

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 837 OF 2008

LOHIT KAUSHAL .. APPELLANT(S)

vs.

STATE OF HARYANA .. RESPONDENT(S)

O R D E R



This appeal by way of special leave has been filed by Lohit Kaushal, who along with several others stands convicted for offences punishable under Sections 364-A, 342 read with Sec.120-B of the IPC and has been sentenced to undergo imprisonment for life for the offence under Sec.364-A read with Sec.120-B and to one year's R.I. under Sec.342 read with Sec.120-B, along with fine in both cases.

The facts of the case are as under:

The appellant is the wife's sister's husband of Harjit Singh brother of Saravjit Kaur, mother of Arshdeep Kaur, aged four years, the kidnap victim. Sukhjit Singh, father of Arshdeep, was employed in a private factory and earning (as per his statement) Rs.70-80 thousand per month while Saravjit Kaur who was working as a Lecturer in the Government College, Narayangarh, was also drawing a handsome salary. As per the prosecution's case the appellant had received a severe setback in his business and being aware of the financial status of Sukhjit Singh's



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family he planned to kidnap Arshdeep Kaur for ransom. As per parents were employed Arshdeep was left in a Creche in the morning by her parents and she would return to the home of Mohinder Kaur, her maternal

grand mother after school hours. Pursuant to a conspiracy hatched by the appellant, Parminder Mohan @ Pammi and Lovepreet Kaur, both well-known to Mohinder Kaur and her family, went to the house of Mohinder Kaur at about 1.30 p.m. on 25/8/2002, while Sukhjit Singh and Saravjit Kaur were at work. They found Mohinder Kaur and Arshdeep in the courtyard of the first floor of the house, and enquired about Sukhjit Singh and Saravjit Kaur and told Mohinder Kaur that Parminder Mohan had been blessed with a son and they had come to deliver a box of mithai to



celebrate the occasion. They also asked Mohinder Kaur to give them some water. In the meantime two other persons, one being Manjit Singh alias Mithu, also came into the room and also asked for water and as Mohinder Kaur went into the kitchen, Manjit Singh followed her, caught hold of her and brought her into the bedroom. Parminder Mohan, thereafter, caught hold of her arm whereas Manjit Singh shut her mouth and tied her with a dupatta and the fourth unnamed accused manhandled her. Parminder Mohan thereafter tied her hands, shifted her to another room and after

picking up Arshdeep and a video cassette player from the house, drove away in a Tata Sumo vehicle. A telephonic

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message was conveyed by Mohinder Kaur's neighbour Harjinderpal Singh to police station, Sector-19, Panchkula on which Sub-Inspector Avtar



Singh reached the kidnap site and recorded the statement of Mohinder Kaur and on its basis an FIR was registered by Sub-Inspector Om Parkash. The appellant, alongwith his wife Satnam Kaur, on hearing the news about the kidnapping and pretending to be concerned relatives, also visited Mohinder Kaur's house and arranged that she be sent to the General hospital, Panchkula, for her medical examination.

On 27/2/2002, information was received by Inspector Mange Ram that the kidnappers were demanding Rs.60 lakhs as ransom and on

receipt of the amount they would free the child near Gurudwara Dukhniwaran Sahib, Patiala. The matter was however settled at Rs.21 lakhs. Sub-Inspector Mange Ram accompanied by Sukhjit Singh (Arshdeep's father) reached the pre-determined place, which was a STD booth near the Gurudwara and found Lovepreet Kaur along with the child inside the booth. She was immediately arrested and the child was freed and handed over to her father. Pursuant to Lovepreet Kaur's sustained interrogation Satnam Kaur was arrested on 28/2/2002, and pursuant to



her interrogation, Lohit Kaushal, the appellant herein, was taken into custody and a MarutiCar No. CH01-4565, which had allegedly been

used while kidnapping the child, was seized by the police. A Tata Sumo

vehicle bearing Registration No.HR01E-7582 was also produced before the police by its owner, PW.3 Sarwan Singh and was taken into possession. On the same day Parminder Mohan, ManjitSingh, Nand Kishore and Sunil Kumar were also apprehended. On 3/3/2002 Lovepreet Kaur made a disclosure leading to the recovery of the clothes that Arshdeep had been wearing at the time of the kidnapping. Likewise and at the instance of ManjitSingh, a VCP along with its remote control were also recovered.

