CASE NO.:
Appeal (crl.) 748 of 1999

PETITIONER:
Shashidhar Purandhar Hegde and Anr.

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 15/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

The appellants faced trial for alleged commission of offences punishable under Sections 363, 368, 506 and 507 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court directed acquittal of the present appellants being of the view that the accusations have not been established. In appeal by the State, by the impugned judgment the High Court held that the appellants were guilty of offences punishable under Section 363 read with Section 34 IPC and were also liable to pay a fine of Rs.1,000/-. Appellant No.1 additionally was sentenced to undergo imprisonment for three months on each count for the offences punishable under Sections 506 and 507 IPC. It was directed that in case the fine is paid, a sum of Rs.1,000/- was to be paid to Niranjan (PW-3) the victim. The appellants are described as A-1 and A-2 hereinafter.

The background facts and the findings of the trial Court are as follows:

Niranjan (PW-3) is the son of Sudhakar Kamat (PW-1) and was studying in St. Anthony's school. PW-3 was a minor then. On 16.2.1989 at about 4.00 p.m. when Niranjan (PW-3) was in his class, his friend Sachin informed him that somebody wants to see him. Accordingly, PW-3 went out of his class room and saw A-1 standing near a motor-bike. He told PW-3 that Dr. Prabhu who is PW-3's brother-in-law had asked him to take PW-3 whereupon PW-3 told him that he could not go out without the permission of his teacher. A-1 told him that he had already taken permission from his class teacher. Thereafter, he was taken in his motor-bike as a pillion rider. When they reached the 5th Main Road, A-2 was there. All the three of them went by motor-bike. Though PW-3 requested them that he would keep his school bag in his house, A-1 did not agree and he was taken away. Thereafter, they went into a forest for about 2 furlongs where A-1 collected his phone number. When PW-3 enquired about his brother-in-law-Dr. Prabhu, A-1 told him that he would find out about his brother-in-law. At about 6.30 p.m. A-1 came back and discussed something privately with A-2. Then A-2 told him that he had lost his ring and so saying he went to search for the lost ring. However, PW-3 became suspicious and asked A-1 to take him to his house. But A-1 assured him that after A-2 returned, they would go. When PW-3 insisted he threatened him saying that there was a ghost in that place which made him to cry. At that time A-1 threatened him by showing a knife saying that he would stab him.

After some time one Nagapathy brought A-2 holding him. A-1 dragged PW-3 inside the forest and hid him covering his mouth with his

hands. PW-3 had made some sound with his legs as he heard the voice of Narasimha Barakura (PW-5) who is his brother's friend. Then they flashed a torch light and saw that PW-3 was being held by A-1. Immediately they apprehended A-1. Thereafter, all the persons came to the house of PW-1 and subsequently they produced him before police. (So the evidence of PW-3 gives a clear picture as to how these accused persons kidnapped him and held him in the forest.) In the meantime, PW-1 had been informed over the phone by A-1 that he had kidnapped his child and he would be killed if he failed to pay Rs.3 lakhs. The fact that A-1 had telephoned at about 4.30 p.m. is spoken to by Rajendra (PW-7) who is a rice mill owner and also P.V. Hegde (PW-11) who is working as a manager in the shop. According to PW-11 at 6.00 p.m. A-1 telephoned to some one. It is no doubt true both PWs 7 and 11 could not know what he had spoken or to whom he had telephoned. But the fact remains that he had telephoned and those calls were received by PW-1 who is none other than the father of PW-3. He had clearly stated that the person who had spoken over the telephone had demanded a lump sum of Rs.3 lakhs for returning his child, lest he would be killed. PW-1 was also informed that he had to keep the money in a place where kumkum and lemon were placed and he had also mentioned the place where exactly that rock was located. He was also threatened that if he reported the matter to the police, he would be done to death. Therefore, he could not immediately inform the matter to the police. However, he mustered courage and telephoned his nephew Sri Prakash who came to him with his friend Narasimha Barakura (PW-5). Thereafter, they all went to the school and enquired from one teacher and also the friends of PW-3. They learnt as to what had happened to PW-3. Therefore, this fact was informed to these witnesses and they went to the indicated place and verified where they found the 'kumkum' and lemon kept near a rock. After verifying this, they came back and collected some fake currency notes and put it in a bag and returned to the same spot where this kumkum and lemon was kept, they left the bag there and kept watch on the ground. At about 6.30 p.m. A-2 came to the spot and he was attempting to take the bag kept by these witnesses. In the meantime, these persons caught hold of him and on enquiry he revealed that A-1 was holding PW-3. Accordingly, all of them took A-2 to that place and apprehended A-1 who was holding PW-3 as stated above. Information was lodged with police and the apprehended accused persons were handed over to police. After investigation was completed, charge sheet was filed. Accused persons pleaded innocence. The above version was unfolded during trial.

