

Manoj Kumar vs.state

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Court : Delhi

Decided On : Jul-10-2017

Appellant : Manoj Kumar

Respondent : State

Advocate for Def. : Mr. Sanjeev Singh

Advocate for Pet/Ap. : Mr. Subhiksh Vasudev, Mr. Vijay Pal Sharma, Mr. K. Singhal, Mr. Vikaram Panwar, Mr. Deepak Vohra

Judgement :

\$~ IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

24. h March, 2017 Judgment pronounced on:

10. July, 2017 + CRL.A. 58/2011 ASHISH UPPAL @ ASHU Appellant Through : Mr.Subiksh Vasudev, Adv. Versus STATE GOVT. OF NCT OF DELHI Respondent Through : Ms.Aashaa Tiwari, APP for the State. + CRL.A. 1240/2011 SANDEEP PARMAR @ SANDY @ BUNTY Appellant STATE Through : Mr.Vijay Pal Sharma, Adv. Versus Respondent Through : Ms.Aashaa Tiwari, APP for the State. + CRL.A. 27/2011 SANDEEP SINGH @ GUDDU Appellant STATE Through : Mr. K. Singhal, Adv. Versus Respondent Through : Ms.Aashaa Tiwari, APP for the State. Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 1 of 45 + CRL.A. 1422/2010 MANOJ KUMAR Appellant STATE Through : Mr. Vikaram Panwar, Adv. Versus

Respondent Through : Ms.Aashaa Tiwari, APP for the State. + CRL.A. 1384/2013 SAURABH SHARMA Appellant Through : Mr.Deepak Vohra, Adv. Versus STATE (GOVT. OF NCT) OF DELHI Respondent Through : Ms.Aashaa Tiwari, APP for the State. + CRL.A. 890/2012 GOVT. OF NCT OF DELHI Appellant Through : Ms.Aashaa Tiwari, APP for the State. versus MUKUL YADAV Respondent Through : Mr.Sanjeev Singh, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 2 of 45 G. S. SISTANI, J.

1. All the present six appeals are set down together for final hearing and disposal. The aforesaid five appeals filed by the appellants convicted by the trial Court and one appeal filed by the State against the acquittal of the respondent Mukul Yadav, were heard together, as they arise out of a common judgment and hence, are being disposed of by a common judgment.

2. Present five appeals being Crl.A.No.1422/2010, 27/2011, 58/2011, 1240/2011 and 1384/2013 have been filed under Section 374 of the Code of Criminal Procedure by the appellants and are directed against the judgment dated 20.10.2010 and order on sentence dated 27.10.2010 passed by the Additional Sessions Judge in Sessions Case No.79/2008 convicting the appellants under Section 120-B and Section 364-A of the Indian Penal Code read with Section 34 of the Indian Penal Code and sentenced them to imprisonment for life and to pay a fine of Rs. 25,000/- for each offence and in default of payment of fine the appellants shall further undergo simple imprisonment for a period of six months. It was further ordered that the sentence of imprisonment imposed herein above shall run concurrently.

3. The facts, as noticed by the trial Court, which are necessary for the disposal of the present appeals are as under: 1. On 27.06.2007, an information was received by the crime branch, Delhi, from Inspector Tarun Barot, District Crime Branch, Gaikwad Haveli, Ahmadabad, that one Raju Bhai Malvi, came to Delhi from Ahemedabad, via air flight, was abducted from Delhi airport and that the brother of Raju Bhai Malvi received ransom calls, on his mobile Crl.A. 58/2011, 1240/2011,

27/2011, 1422/2010, 1384/2013 & 890/2012 Page 3 of 45 phone, from the mobile phone of his abducted brother Raju Bhai. This case, thus, relates to 3 for ransom.

2. On 03.07.2007, SI Sanjeev Kumar was present at Gurgaon. HC Ajmer reached there and handed over Zero FIR of District Crime Branch, Ahmadabad, Gujarat, to SI Sanjeev Kumar. The said zero FIR was registered on the statement of complainant Shyam Bhai Malvi. Thereupon, SI Sanjeev Kumar made his endorsement and sent HC Rajeev to PS Palam Airport for registration of the case u/s 364-A, 368 and 120-B IPC.

3. Case of the prosecution is that Raju Bhai Malvi, who looks after the business of H.K Malvi Industries at Odhav, went to Delhi for business purpose in the night of 25.06.2007, from Ahmadabad Airport.

4. That on 26.06.2007, at about 3 pm, one person, namely, Asgar Ali telephoned the complainant Shyam Bhai at his mobile phone from his brother Rajus mobile No.9825440732 and told that his brother had been kidnapped as he had got supari for his brother. That the kidnapper further told him to immediately rush to Ahmadabad and that he may telephone him between 8 am to 8:30 am.

