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Crl.A.No. 1209 OF 2001
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ITEM No.101(PH) Court No. 09 SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Crl. Appeal No.1209 of 2001

Jaipal Appellant (s)

VERSUS

State of Haryana Respondent (s)
(with office report)

Date : 19/09/2002 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s)

Ms. S. Janani, Adv.

For Respondent (s)

Mr. J.P. Dhanda, Adv.
Mrs. Raj Rani Dhanda, Adv.
Mr. Sunder Khatri, Adv.

UPON hearing counsel the Court made the following

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Ms. S. Janani, learned counsel resumed her arguments
at 10.35 a.m. and concluded at 11.30 a.m. Hearing
concluded.

The appeal is dismissed in terms of the signed order.

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(Pawan Kumar)
Court Master

(V.P. Tyagi)
Court Master

(signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1209 OF 2001@@
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Jaipal

..Appellant

Vs.

State of Haryana

..Respondent

O R D E R@@
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.SP2

The appellant was tried by the Additional Sessions Judge (II) Jind for the offence punishable under Section 363A/364A IPC. Having been found guilty the appellant was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- in default of payment of fine to further undergo RI for six months. His appeal before the High Court of Punjab and Haryana having failed the appellant is before us in this appeal.

The prosecution case briefly stated is that the appellant was working as an agricultural labourer in the fields of Ganga Bishan, PW.10. On 28th of April, 1994 he abandoned his work and went away without informing anybody. On the same day the family of PW.10 found his grandson by name Varinder alias Bintu aged about 5 years was missing from their house. His family members having searched for missing child for two days in various places in the neighbouring districts ultimately lodged a complaint on 30th April, 1994 in Safidon Police Station. On investigation it was found that the
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appellant while working in the fields of PW.10 had given his name as Rajbir and Jagbir though his actual name is Jaipal and also he had not given his true and correct address of his permanent place of residence. It is the further case of prosecution that during the course of investigation they came to know that the appellant had kidnapped another child and on the basis of the information supplied by the family members of that child they went to the village of the appellant and searched for the appellant. Having failed to apprehend the appellant they contacted the brother of the appellant, Hari Singh who later on produced the appellant before the Police. After interrogation they came to know that the appellant in connivance of his minor son, Vinod Kumar had kidnapped the said child on 28th April, 1994 and the appellant had written a ransom letter with the help of his minor son, Vinod Kumar on 28th April, 1994 demanding a sum of Rs. 65,000/- which was received by the family members of the kidnapped child on 4th May, 1994. It is also the case of the investigating agency that the child was found on the basis of the disclosure statement made by the appellant on 4th May, 1994 wherein he had stated that he had sent the boy in a train which was going from Meerut to Delhi. On further investigation the police came to know that the child was abandoned at old Delhi Railway Station and was picked up by the Constable at Railway platform. Unable to trace the family of the child the Railway Police kept the child in a aftercare
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home at old Delhi Railway Station. The child was recovered on 28.10.1995 from the said aftercare home. On completion of investigation the appellant was charged for the offence as stated above. In support of the prosecution case PW.10 and PW.4 the grand-father and father of the child respectively had stated that the appellant when employed had given his name as Rajbir and Jagbir and on 28th April, 1994 while working he returned to the house on a pretext of taking bath and when these witnesses returned to their house they found that Varinder alias Bintu was missing from the house and as stated above after a prolonged search the child was recovered based on the disclosure statement made by the appellant. The prosecution has also relied on the ransom letter received by PW.4 which was proved by the handwriting of the son of the appellant as stated above. The prosecution also relies upon the evidence of PW.9, the police constable which establishes the fact that based on the disclosure statement the investigating agency deputed him to investigate in railway stations in the route from Meerut to Delhi to trace the child consequent upon which the child was ultimately recovered on 28th October, 1995. It is based on this evidence the learned Additional Sessions Judge came to the conclusion that the prosecution has established the fact that the appellant was working in the field of PWs.4 and 10 during which time he had given a false name and on 28th April, 1994 he was missing from the place of his work on the same day the child was kidnapped.

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Learned Additional Sessions Judge also relied on the recovery on disclosure statement made by the appellant as Exh.PK as also the learned Sessions Judge took note of the fact that the appellant was not available for the investigating agency in spite of their search and it is only at the instance of the appellant's brother that he could be arrested.

From the above material on the record the learned Addl. Sessions Judge found the appellant guilty and sentenced him which has been affirmed by the High Court.

Ms. S. Janani, learned counsel appearing for the appellant, contended before us that there has been delay in lodging FIR in this case. She pointed out that the child was missing from 28th April, 1994 whereas FIR was lodged after two days later. She contended that there is no satisfactory explanation for the delay in lodging the FIR. We have perused the record and the evidence in this case and we find that this complaint made by the learned counsel is not correct. As a matter of fact PWs.4 and 10 have explained the steps taken between 28th and 30th April, 1994 for searching the child before lodging the police complaint. Learned counsel thereafter contended that the disclosure statement allegedly made not properly proved inasmuch as the said document was attested by PWs.4 and 10 and Gaje Singh, Sarpanch. She contends while PWs.4 and 10 are interested witnesses and the prosecution having failed to examine Gaje Singh who was the only independent witness no reliance can be placed on the so

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called disclosure statement. Learned Addl. Sessions Judge has considered this argument and has for good reasons chosen to place reliance on this piece of evidence and we find no reason why it should not be accepted. As a matter of fact that it is during the course of the search of the child the grandfather and others contacted the appellant's brother, Hari Singh, and on request made by the said persons the appellant was produced before the investigating agency by said Hari Singh and the said disclosure statement was made in their presence. Therefore, presence of PWs.4 and 10 at the time of disclosure statement cannot be doubted as also their evidence in this regard merely because PWs.4 and 10 are relatives of the kidnapped child in the absence of any other material to suspect the same. Here in we must also notice the fact that it is based on this evidence the child was recovered which fact complements the disclosure statement made by the appellant. The factum of recovery of the child is established by the evidence of PW.9 by which it is seen that this witness visited all the railway stations between Meerut and Delhi consequent upon this investigation he was able to trace the child. Therefore, we find sufficient corroboration as to the disclosure statement made by the appellant. The prosecution has then relied upon the ransom letter which according got written by the appellant by his son, Varinder. This factum was proved by the evidence of handwriting expert who stated that the specimen of handwriting of Vinod Kumar tallies with
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the handwriting found in the inland letter received by PW.4. The specimen of handwriting is admitted by the appellant as that of his son. In these circumstances it establishes beyond reasonable doubt that the ransom letter is written by Vinod Kumar and obviously at the instance of the appellant. This case though is based on circumstantial evidence, in our opinion, the prosecution was able to establish its case beyond reasonable doubt by proving the chain of circumstances.

For the reasons stated above we find no reason to interfere with the findings of the Courts below, hence the appeal is dismissed.

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.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

New Delhi,
September 19, 2002.