Learned Judge was satisfied that they have stated the true facts as to what had happened. However, he found fault with the manner in which they had dealt with the matter. According to the learned Magistrate, these petitioners should have taken police assistance before apprehending the accused. He therefore directed acquittal. State filed an appeal before the High Court. Stand of the State was that acting on surmises and ignoring vital evidence, the trial Court had directed acquittal. Accused persons supported the trial Court's order.

High Court held that PW-1 was already threatened that if he informed the matter to the police, he would be done to death and that his men were near his house, etc. Besides that they were interested to save the child and if they ventured to go to the police station, they could not visualize the consequences that would happen to the child. It held that the learned Magistrate instead of commending their good work found fault with PWs 2, 4, 5 and 6 who saved the life of the child in their own way. Though in the evidence of these witnesses there were minor discrepancies here and there, duty of the Court is to find out whether their evidence in totality can be accepted. From a careful scrutiny of the evidence, the High Court was fully satisfied that their evidence is most natural and they had absolutely no axe to grind against A-1 and A-2 and they have no ill will against them. PW-3 who is a victim has given a clear picture as to how he was kidnapped and

how he was confined in the forest and how they contacted his father PW-1. A-1 had used their telephone between 4.30 and 6.00 p.m. which would indicate that he had contacted PW-1. In addition to that nothing could be elicited as to why their evidence cannot be accepted. Therefore, the learned Judge was of the considered view that evidence of these witnesses is worthy of acceptance. The learned Magistrate had found some discrepancies in the evidence of PWs 8, 12 and 22 who were the classmates and friends of PW-3. They had stated as to what they had seen on that particular day and also the manner in which A-1 came to meet PW-3. PW-9 had stated that A-1 had purchased kumkum from his shop. PW-10 was examined to show that A-1 had purchased lemon from his shop, but he turned hostile. This would not in any way demolish the case of the prosecution. The presence of 'kumkum' at the place of incident and also the lemon were spoken to by the witnesses and it is not in dispute. A-1 and A-2 are not strangers. PW-3 went on the motor bike of A-1 without knowing his bad intention and believing his representation. Srinivasa Verneker (PW-8) knows A-1 by name as his father used to take petrol from his petrol bunk. He had even seen A-1 taking PW-3 in his red motor-bike. Sumanth (PW-12) has stated that A-1 had gone to his school on that day in his red motor-bike. Fernandese (PW-13) the school teacher of PW-3 stated that when he was in the class, someone wanted to meet PW-3 and therefore he asked PW-3 to talk to him. He also stated that he saw A-1 talking to PW-3. Ariyan (PW-17) is the Head Mistress of PW-3. She has stated that no one had taken permission to take away PW-3 from the school. Therefore, it is clear that PW-3 was removed from the school without the prior permission of the Head Mistress (PW-17) or PW-13, the teacher of PW-3. Janardhan (PW-20) is working as the clerk in the shop of PW-1. He had seen PW-1 speaking over the phone on 16.2.1989 in Hindi and PW-1 looked scared. PW-1 told him that his son was kidnapped and the kidnapper was demanding Rs.3 lakhs to release his son, which payment would have to be made near Kerki. This evidence coupled with the fact that A-1 and A-2 were apprehended at the place, corroborates the case of the prosecution. He also deposed that PW-1 telephoned to Prakash Kamath. PW-21 is the owner of the motor bike which was borrowed by A-1 to kidnap PW-3 on 16.2.1989. An attempt was made to show that he had borrowed the motor bike at about 7.00 p.m. but the time factor is not very material when there was sufficient material to show that the said motor bike was used for taking away the victim boy. Sachin (PW-21) also speaks about A-1 going to his school and enquiring about PW-3 and thereafter taking PW-3 along with him. He also says that A-1 had come on a red motor bike. PW-23 Seetharam had seen A-1 with others near Kerki and he learnt that PW-3 was kidnapped by A-1. PW-24 Mahadev, ASI has received the complaint and registered the case on 16.2.1989 at about 11.45 p.m. and prepared the FIR. Narasimha Bakakura, Lateef and Govind produced before him the accused and also PW-3. He searched the person of A-1 and found one hand bag and a shirt. Inside that there was a bag which had small ropes and a knife. He has identified all the M.Os. marked in this case which were seized from the A-1 as per Mahazar (Ex.P-3). He also produced Niranjan (PW-3) to the Court and thereafter the Court had given the custody of the victim boy to his parents. Therefore, this evidence also clearly discloses that there is sufficient material to show that A-1 and A-2 are responsible for kidnapping PW-3 and also they demanded ransom from PW-1. They had also threatened PWs 1 and 3. After having carefully scrutinized the evidence as indicated above, the learned Judge was fully satisfied that the learned Magistrate had committed an error in rejecting the evidence of these witnesses. These witnesses have given a true picture and there may be some discrepancies which would not go to the root of the case. The learned Magistrate had also taken a serious note of certain inconsistent statements made by the witnesses in regard to approaching PW-3 and also PWs 2, 4, 5 and 6 apprehending these accused. But PW-3's evidence is directly on the point.