5. That thereafter, complainant Shyam Lal reached Ahmadabad and reported the matter to the police. That on 27.06.2007, at about 4 am, the complainant received a phone call from Asgar Ali who made call from his brothers mobile and asked the complainant to bring ransom of Rs. 1.5 crores. On which, complainant said that he was unable to arrange so much money as they were not such big people, but, the brother of the complainant was told by the caller to bring whatever they want otherwise, they would kill the brother by next morning. Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 4 of 45 6. That Asgar Ali then took the phone from Raju Malvi and asked the complainant to bring Rs 1 crore to Delhi then otherwise, his brother would be killed and disconnected the phone.

7. The complainant, in the meanwhile, suspected Sandeep Parmar @ Sandy @ Bunty, who was later on apprehended from Gurgaon and who disclosed that he alongwith his friends conspired and executed abduction of Raju Bhai Malvi and that they kept Raju Bhai Malvi blind folded in a rented flat at U-5/45, DLF-III,

Gurgaon, Haryana and two of his associates Sandeep Singh @ Guddu and Ashish Uppal were guarding him.

8. That a raid was conducted at U-5/45, DLF-III, Gurgaon, Accused Ashish Uppal @ Ashu and Sandeep Singh @ Guddu were found guarding the captive Raju Bhai. Raju Bhai Malvi was later rescued by the police.

9. During further enquiry, the aforesaid three accused persons disclosed that their other two associates were present at their another rented flat at F-19-D , Royal Residency, Sushant Lok-II, Gurgaon, Haryana, who were also involved in the crime. Raid was conducted on the said premises and the accused Saurabh Sharma and Mukul Yadav were apprehended from there.

10. That all these accused persons further disclosed that they conspired the plot of abduction with one Manoj Kumar who was living nearby, in a rented flat. That all the accused were apprehended and then arrested. Further investigation followed.

4. After completion of the investigation, charge sheet for the offence punishable under Sections 120-B, 364-A read with Section 34 of the Indian Penal Code was filed against Ashish Uppal @ Ashu, Sandeep Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 5 of 45 Parmar @ Sandy @ Bunty, Sandeep Singh @ Guddu, Manoj Kumar, Saurabh Sharma (hereinafter referred to as the appellants) and against Mukul Yadav (hereinafter referred to as the respondent in State appeal). The prosecution has relied upon the testimonies of 34 witnesses, besides the exhibited documents tendered during the trial. The statements of the appellants and the respondent in the State appeal were recorded under Section 313 of the Code of Criminal Procedure wherein they denied all the incriminating circumstances appearing in evidence against them and claimed to be falsely implicated. The appellants and respondent in the State appeal examined 6 witnesses in their defence. During the course of hearing of the appeals, at the request of learned Additional Public Prosecutor for the State, supplementary statements of the appellants and the respondent in the State appeal were recorded under Section 313 of the Code of Criminal Procedure wherein they reiterated their innocence.

5. After appreciating and considering the rival contentions of the parties, scrutinizing the evidence, the trial Court concluded that the appellants were guilty for the offence punishable under Section 120-B, 364-A read with Section 34 of the Indian Penal Code. However, the trial Court acquitted the respondent Mukul Yadav in the State appeal. Common arguments raised by the appellants and the respondent in the State appeal 6. Assailing the impugned judgment, learned counsel for the appellants contended that the impugned judgment passed by the learned Additional Sessions Judge was perfunctory in nature, full of conjectures and surmises and therefore liable to be set aside. Learned Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 6 of 45 counsel further contended that the impugned judgment was a glaring case of legal defects resulting in grave failure of justice.

7. Learned Counsel for the appellants further contended that the charge of criminal conspiracy had not been proved beyond reasonable doubt and there was absence of conclusive evidence of an agreement prior to 25.06.2007 between the appellants for commission of the offence under Section 364-A of the Indian Penal Code. They argued that on the basis of irregularities or defects in connection with investigation the prosecution case should be viewed with suspicion.

8. Learned counsel for the appellants further contended that no recoveries were made at the instance of the appellants and also the victim failed to identify the appellants correctly in the Court.

9. It was further contended by the counsel for the appellants that the victim who was examined as PW4, was a tutored witness as his deposition about being beaten, tortured and injured for 3 days from 25.06.2007 onwards was totally contradictory to the MLC report which showed that no injury was sustained by him.

10. It was vehemently urged by the counsel for the appellants that the trial Court failed to appreciate that there were material contradictions in the statements of PW1, PW4, PW6 and PW7. It was further urged that the testimony of the sole eyewitness PW4 was not reliable and benefit of doubt should have been passed on to the appellants.

11. Learned counsel for the appellants contended that the trial Court failed to appreciate that it was the prime stand of the prosecution that the appellants were caught with the help of electronic surveillance however, no such electronic evidence has been brought on record or CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 7 of 45 proved in accordance with the provision of Section 65B of the Indian Evidence Act. It was also contended that no documentary evidence was proved such as travel ticket from Ahmedabad to Delhi by Go Air Airlines, mobile call details, contents of the CD which could have proved the ransom and abduction of the victim. To substantiate their arguments, learned counsel on behalf of the appellants have placed reliance upon the judgments passed by the Apex Court in Anvar P.V. vs P.K. Basheer and others:

2015. AIR SC180 Nilesh Dinkar Paradhkar vs. State of Maharashtra:

2011. 4 SCC143 Sanjay Singh Ram Rao Chavan vs Dattatray Guabrao Phalke and others : (2015) 3 SCC123 and Ram Singh & ors. Vs Col. Ram Singh:

1985. Supp SCC611 In Ram Singh & Ors. (Supra), the Honble Apex Court held as under: 1. Thus, so far as this Court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:

1. The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

2) The accuracy of the tape-recorded statement has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial.