On the completion of the investigation the accused were charged



for the aforesaid offences. They pleaded not guilty and were brought to trial.

The Additional Sessions Judge, Panchkula, however, by his order dated 4/3/2002 discharged Satnam Kaur, Lohit Kaushal's wife, Nand Kishore @ Mithu and Sunil Kumar @ Rinku for lack of evidence, but proceeded with the trial with respect to the other accused.

The prosecution in support of its case placed reliance on the statement of PW.1 Mohinder Kaur, PW.2 Sukhjitsingh, PW.3 Swaran Singh

who deposed that Manjit Singh had borrowed his Tata Sumo vehicle on 25/2/2002 at about 9.00 a.m. and had returned it the same evening at about 5.00 p.m. as had been promised to by him, PW.5-Sub-Inspector Om Prakash, PW.11-Sub-Inspector Avtar Singh and

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PW.12 Inspector Mange Ram amongst others. In their statements under Sec.313 of Cr.P.C. the accused pleaded innocence and alleged false implication and further pleaded that they had been involved on account of suspicion. The accused were, however, ultimately convicted and sentenced by the trial Court as mentioned above. Four appeals filed at their instance were also dismissed by the High Court leading to the present appeal by Lohit Kaushl in this Court. We have also been informed

by the learned counsel for the parties that the other accused had absconded after they had been granted bail by the High Court at the time of the admission of their appeals, and are, as of now, not traceable.

In this situation the learned counsel for the appellant has pointed out that there was absolutely no evidence against the appellant and that he appeared to have been roped in on account of suspicion being a close relative of the complainant party as his adverse circumstances were well known within the family circle. It has also been submitted that neither



Mohinder Kaur nor any of the other witnesses had named the appellant at any stage except at the trial and that too in uncertain terms that they suspected that he had been instrumental in arranging the kidnapping for the purpose of ransom. It has been highlighted that the only two incriminating circumstances against the appellant

were the so called disclosure statements made by Satnam Kaur the appellant's wife, and Lovepreet Kaur, a co-accused, subsequent to their arrest naming him as the main conspirator and secondly the recovery of the Maruti car from him at the time of his arrest.

The learned State counsel has, however, pointed out that in addition to the aforesaid evidence, the conduct of the appellant in trying to distract the police away from the investigation by constantly interfering



therein and by advising Sukhjit Singh not to give any information to the police as Arshdeep's life could be in danger and after suspicion had been raised as to his involvement had absconded and had been arrested three days later, raised grave suspicion with regard to his involvement.

We have considered the arguments advanced by the learned counsel. It is true that kidnapping as understood under Sec. 364-A of the IPC is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the

more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A Court must, therefore, guard against the possibility of being influenced in its judgments by sentiment rather than by objectivity and judicial considerations while evaluating the evidence.



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We have gone through the judgment of the High court and find that but for three or four stray sentences with regard to the appellant's involvement, there is virtually nothing which has been brought out with regard to his role, though the High Court was the first appellate Court. We have, accordingly, chosen to evaluate the evidence ourselves as if we are the first Court of appeal.