The High Court held that the approach of the trial Court was clearly erroneous. The cogent and credible evidence of PW-3 and PW-1,

the father was not considered in the proper perspective; there was nothing to doubt the roles played by PWs 2, 4, 5 and 6 which the trial Court erroneously came to hold to be suspicious and not in conformity with law. Accordingly the judgment of the trial Court was set aside and the appellants were convicted as afore-noted.

In support of the appeal, Mr. Sushil Kumar, learned senior counsel submitted that the trial Court had analysed the evidence in great detail and had come to the right conclusion about the fallacies in the prosecution evidence. It has been clearly established that the witnesses were not speaking the truth. Though the criminal antecedents of a witness are not always sufficient to discard his evidence, yet the trial Court acted not only on the antecedents but also on the improbabilities highlighted by the defence. There are many suspicious circumstances as to when the FIR was lodged to the police. There are unexplained contradictions on that score. The class-mates of the alleged victim (PW-3) were also not consistent as to the manner in which the victim was supposedly taken from the school. If in reality A-2 was caught by the these persons as claimed there was no reason as to why the police was not informed thereafter and the witnesses took upon themselves the task of capturing A-1. The evidence shows as if A-2 was taken to the police station first and the evidence of PWs. 2, 4, 5 and 6 contradicts each other. Since the trial Court recorded a view which is a possible view, the High Court without compelling reasons should not have upset it.

In response, learned counsel for the State submitted that the scenario as projected by the prosecution has been clearly established by the evidence of the witnesses. Most important is the testimony of PW-3, the victim. In spite of detailed and incisive cross examination nothing material has been brought out to discard his evidence. It has also been established that a telephonic call was made regarding demand to PW-1. Merely because the witnesses themselves went out to catch A-1 that does not affect the credibility of their evidence. Mere fact that they did not inform the police, the reason for which has also been indicated, the trial Court had erroneously directed acquittal discarding the credible prosecution version.

The evidence of the witnesses cannot be discarded merely because they first made attempt to find out whether the place where the kumkum and lemon were kept was the place where the accused persons had hidden PW-3 The class mates of the victim have given proper identification of the accused by their description. This clearly corroborates the evidence of PW-3 and since his evidence is cogent and credible the trial Court had erroneously directed acquittal of the accused persons and the High Court has rightly directed the conviction.

The respective stands need careful consideration. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See Bhagwan Singh and Ors. v. State of Madhya Pradesh (2002 (2) Supreme 567). The principle to be followed by appellate Court considering the

appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra (AIR 1973 SC 2622), Ramesh Babulal Doshi v. State of Gujarat (1996 (4) Supreme 167), Jaswant Singh v. State of Haryana (2000 (3) Supreme 320), Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) Supreme 152), State of Punjab v. Karnail Singh (2003 (5) Supreme 508 and State of Punjab v. Pohla Singh and Anr. (2003 (7) Supreme 17).

In the instant case it is to be noted that the discrepancies which were highlighted by learned counsel for the appellants are merely trivial in nature. Minor discrepancies cannot be termed as contradictions unless it affects the credibility of the evidence tendered by a witness.

The word 'contradiction' is of a wide connotation which takes within its ambit all material omissions and under the circumstances of a case a court can decide whether there is one such omission as to amount to contradiction. [(See State of Maharashtra v. Bharat Chaganlal Raghani and Ors. (2001 (9) SCC 1), Raj Kishore Jha v. State of Bihar (JT (2003) Supp (2) 354)]. The Explanation to Section 162 of the Code of Criminal Procedure, 1973 (in short the 'Code') is relevant. 'Contradiction' means the setting of one statement against another and not the setting up of a statement against nothing at all. As noted in Tahsildar Singh v. State of U.P. (AIR 1959 SC 1012) all omissions are not contradictions. As the Explanation to Section 162 of the Code shows, an omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant or otherwise relevant having regard to the context in which the omission occurs. The provision itself makes it clear that whether any omission amounts to contradiction in the particular context is a question of fact.

It is of great relevance that the evidence of PW-3 has not been shakened. Added to that is the evidence of PW-1 the father. Merely because some of the witnesses are involved in criminal cases that may at the most warrant a close scrutiny of their evidence but not total rejection. The High Court has as noted above analysed the evidence in great detail and arrived at the correct conclusions. Unfortunately, the trial Court did not examine the evidence in proper perspective.

Interference is called for when instead of dealing with intrinsic merits of the evidence the Court brushes aside the same on surmises and conjectures and preponderance of improbabilities which in fact did not exist. The intrinsic and probative value of the evidence was clearly over-looked by the trial Court and, therefore, the High Court was justified in interfering with the judgment of the trial Court. The analysis done by the High Court is correct. That being so, the impugned judgment does not suffer from any infirmity to warrant our interference. The appeal fails and is dismissed. The accused-appellants shall surrender to custody forthwith to serve the remainder of sentence.