3) Every possibility of tampering with or erasure of a part of a tape-recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 8 of 45

4) The statement must be relevant according to the rules of Evidence Act.

5) The recorded cassette must be carefully sealed and kept in safe or official custody.

6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances. 12. Learned counsel for the appellants urged that the trial Court failed to appreciate that in the entire investigation all the articles recovered were sealed with the seal of MKS but PW34 SI Sanjeev Kumar, Investigating Officer during his cross examination admitted that the said seal MKS was not of his but was of SI Mukesh Kumar who was neither cited nor examined as a witness in this case and therefore, this shows that the story of the prosecution was fabricated. Additional arguments on behalf of the appellant Ashish Uppal @ Ashu 13. Mr. Subhiksh Vasudev, learned counsel for the appellant contended that Exhibit PW6/A i.e. seizure memo of the Indigo Car which is an evidence against the appellant has not been proved as per law and there are suspicious circumstances surrounding the preparation of the seizure memo. Therefore, the aforesaid exhibit is manipulative and a fabricated document and could not connect the appellant with the alleged crime.

14. Learned counsel for the appellant further contended that the possibility of PW6 and PW7 being planted witnesses cannot be ruled out as the ownership of the Indigo car was not proved and there is no conclusive evidence to prove that the recovered Indigo car was the same car which was allegedly used in the commission of the offence. Learned CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 9 of 45 counsel further contended that trial Court erred in relying upon the testimony of PW7 Tejpal, inasmuch as he neither stated in his statement under Section 161 before the police officials nor in his examination-in-chief that the appellant Ashish Uppal took him to any guest house. He rather deposed that the appellant took him to a room in Mahipalpur, Delhi. The counsel also challenged the arrest of the appellant. Additional arguments on behalf of the appellant Sandeep Parmar @ Sandy 15. Mr. Vijay Pal Sharma, learned counsel for the appellant Sandeep Parmar @ Sandy @ Bunty contended that the appellant herein was falsely implicated and further stated that

the victim was a relative of the appellant and due to some differences over the issue of salary he left the workplace of the victim because of which the victim and his brother suspected him to be involved in the present case. The counsel further relied upon the contradictions in the mode of arrest of the appellant and also the contradictions in the testimonies of PW1, PW2, PW3, PW4, PW15 to prove that he was not involved in the present case. Additional arguments on behalf of the appellant Sandeep Singh @ Guddu 16. Mr. K. Singhal, learned counsel for the appellant contended that the prosecution has failed to establish the call detail records in terms of Section 65B of the Evidence Act. Learned counsel for the appellant further contended that trial Court failed to take notice of the fact that no documents were produced by the prosecution to prove zero FIR CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 10 of 45 registered on 27.06.2007 in District Crime Branch, Ahmedabad, Gujarat.

17. Learned counsel for the appellant further contended that there are material contradictions in the testimonies of PW1 and PW4 in relation to actual travel of the victim and no travel documents were produced by the prosecution to establish its case. Additional arguments on behalf of the appellant Manoj Kumar 18. Mr. Vikaram Panwar, learned counsel for the appellant submitted that the present appellant had surrendered before learned Magistrate and he was arrested on 06.12.2007 with the permission of the Court and laid stress on the testimony of PW4 wherein the victim had admitted in his cross examination that during the entire period of his captivity he was blindfolded and he had seen the present appellant for the first time in Court and had identified him on the basis of his voice. To substantiate his arguments, learned counsel had relied upon the judgments of the Apex Court i.e. Hem Singh alias Hemu vs. State of Haryana reported in 2009 (6) SCC748 Mukhtiar Ahmed Ansari v. State 2005 reported in (5) SCC258 Prahlad Singh v. State of Madhya Pradesh reported in AIR 1997 SC3442 State of M.P vs. Badri Yadav and Another reported in 2006 (9) SCC549 and Ashraf Ali vs. State of Assam reported in 2008 (10) SCALE278 19. Learned counsel for the appellant further contended that the trial Court erred in taking the abscondence of the present appellant after the recovery of the abductee till he surrendered as a circumstance against him for convicting him which was completely illegal and unwarranted. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 &

