she has nevertheless still supported the prosecution. We are of the opinion that in normal circumstances she would not have given evidence against the appellants but she has come forth as an eyewitness and supported the prosecution in all material particulars."

35. The trial court has thoroughly marshalled the oral and documentary evidence on record. High court on re-appreciation of such evidence has affirmed the order of conviction of the appellant. We do not find any error in the judgment of court below, warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution. The appeal

lacks merit and is consequently dismissed. Before we close we record our appreciation for the valuable assistance rendered by Shri Amarendra Sharan, Senior Advocate assisted by Shri Amit Anand Tiwari, Advocate.

Judgment Referred.

¹(2008) 11 SCC 0328