

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 218 OF 2008**

STATE OF MAHARASHTRA

... APPELLANT

VERSUS

LAHU @ LAHUKUMAR RAMCHANDRA DHEKHANE

...RESPONDENT

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

This is an appeal by special leave by the State of Maharashtra against the judgment of acquittal. Said judgment of acquittal has been passed in appeal. By the impugned judgment, the High Court of Bombay has acquitted the respondent under Sections

363, 364A, 386, 302 and 201 of the Indian Penal Code. The trial court, however, had held the respondent Lahu @ Lahukumar Ramchandra Dhekhane guilty of all the charges.

According to the prosecution, Sanket, son of Suryakant Bhande, PW-30 was studying in Junior K.G. in M.E.S. High School. On 29th of November, 1999 Sanket went to school at 9 A.M. When he did not return, the father went to the school where he met Sanket's Class Teacher, Anjali Walimbe (PW-4), who informed him that he left the school with a person aged about 25 years at 12.30 P.M. In the meanwhile, Pratibha, the mother of the child received a ransom call promising to release the child on payment of ransom of Rs. 1 lakh. A report was accordingly lodged. On 6th of December, 1999 at 11.00 A.M. another ransom call came demanding a sum of Rs. 1 lakh from the father for releasing the child from captivity and the ransom amount was to be delivered at specified place. The caller gave

threat to the father of dire consequences in case police was informed. Despite the threat, the police was informed and the father went to the specified place with the ransom money, kept the money but nobody turned up till about 2.45 P.M. The father then received a call from his cousin on his mobile at 3.30 P.M. asking him to return to his house. On reaching there, the father was told by his cousin that another anonymous call had come complaining that the place where the money was kept was surrounded by the police and, hence, the ransom amount be kept at Katraj Ghat near Hotel Rama. The caller gave specific instruction as to the place and the manner in which the bag containing the ransom amount to be kept. This time, the father went without informing the police, kept the bag containing the ransom amount at the specified place and sounded whistle as directed. After 10 minutes when the father went to the spot he found that the bag was not there. Thereafter, the search was made but neither the child nor anybody was found there.

The family suffered the pain for a long time as they could not get any information with regard to the child. However, suddenly after about 6 months on 5th of June, 2000 the father received a call on his mobile from Pune but it got disconnected. The father, in order to record the conversation, had attached a tape-recorder to his mobile. After some time, he received another phone call from Pune asking him to pay a sum of Rs. 1,50,000/- for return of the child and an impression was given that the child is safe in Mumbai. The caller further informed him that the time and the place for payment of the ransom money shall be informed on the next day. As communicated, on the next day at about 12 noon the father received a phone call on his mobile and he was asked to deliver the ransom amount near a hill at a specified place at Pune-Ambegaon Bypass. In order to secure release of the child, the father put the bag containing currency notes at 3.00 P.M. at the specified spot.

At that time, the police officers were standing at a distance. Within five minutes the bag was taken away by somebody. At about 3.45 P.M. on the same day the father received a phone call on his mobile from a place called Hadapsar from Pune and the caller threatened to kill his another son named Saurav, who was studying in IIIRD Standard in the same school, as he had not obeyed the instruction and informed the police. The father, with the help of the police, found out the STD Booth from where the phone call was made. The owner of the booth, Ganesh Shinde, PW-26 told them that a person had come on Suzuki Samurai Motorbike who had made the call.

JUDGMENT

On 17th of July, 2000 respondent Lahu @ Lahukumar Ramchandra Dhekhane, hereinafter referred to as 'the accused', was arrested in a case in which the ransom call and the details and the manner in which ransom money was to be delivered were the same.

During the course of investigation it transpired that on 29th of November, 1999 the accused went to Sanket's school at 12.30 P.M. and since nobody had come from the family to pick him up, the class teacher Anjali Walimbe, PW-4 was waiting for somebody to come and pick him up. At a little distance another teacher Swati Joshi, PW-9 was taking the class in the verandah of the school. At about 12.30 P.M., the accused came to the school and called Sanket whereupon he went running towards the accused and on enquiry by the class teacher the child answered that he knew the accused. In this way the accused had taken away the innocent non-suspecting child with him. It had further transpired that the accused, after kidnapping the child from the school, had gone to paan shop of Ramesh Gadhave, PW-5 and purchased some chocolates for the child. Thereafter, the accused had taken the child to a place called Wai and made a ransom

call from the telephone booth of Sulbha Kadane, PW-28.

Thereafter, on the same day or a little later he killed the child and made phone calls from different telephone booths of Sanjay Salunkhe, PW-15, Ganesh Shinde, PW-26 and Sulbha Kadane, PW-28. The statement given by the accused led to the recovery of the bag and the shirt of the child which were identified by the parents in the test identification parade. During the course of investigation it also came to the notice that the accused has opened an account in a bank and deposited a sum of Rs. 40,000/-. In this way the accused was alleged to have kidnapped the child for ransom, killed him and later on destroyed the evidence.

Accordingly, the police submitted the charge-sheet and the accused was ultimately committed to the Court of Sessions where charges

under Sections 360, 364A, 386, 302 and 201 of the Indian Penal Code were framed against him. He denied having committed the offence and claimed to be tried. He pleaded false implication and his defence was that after he was apprehended by the police from Ambabai Temple, the following day, he was shown to two teachers, Anjali Walimbe, PW-4 and Swati Joshi, PW-9 who stated that the accused was not involved in the crime.