890/2012 Page 11 of 45 To substantiate his argument on this aspect, learned counsel has relied on the judgement of Apex Court *Matru versus State of U.P.* reported in AIR 1971 SC1050 Additional arguments on behalf of the appellant Saurabh Sharma 20. Mr. Deepak Vohra, learned counsel for the appellant contended that the trial Court had erred in not relying upon the testimony of DW5 i.e. Stamp vendor who had categorically deposed that the stamp paper used for the alleged lease deed bearing serial No.2235 was sold to Ms. Sarita and therefore, the lease deed is a forged document which was prepared afterwards to deliberately link the appellant with the crime. It is further urged that PW4 did not have the occasion to identify the appellant and the alleged recovery of HDFC card had been planted upon the appellant. Arguments on behalf of Mukul Yadav, respondent in the State appeal 21. Mr. Sanjeev Singh, learned counsel for the respondent in the State appeal i.e Mukul Yadav submitted that the trial Court has rightly acquitted Mukul Yadav for the offence punishable under Sections 120B and Section 364A of the Indian Penal Code read with Section 34 of the Indian Penal Code as the victim himself failed to identify the respondent in Court and contended that it was settled law that naming or identifying an accused for the first time in Court, without any TIP having been carried out, is a farcical exercise. To substantiate this argument, the counsel has relied upon the judgment of Mohanlal Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 12 of 45 Gangaram Gehani Vs. State of Maharashtra reported at AIR 1982 SC839 22. The counsel further submitted that the CD relied by the prosecution originally claimed to be prepared by using a digital camera and laptop could not be proved in Court as it was in a broken condition and therefore the trial Court had correctly disregarded this evidence. Counsel for the respondent further relied upon the judgments of Gopal Singh and Ors. vs State of M.P:

2010. (6) SCC407 Chandrappa and Ors.Vs. State of Karnataka :2007 (4) SCC415 wherein the Apex Court held that there is a double presumption favouring the respondent in an appeal against acquittal. Arguments on behalf of State against the appellants 23. Per contra, Ms. Aashaa Tiwari learned APP for the State contended that the evidence produced on record established the guilt of the appellants beyond any shadow of doubt and the trial Court has rightly convicted the appellants for the offence punishable under Section 120B and Section 364A of

the Indian Penal Code read with Section 34 of the Indian Penal Code and hence the findings warrant no interference, accordingly the appeals are liable to be dismissed.

24. Learned APP for the State further contended that the victim had no ulterior motive to name all the accused for Kidnapping the victim for ransom. The victim attributed specific roles to each of the accused persons before the trial Court in the offence of Kidnapping. It was further stated that in the instant case, the testimonies of the PW1 and PW4 are corroborated in material particulars by other public and police witnesses. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 13 of 45 25. Learned counsel for the State submitted that there were no material defects in investigation and stated that as per the settled position of law, the defects of investigation do not come to the benefit of the accused, if the case of the prosecution is proved on record by reliable, cogent and trustworthy evidence as present in the instant case. Arguments on behalf of State against Mukul Yadav 26. Learned counsel for the State further contended that as against Mukul Yadav there was cogent evidence on record to show that he was involved in the commission of the crime but the trial Court has wrongly given him the benefit of doubt and acquitted him.

27. Learned counsel for the State further contended that the trial Court had erred in holding that the prosecution was not able to prove recoveries against Mukul Yadav and also erred in holding the arrest of Mukul Yadav as doubtful.

28. We have heard learned counsel for all the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court.

29. The first question which comes up for consideration is as to whether a case under Section 364A of the Indian Penal Code is made out against the appellants and the respondent in State appeal or not. Section 364A of the Indian Penal Code reads as under: 364A: Kidnapping for ransom, etc.: Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 14 of 45 conduct

gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine. 30. A plain reading of Section 364A of the Indian Penal Code would show that the necessary ingredients of this Section are as under: i. ii. iii. That kidnapping or abduction of a person is caused; or such kidnapped or abducted person is kept under detention; That the accused threatened to cause death or hurt, to such person or gave rise to a reasonable apprehension that death or hurt may be caused to such person, or death or hurt is actually caused; The above said is done to compel another person to do or abstain from doing any act or to pay a ransom.

31. In Vishwanath Gupta Versus State of Uttarakhand:

2007. (11) SCC633 the Supreme Court observed that to prove the offence under Section 364A, three facts are required to be established. The Supreme Court held as under: 9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 15 of 45 lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A of the Penal Code.... 32. In this context, we deem it appropriate to examine the testimonies of two important witnesses i.e. PW1 Shyam Bhai Malvi (brother of the victim) and the victim PW4 Raju Himmat Bhai Malvi. PW1 Shyam Bhai Malvi, brother of the victim is one of the material witnesses who deposed in his examination-in-chief as under: I live in Ahmadabad. In between 10th June 2007 to 15th June 2007, I received phone call from Manish bhai who called me at Delhi for purchase of our machine to be installed at Delhi. We manufacture dye and machinery which are used in jewellery. Manish told me that his owner/Boss is coming from Dubai so I should reach Delhi