As already noted above, the appellant who was well known to Mohinder Kaur being a close relative, did not invite any suspicion about his involvement at the time when the FIR had been lodged and her statement under Sec.161 Cr.P.C. recorded. She however made an improvement at the time of the trial about her suspicion vis-a-vis the appellant and was duly confronted with the omission. The only other effective piece of evidence that the Courts below have relied upon are the disclosure statements of Satnam Kaur and Lovepreet Kaur, recorded by



the police while they were in police custody as co-accused. The primary question which calls for consideration is as to whether their statements can form the basis for a conviction. In addition to the fact that Satnam Kaur was discharged by the trial Judge on account of lack of evidence, we are of the opinion that so called disclosure statements made by both these women are hit by Sections 25 and 26 of the Evidence Act, 1872, as they had the status of being statements made to the

police, and nothing more and are, thus, not admissible in evidence. It will be seen that a statement made to the police can only be used to the limited extent provided under section 27 of the Evidence Act and that too only against the person making the statement. Admittedly the statements, did not lead to the recovery of any item whatsoever. Satnam Kaur's



statement is on record and we have very carefully perused the same. It reads as under:

"In 1995 year I was married to Lohit Kumar S/o Diwaker Kaushal r/o Delhi. After 5/6 months of the marriage I and Lohit started quarreling with each other and it continued for 1 1/2 year. During this period Lohit went to Australia. About 6 months back Lohit came back from Australia. During this period my younger sister Jaspreet Kaur got engaged to Harjit Singh S/o Sajjan Singh R/o H.No.527 Sector 12-A, Panchkula. During this period our relatives got patched up our differences. Lohit and I for distribution of invitation cards for marriage went to our relatives. I Lohit's relation, his uncle (Mama) Sh. Jagdish R/o Dhuri was given the invitation card for

marriage. There we met Parminder Mohan @ Pammi whose conversation impressed me a lot and I in person invited him to attend the marriage. He did come to attend the marriage of my sister at Panchkula with whom I developed relation. After marriage Harjit Singh started torturing my sister number of times he was advised but he used to assault for which my sister complained to me number of times whom my husband Lohit also tried to advice him, he quarreled with Lohit also and uttered nonsense words to Lohit for which Lohit felt upset. Harjit's Sister Sarabjit Kaur with her husband Sukhjit Singh stays at H.No.4079 H 32 Sec.20 Panchkula. Her only daughter aged three year is darling to her. This girl's grandmother (Nani) Mohinder Kaur who stays with her son Harjit Singh and daughter-in-law Jaspreet at H.No.527 Sector 12 A Panchkula, both of them are in service. During that period the old woman



stays alone at home. There Sukhjit Singh and his wife Sarabjit Kaur are also in service. While going for duty they leave the girl at Sector 12 A

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Panchkula Creche. The vehicle of the creche leave Arshdeep girl with her Nani who loves her. On their way back from the duty in the evening Mummy Pap of Arshdeep taken her to home. With the intention of taking revenge from Harpreet and for grabbing money because Lohit was facing much loss in his business. Next day after planning the kidnapping the niece (Bhanji) of Harjit, for ransom I and Lohit went to Pammi's house

at Dhuri. After meeting Pammi and Nand Kishore @ Nittu we four planned that HarjitSingh's sister and SaukhjitSingh is a solid party. Good amount can be got. In order to execute this plan we started keeping an eye on the HarjitSingh's House and the girl. During this period I and Lohit remained at my mothers House No.552 Sector 25 Panchkula. After seeking location, Pammi has asked on telephone to reach Panchkula fully prepared for making the plan a success. As per plan, I and Lohit waited after reaching Zirakpur. At about one O' clock in a white coloured Tata Sumo, Pammi and Nittu came along with a girl and two boys, and on seeing up they halted. I and Lohit advised Pammi & Nittu that we will stop our vehicle at about 100 away from the kothi, you run away after doing the work and Pammi got a packet of sweets from Zirakpur. We moved ahead our vehicle followed by the vehicle of Pammi etc. and reached



Sector 12 A Panchkula. After making plan, Pammi etc after carrying out the work went away and we both went to our house. After that on the subject being noised, I and Lohit went to Harjit's house and kept an eye on the happening and the situation was conveyed to Pammi but Pammi's demand for Rs.60 lacs created horror in the entire family we also never expected that he will demand so much. On seeing the situation worsened, we on phone informed Pammi to return the girl. At right time my husband also escaped from there. Whose all where about I know. He can be available with his friend at Delhi, Ghaziabad, Meerut. It can get him apprehended on identification statement of the accused is recorded separately which is signed by the accused and the witnesses."