From the facts narrated above it is evident that the case of the prosecution largely rests on circumstantial evidence. The trial court, on appreciation of the evidence led on behalf of the prosecution, came to the conclusion that the chain of circumstances proved clearly points towards the guilt of the accused and accordingly, he was held guilty for kidnapping and ransom, murder as also for the destruction of the evidence. However, on appeal the High Court doubted the evidence of both the teachers and observed that it is probable that

they identified the accused from the photograph published in the newspaper. The High Court rejected the evidence of Ramesh Gadhave, PW-5, the paanwala, on the ground that a paanwala attending to various customers on a day could not be in a position to identify the accused who had gone with a child some eight months ago. As regards the entries of the Telephone Department showing the calls made to the father, opening of bank account and deposit of money in the bank account, in the opinion of the High Court, though creates suspicion but that cannot form the basis of conviction and the suspicious circumstances become insignificant once testimony of both the teachers becomes doubtful. Accordingly, the High Court acquitted the accused.

As stated earlier, aggrieved by the aforesaid order, the State of Maharashtra has preferred the special leave petition and while issuing notice, this Court, by order dated 9th of September, 2005

stayed the operation of the impugned order of acquittal rendered by the High Court. Thereafter, this Court granted leave against the impugned order on 3rd of January, 2008 and directed for continuance of the interim order passed earlier till the disposal of the appeal. The result thereof is that the judgment and order of conviction is operating against the accused.

Evidence of Anjali Walimbe, PW-4 and Swati Joshi, PW-9, the two teachers working in the M.E.S. High School are of vital importance. Their evidence has been accepted by the trial court but has been rejected by the High Court, hence, we consider it expedient to consider their evidence in little detail. Anjali Walimbe, PW-4 has stated in her evidence that Sanket, aged about three years was studying in Mini K.G. Class of which she was the class teacher. She has further deposed in her evidence that Sanket had come to the school on the fateful day and when nobody turned up to take him

back till noon, she brought the child in the verandah of the school. According to her evidence, at 12.30 P.M. the accused came in the school, called Sanket; whereupon he ran towards the accused. On enquiry, according to this witness, Sanket told her that he knew the accused and in this way Sanket went along with him. She has also stated the manner in which she identified the accused in the test identification parade held by Jyostna Vidhasagar Hirmukhe, Tahsildar, PW-27, on 16th of September, 2000. In the cross-examination she had admitted that after accused was arrested, his photograph was published in the newspaper and on the same day the test identification parade was held. Similarly, Swati Joshi, PW-9 had deposed about the manner in which Sanket was taken by the accused. She also testified about the identification of the accused in the test identification parade held on 16th of September, 2000. In the cross-examination she denied the suggestion that she had identified the accused at

the instance of the police. As observed earlier, the High Court has rejected the evidence of these two witnesses on its finding that the possibility of their identification on the basis of the photograph published in the newspaper cannot be ruled out. We find ourselves unable to subscribe to this view. The two teachers had neither any grudge to grind against the accused nor anything has been suggested by the defence in the cross-examination. They have clearly stated in the evidence that they identified the accused in the test identification parade which was conducted by the Tahsildar, PW-27. She has stated about the manner in which test identification parade was conducted and the manner in which these two witnesses identified the accused. These two teachers are absolutely independent persons. We do not find any earthly reason as to why they would falsely identify the accused in the test identification parade. We are of the opinion that

the identification of the accused by these teachers cannot be doubted.

Ramesh Gadhave, PW-5 is the paan shop owner, who has stated in his evidence that the accused had come to his shop along with a child between 1.00 P.M. to 1.30 P.M., purchased four chocolates, gave those to the child and went towards Satara side. In the cross-examination he admitted that he is not expected to remember who comes to his paan shop and taking this into account, the High Court has rejected his evidence. We find ourselves unable to endorse the conclusion of the High Court. This witness has emphatically stated that the accused had come to his paan shop along with a child who was weeping, purchased chocolates and gave them to the child. He may not be expected to remember each and every customer but fact of the matter is that in the case in hand he had identified the accused and, in the absence of any evidence to the contrary, his evidence is not fit to be rejected

only on the ground pointed out by the High Court. The STD Booth owners from where the accused had made the calls have also identified the accused. Not only that, the discovery of various articles at the instance of the accused, the entries of the Telephone Department showing the calls made to the father, opening of the bank account and the deposit of money coupled with the evidence of the two teachers, the paanwala and the STD Booth owners, in our opinion, complete the chain and point towards the guilt of the accused. In the circumstances, we are of the opinion that the chain of circumstances clearly points towards the guilt of the accused and the High Court erred in acquitting him.

JUDGMENT

We may herein observe that acquittal of an accused who has committed the crime causes grave injustice in the same manner as that of conviction of an innocent person.

In the result, we allow this appeal, set aside the impugned judgment and order of the High Court and restore that of the trial court.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(KURIAN JOSEPH)

NEW DELHI,
SEPTEMBER 6, 2013.

JUDGMENT