for this purpose. During this period my uncle expired at Rajasthan, so I could not come to Delhi. I again receive a call after 2-3 days at Rajasthan on my mobile phone the caller Manish bhai and I inform him that I was still in Rajasthan and would not be able to come to Delhi. I suggested him to contact my younger brother Raju bhai on his mobile phone by giving him his mobile number 9825440732. They contacted Raju bhai, my brother and sent him PNR of air ticket so my brother reached Delhi on 25.6.07 in the evening at airport, Delhi. On 27.6.07 I was in Rajasthan, I again receive telephone call from one Asgar Ali that he has abducted my brother Raju bhai and he asked me to go to Ahmadabad and then he would tell me the future programme. Thereafter, I went to Ahmadabad by car and took advice of my friends. In the night at about 12 or 1 am, I received another call from the mobile phone of my brother Raju bhai. He threatened me that if I love my brother Raju bhai then I should arrange a sum of Rs.1.5 crore for release of my abducted brother Raju bhai. He also advised me not to report the matter to Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 16 of 45 police. I informed him that I am not in a capacity to pay this huge amount, as I am not that rich person. Then they got my brother talk to me on telephone in Hindi. My brother was weeping and requested me to get him released and arranged the money to save him or else he would be killed. Thereafter, I was frightened and we decided that the matter should be reported to the police. We went to crime branch of Ahmadabad police and I made complaint to the police. The complaint was written by my friend as I was not in senses and the complaint Ex PW1/A is signed by me at point A. We were informed by the crime branch of Ahmadabad after hearing out story and recording of the zero FIR that since the incident had taken place in Delhi so the Delhi police has jurisdiction to investigate the matter. xxx xxx xxxx In the night we displayed the said video CD in the office of Crime Branch of Delhi Police. In the said video CD we saw Raju Bhai was chained in a room but I do not remember whether he was sitting or standing. There was a message in video CD in Rajasthani Marwari Language that I should give the money or else they would kill my brother and something like that was in the said video CD.... 33. PW1 Shyam Bhai Malvi in his cross-examination stated as under:It is correct that on 26.6.07 at about 02:45 pm I received a telephone call who identified himself as Asgar Ali and told me that how much I love my brother and my children.

He further told me that he has full plan of my house. He further told me that he has received Supari of my brother and my brother was abducted... xxx xxxx xxx It is correct that on 3.7.07 I was present in my hotel and that I received a call from Vinod @ Pintu that he had identified Sandeep Parmar @ Bunty son of Rattan Lal Parmar and that police had apprehended him and that he CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 17 of 45 had told the police regarding the place of confinement of Raju Bhai. It is correct that he had also disclosed to the police about the other kidnappers. It is correct that earlier also Sandeep Parmar had threatened to some of my family members when he was at Mumbai. It is correct that we have suspected Sandeep Parmar in this case. It is correct that after release of Raju Bhai he told me that accused Sandeep Parmar @ Bunty along with his friends Saurav Sharma, Mukul Yadav, Sandeep @ Guddu, Ashish Uppal @ Ashu and Manoj conspired with each other were kidnapping him. It is correct that he further told him that Saurav Sharma impersonated himself as Asgar Ali and also Manish and telephoned to them. It is correct that he further told me that accused persons had snatched away his HDFC debit card, Motorola mobile, cloths bag and watch and that he was confined in a room. It is incorrect that I told to the IO that my brother that sardar of team was Manoj who had been identified by him. (Vol my brother told me that there was one other person who was the leader of the gang). It is correct that due to lapse of time I could not depose the facts systematically. It is correct that all the accused are present in the court.... 34. The victim PW4 Raju Himmat Bhai Malvi in his examination-in-chief deposed as under: We have family business of making Gold Smith machine at Ahmadabad. My father runs the same business in the name of H.K.Malvi Industries. I was in Ahemdabad on 25.6.07. Someone namely Manish had contacted my brother Shyam Lal on his telephone number, i.e. landline and mobile and asked him that some Sethji is coming from Dubai and also asked him to reach Delhi to discuss about purchasing of Gold Coin machine. The person who called my brother on telephone revealed his name as Manish. As my brother was busy due to death of my uncle, he told Manish that he can contact my younger brother Raju Bhai and he gave my mobile number to him. I received a call on my mobile between 24.6.07 and 25.6.07, when I was in Ahmadabad and told me that a Sethji is coming from CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010,