Lovepreet Kaur's statement has not been filed with the Supreme

Court record but it has been paraphrased by the trial Court in its judgment and we reproduce the same hereinbelow:

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"During interrogation, Lovepreet Kaur alias Preeti wife of Virender Singh made disclosure statement that on 25.02.2002 at about 8.00 P.M. phone was received from her fast friend namely Pammi that she should reach at Dhuri PCO. She reached at Dhuri PCO at about 8.30 P.M. from Sangrur. At the time, Pammi son of Jagdish Chand caste Pandit, Nitu son of Naresh Chand residents of Dhuri, Sunil Kumar alias Rinku



resident of Dhuri were sitting at STD/PCO. Pammi told her that she would be given good amount in one trip. He further told that niece Arshdeep of Harjit Singh, who is sandhu of Lohit being only one daughter of rich parents. As per information of Lohit and Semmi, this girl used to come to kothi No. 527, Section 12-A, Panchkula to her grand mother for four-five hours. After kidnapping her, they could get the good amount and leave the girl. She had to do only that she would take the girl aged about three years in her lap with live and sit in the vehicle. If the girl weeps, then she would keep her mum and she will get Rs.20,000/- for the work. In the meanwhile, phone from Lohit had come of Pammi. Lohit and Satnam Kaur alias Semmi, who were earlier known to her also told about the planning. She also asked Lohit and Semmi as to whether girl likes chocolates or toffees, so that she may be

kept mum on her weeping. As per planning, Mithu who was the Driver brought a Tata Sumo of white colour, whose number she did not know but Indian on the front mirror and Deol in English were written. They started at 10.00 A.M. when they reached at Local Bus Stand Zirakpur at about 1.00 P.M. Lohit and Satnam Kaur met them, who were in a Maruti car of blue colour and talked to Lohit and Semmi, after getting down. Sweets box was also purchased from there. Lohit Kaushal and Semmi stopped their vehicle on the back turning and as per planning, they stopped their vehicle in front of kothi no.527, Sector 12-A, Panchkulla. She and Pammi saw the old woman and small girl sitting in the courtyard of first floor of the kothi. Pammi and she said Namaste to the woman. Pammi asked that where was Sukhjit Singh, who used to work in Lalru and they had come at wrong place.



Pammi told that they are his friends and he had been blessed with a son, so they came to give him a sweet box. Woman asked them to sit in the drawing room and they

demanding water. The old woman brought two glasses of water from the kitchen and they took it. In the meanwhile, Nitu and Sunil also came up and they also demanded drinking water. Mithu also came up at that time. Pammi told him to stand on the gate and she started to feed the girl. They all

caught hold of old woman. Pammi shut her mouth and she lifted the girl and took her to the vehicle standing down. Mithu kept standing on the upper gate. After sometime, when they came down, she saw a VCP in the hands of Nitu. They all sat in the vehicle and sped away from there in the vehicle. Pammi talked on mobile in the way and got the vehicle stopped near Amargarh. A man came there on a motorcycle, and Pammi took the girl from her and handover to that person who came there on motorcycle. She was dropped at Dhuri bypass and she went to Sangrur. She continued to keep contact on phone and demanded her money. Pammi told that money would be given after receipt. She reached at STD/PCO and girl was sitting at the STD/PCO in same clothes. She told Pammi to change her clothes and she changed the clothes of the girl and kept the used clothes at the STD/PCO by putting



them in a bag. Pammi told her that she may take the girl and to reach at Gurdwara Dukhniwaran Patiala, where father of the girl would come with money and she should handover the girl to the father and take the money. She would also get extra amount for this work and thereafter, she reached at Patiala Bus Stand along with the girl. She hired a three-wheeler and reached at the gate of Gurdwara and police caught her. She could tell the place where all other accused persons were stayed and get them arrested and could get recovered the clothes of the girl from STD/PCO. This above referred disclosure statement of accused Lovepreet Kaur was reduced into writing upon which accused and witnesses put their signatures. In view of the disclosure statement of accused Lovepreet Kaur, clothes of girl Arshdeep were got recovered from the STD/PCO, which were taken into police possession.