1384/2013 & 890/2012 Page 18 of 45 Dubai and I am sending ticket for you and he also asked me to reach Delhi on 25.6.07 immediately under all circumstances. The called revealed his name as Manish. And I received flight ticket through PNR SMS. And on the same day, I had taken flight from Ahmadabad to Delhi at 8.30 pm and reached Delhi at about between 10.00 pm and 10.30 pm. On reaching Delhi, I received telephone call from Manish at my mobile number 9825440732 and he told me that he is not in a position to receive me at the airport and he told me that he had sent a boy and vehicle who will meet you at petrol pump at airport. Thereafter, I reached near petrol pump on foot and kept standing there. Within 2-3 min., a boy came and asked me whether I am Raju Bhai from Ahemdabad and I said yes. He told me that he has been sent by Manish and he revealed his name as Sandeep Singh. He also told me that a hotel room has been booked and he brought one Indigo car and asked me to sit in the same. I sat in the car. There was another person who was driving the car. His name was revealed as Mukul. I sat in the back side of the car alongwith Sandeep, who came to receive me at the airport. After 10- 15 mins., Mukul, who was driving the car stopped the car on the road near divider and there was one boy standing on the road, who asked us way to Noida, whose name revealed Ashish later on. My attention went towards Ashish. Suddenly, another boy came, whose names was revealed Saurabh Sharma, hit me on my face with some object and I also received injuries on my hands. Sandeep Singh also hit me. After some time, Sandeep Singh and Saurabh pressed me and put in between the seat. Thereafter, they tied my hands and put a cloth on my mouth and threatened me that they will kill me if I tried to shout. Thereafter, the car started moving and I was taken to some house after going through the stairs, they had taken me inside the room and they had taken off my clothes and they had tied me with chair with iron chains. There were 5 persons, when they tied me with the chair in the room. They again beaten me badly in the room. They have shown sharp edge weapon and threatened me and tortured me badly in the room. The names of 5 persons CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 19 of 45 who tortured me in the room are Sandeep Singh, Mukul, Ashish, Saurabh and Sandeep Parmar. Sandeep Parmar is my cousin. Therefore, he is known to me. All the accused persons told me that they have received 70 lakhs supari to kill me if I want to save my life, ask my

brother Shyam Bhai to pay between 1.5 to 2 crores of rupees. Again they had beaten me in the room. After some time, they made me talk to my brother Shyam Bhai on telephone and they asked me to talk in Hindi as they do not know Marwardi language. And I was asked to tell my brother not to make any complaint to Police and make the payment as demanded by Saurabh Sharma on telephone. Thereafter, I told my brother on telephone to arrange the money and give the accused persons as per the demand of Saurabh Sharma and Sandeep Parmar and I also requested my brother to release me immediately by fulfilling their demands on telephone. They continuously tortured me for about 3 days and they also threatened me that my entire family alongwith children will be wiped out if I do not pay the demanded money. In between, they have tied chain on my neck and prepared video film in the room in order to send the same to my brother to press to pay the money. In between they shifted me one-two places and I was not kept at one place for more than 2 or 3 days...

35. Law regarding reliability of testimony of a single witness is well settled by the Apex Court. In *Sunil Kumar v. State (Govt. of NCT of Delhi)* reported in (2003) 11 SCC367 the Honble Supreme Court held as under: 9.As a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short the Evidence Act). But, if there are doubts about insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, the courts will the testimony Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 20 of 45 but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.

36. In *Sudip Kumar Sen and Ors. Vs. State of West Bengal and Ors.* reported in (2016) 3 SCC26 it was held as under: 11. It is well-settled that the court may act on a testimony of a single witness though uncorroborated, provided that the testimony of single witness is found reliable. Trial court which had the opportunity of seeing and hearing PW-6 found him wholly reliable and trustworthy and held that evidence of Sandipan Majumdar-PW6 cannot be doubted as far as the role attributed to A-1 to

A-6 except Jishu Jain is concerned, which was affirmed by the High Court. We find no ground to interfere with the concurrent finding recorded by the Courts below as to the reliability of PW-6 and to record the conviction. based on of 12. Observing that there is no impediment for recording conviction a single witness provided it is reliable in Prithipal Singh and Ors. v. State of Punjab and Anr. : (2012) 1 SCC10 it was observed as under: testimony the 49. This Court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 21 of 45 cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. 37. Perusal of testimonies of PW1 Shyam Bhai Malvi and PW4 Raju Himmat Bhai Malvi would show that their testimonies support the case of the prosecution. As the victim PW4 testified as they made me talk to my brother Shyam Bhai on telephone and they asked me to talk in Hindi as they do not know Marwadi language. And I was asked to tell my brother not to make any complaint to police and make the payment as demanded by Saurabh Sharma on telephone. PW1 Shyam Bhai Malvi (brother of victim) also deposed on the s imilar lines and stated as on 26.6.07 at about 02:45 pm I received a telephone call who identified himself as Asgar Ali. The factum of second ransom call was also established in the statement of PW1 wherein he deposed as on 27.6.07 I was in Rajasthan, I again receive telephone call from one Asgar Ali that he has abducted my brother Raju bhai and he asked me to go to Ahemdabad and then he would tell me the future programme.

38. On careful analysis of the testimonies of these above witnesses, it stands established that the victim PW4 was kidnapped, kept under detention, a demand for rupees 1.5 crore was made and was threatened to death in case of non-payment of ransom. Thus, all the ingredients of Section 364A are satisfied in the present case. Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 22 of 45 39. To delve upon the aspect of Criminal Conspiracy, it is necessary to see whether the appellants and respondent in the State appeal entered into a criminal conspiracy to commit the crime. On perusal of documents, testimonies of witnesses and submissions of learned counsel, we are of the view that one of the main charge against the appellants and the respondent in the State appeal is for entering into a criminal conspiracy to abduct victim PW4 for ransom. At the outset, it is pertinent to examine Section 120A and 120B of the Indian Penal Code which reads as under:

"120A. Definition of criminal conspiracy: When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation: It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. 120B. Punishment of Criminal Conspiracy:

1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 23 of 45 punished in the same manner as if he had abetted such offence.