Arshdeep was also recovered from accused Lovepreet Kaur outside the gate of Dukhniwaran Gurdwara Patiala and girl was taken into possession vide recovery memo dated 27.2.2002."

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The two statements above-quoted cannot by any stretch be read into evidence against the appellants, as they have the status of being



statements made to the police while the two were in custody. Admittedly, the two were also co-accused at that stage (as Satnam Kaur was later discharged by the trialCourt) for lack of evidence against her.

We are now leftwith the recovery of the Maruti car allegedly used in the kidnapping. In this connection itis relevant to observe that as per the statement of Mohinder Kaur made to the police which formed the basis of the First Information Report, as also in her statement in Court, the four accused who had come to her home had taken the child away in a Tata

Sumo vehicle. That this vehicle was apparently used in the kidnapping is impliedly supported by its owner Swaran Singh PW.6 who deposed that it had been borrowed by Manjit Singh accused, on the morning of 25/2/2002 with a promise to return it by the evening and the vehicle had indeed been returned to him. It is, therefore, clear that the Maruti Car No. CH01-4565 recovered from the appellant did not figure at the initial stage in the kidnapping of the child. Furthermore, there is absolutely no evidence to suggest that the Maruti Car had been used in the kidnapping at any later



state. We have also perused the arrest memo pertaining to the appellant and the recovery of

the Maruti Car on 28/2/2002. It is obvious that this too is not a statement under Sec.27 of the Evidence Act as the vehicle had been seized from the

appellant at the time of his arrest.

As will be apparent from what has been written above the charge against the appellant is primarily under Sec. 364-A, 342 read with Sec. 120-B of the IPC. Concededly, also as per the prosecution story, the appellant had not been present at the time when the child had been kidnapped by the four co-accused and he had been roped in as the main conspirator, with the aid of Section 120-B of the IPC. We find no evidence to indicate that such a conspiracy had been hatched by the appellant as the



statements of Satnam Kaur and Lovepreet Kaur cannot be read as evidence and there is no other circumstance suggested against the appellant.

The learned counsel for the State has, however, in addition, pointed out that the very conduct of the appellant indicated his guilt and that the fact that he had attempted to dissuade Sukhjit Singh from informing the police about the kidnapping and that he had absconded after the police had arrived, were indications that he was involved in the crime.

We find that these circumstances by themselves cannot be taken against the appellant. It needs to be kept in mind that in a case of kidnapping for ransom there are

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two very clear schools of thought; one that the law enforcement agencies



should be informed as soon as possible so that the victim can be recovered without loss of time and the second, and an equally meritorious one, given that that the police investigations are often tardy and clumsy, that the police should not be informed as the victim would then be gravely endangered and that the best option was to pay up and recover the victim. It hardly needs mention that the second option is the more preferred one in India. Assuming, therefore, that the appellant, as a close relative, had advised Arshdeep's family to adopt the second course, cannot by itself be

a circumstance to be taken against him. It has also come in evidence, (and so argued by the learned counsel for the State) that the appellant had absconded after the police had arrived. We, however, find that in the backdrop of all the other circumstances, this factor may raise some suspicion but cannot by itself constitute sufficient evidence for conviction. We, thus allow, the appeal, set aside the conviction and sentence of the appellant and order his acquittal. He shall be released forthwith if in custody and is not wanted in any other case.



.....J.

(HARJIT SINGH BEDI)

.....J.

(J.M. PANCHAL)

New Delhi,
August 4, 2009.