2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both. "

40. A careful reading of the above provisions would show that the following ingredients are necessary to prove a case under Section 120B which read as under: a) There must be an agreement between the persons who are alleged to conspire; b) The agreement must be for an illegal activity; c) The common intention of the accused persons must also be proved; d) All the accused persons must have played their part in the act for achieving the common purpose for their common benefits.

41. As per Section 120A and 120B of the Indian Penal Code, Criminal Conspiracy is a substantive offence, which renders a mere agreement to commit an offence punishable. The punishment for conspiracy is the same as if the conspirators have abetted the offence. The punishment varies according to the commission of offence. If the offence has been committed in consequence of the conspiracy, the accused would be punished under Section 109 of the Indian Penal Code.

42. Section 109 of the Indian Penal Code reads as under: CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 24 of 45 Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment: Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the abetment. the aid which constitutes 43. Now the next crucial question which arises for our consideration is as to whether the appellants and the respondent in State appeal were involved in the commission of crime under Section 364A of the Indian Penal Code and the role played by all the appellants in furtherance of it?.

44. Learned counsel for the appellants contended that the story of the prosecution was a concocted story as the MLC does not support the case of the prosecution. In this regard, it is relevant to analyse the medical report received in this case. The victim PW4 was taken to Dr. Ram Manohar Lohia Hospital, New Delhi on 03.07.2007 and Dr. Vipin Goel conducted the medical examination vide MLC

which is Ex PW28A which reads as under: Burning sensation in the eyes. No fresh External Injury marks seen. Bandage and dynaplast on scalp removed alongwith some hair, densely adherent. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 25 of 45 45. PW28 Dr. Vipin Goel, SR, RML Hospital, Delhi entered into the witness box and stated in his cross-examination as under: Dynaplast is adhesive tape which is used to fix bandage. It can be used on any part of the body to avoid any slipness on the dressing. It is a very strong adhesive which keeps the bandage in place. It can be removed by any of the person easily except on whose person the same is pasted hand tied. I do not remember whether hands of the victim Raju Bhai were tied when he was examined by me. There were no ligature marks observed by me on his hands and legs as in case I would have observed the same. I might have mentioned it in my report/MLC. 46. The victim PW4 in his examination in chief, in relation to torture and brutality, deposed as they have tied chain on my neck and prepared video film in the room in order to send the same to my brother to press to pay the money. He further deposed as I had received injuries after receiving beatings by the said persons on my nose, on my thumb, on my jaws, head.

47. On a careful examination of the MLC, Ex PW28A, it is apparent that there were no fresh injuries on the body parts of the victim. PW4 however deposed that there was bandage and dynaplast on his scalp. The examining Doctor in his cross examination admitted as Dynaplast is adhesive tape which is used to fix bandage. It can be used on any part of the body to avoid any slipness on the dressing. It is a very strong adhesive which keeps the bandage in place. Doctor further admitted as there were no ligature marks observed by me on his hands and legs as in case I would have observed the same. I might have mentioned it in my report/MLC. From above, the allegations of the victim that he had received beatings on the various body parts such CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 26 of 45 as nose, thumb, jaws, head and hands did not corroborate as the chains, rope etc. would have left the mark or abrasions on the hands of the victim PW4, however there was nothing in the MLC, which supports the case of the prosecution. Therefore, the MLC report does not corroborate the prosecutions case.

48. The next plank of submission made by the learned counsel for the appellants that no Test Identification Parade (hereinafter referred to as TIP) was held and that the appellants were identified in Court for the first time and as such no reliance should have been placed upon such identification.

49. In this context, the law in relation to TIP is well settled. In *Dana Yadav @ Dahu and Ors. Vs. State of Bihar* reported in 2002 (7) SCC295 wherein the Apex Court held as under: 6. It is also well settled that failure to hold test identification parade, which should be held with reasonable despatch, does not make the evidence of identification in court inadmissible rather the same is very much admissible in law. Question is what is its probative value?. Ordinarily identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 27 of 45 fortified in our view by catena of decisions of this Court in the cases of *Budhsen (supra)*, *State of Maharashtra v. Sukhdev Singh and Anr.* 1992 Cri LJ3454 *Ronny alias Ronald James Alwaris (supra)*.

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time there being any corroboration whatsoever can form the sole basis for his conviction. In the case of *Budhsen (supra)* it was observed:-

"time in court without "They may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

8. In the case of State of Maharashtra (supra), it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny alias Ronald James Alwaris and others (supra), it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held... (Emphasis supplied) 50. The view taken by the Honble Supreme Court in Mahabir vs. State of Delhi reported in (2008) 16 SCC481 which was further reiterated in a recent judgment Hem Singh @ Hemu vs. State of Haryana reported in (2009) 6 SCC748 The relevant para 20 reads as under: Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 28 of 45 20. In Mahabir v. State of Delhi (2008) 16 SCC481 this Court held: by the observed 10. As was this Court in Matru v. State of U.P. (1971) 2 SCC75 identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain (1973) 2 SCC406 The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, is no provision for it in the Code and the Evidence Act, 1872 (in short the Evidence Act). It is desirable that a identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility

of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond identification parade, during therefore, there test Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 29 of 45 control and there is some delay, it cannot be said to be fatal to the prosecution.

11. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. (Emphasis supplied) 51. In view of the above settled position of law, the necessity for holding an identification parade arises only when the accused persons are not previously known to the witnesses, in the instant case, the victim PW4 deposed in his examination-in-chief as During my captive, I have seen the faces of the accused persons, I have seen Sandeep Parmar, who was my cousin but due to fear, I did not recognise him. PW4 also deposed as I did not know other accused persons except Sandeep Parmar prior to the date of occurrence. I do not remember as to how the names of the other accused persons came to be mentioned by me in my statement, i.e. whether at the instance of the Police or during the course of investigation. IO had shown the articles for the first time to me in the Police Station when he was preparing the said memos as the articles having been recovered from the accused persons. It is wrong to suggest that I am deposing falsely. 52. Undoubtedly, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 30 of 45 based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. In view of the aforesaid dictum, ordinarily, identification of an accused for the first time in Court by a witness should not be relied upon, being inherently of a weak

character, unless it is corroborated by his previous identification in the test identification parade or any other evidence as held by the Honble Supreme Court. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused persons. The object being to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. However, if a witness identifies the accused in Court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence.

53. Applying the broad guidelines laid down by the Honble Supreme Court and in view of the factual background discussed above, we are of the view that it would be highly unsafe to convict the appellants on the solitary evidence of identification by the victim PW4 in Court.

54. As far as arguments of learned counsel for the appellants and respondent in the State appeal in relation to non production of electronic evidence to prove recovery of victim in accordance to provision of Section 65B of the Indian Evidence Act, non production of any documentary evidence in relation to travel ticket from Ahmedabad to Delhi, non production of documents in support of contents of CD and also that all recovered articles were under the seal of MKS instead of seal of PW34 SI Sanjeev Kumar is concerned. It CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 31 of 45 has emerged from the evidence on record that there were certain lapses and irregularities that had manifested during trial. PW34 SI Sanjeev Kumar (Investigating Officer) admitted in his testimony that he did not collect any payment receipt, PNR details with respect to the purchase of air ticket. He deposed that there would have been no difficulty to collect the supporting documentary evidence. It is difficult to understand as to what prevented the IO to collect the said documentary evidence. Despite the fact that the documentary evidence as mentioned was not collected. We are of the view that the appellants cannot gain any advantage for the reason that law is well settled that defective investigation by itself cannot be a ground for acquittal, more particularly when other evidence on record is reliable and trustworthy. Our view is fortified by the following judgments.

55. In the case of C. Muniappan v. State of T.N. reported at (2010) 9 SCC567 it has been held by the Honble Supreme Court as under: 55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 32 of 45 judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. 56. Similar view was taken by the Apex Court in the case of Sunil Kundu v. State of Jharkhand reported at (2013) 4 SCC422 wherein it was held as under: 29...It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the depreciable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored.... 57. In addition to the evidence which has been examined, we shall take into consideration the role played by each of the appellants taking up their case on individual basis. Appellant Sandeep Parmar @ Bunty @ Sandy 58. As far as the role and evidence against the appellant Sandeep Parmar @ Bunty is concerned, it may be noted that during the inquiry PW1 Shyam Bhai Malvi (brother of the victim)

had a suspicion on his relative namely Sandeep Parmar for kidnapping of his brother. Mobile phone of victim was put on electronic surveillance and the raiding team went to Sector 56 Gurgaon. The fact that raiding team went to Gurgaon has been established from the testimony of PW3 Vinod Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 33 of 45 Narain Lal Malvi who accompanied the raiding team and testified as at the square (chouraha) of Sector-56, I identified accused Sandeep Parmar standing there in suspicious condition. Furthermore, PW34 SI Sanjeev Kumar, Investigating Officer and one of the members of the raiding team proved this aspect and deposed as while we were present near crossing Sector-56, Gurgaon, Sushant Lok, Vinod pointed out towards the person who present near the street on the motorbike as Sandeep Parmar. Consequently, the appellant Sandeep Parmar was interrogated and pursuant to his disclosure and pointing out of the appellant Sandeep Parmar a raid was conducted at U5/45 DLF, Phase-III, Gurgaon where the victim was held captive and after reaching the spot they got open the bolted door and found the victim with a bandage on his eyes. Further, pursuant to disclosure of the appellants a raid was conducted at F-19-D, Sushant Lok, Gurgaon and two more associates who were involved in the commission of crime were found present and were arrested. Again, this fact stands established from the testimonies of PW3, PW4, PW15 Insp. Tarun A Barot, PW20 ASI Rajbir and PW34 SI Sanjeev Kumar (Investigating Officer). Appellant Saurabh Sharma 59. With regard to the conviction of the appellant Saurabh Sharma, the prosecution relied on the fact that the premises where the victim PW4 was found and rescued from was leased to the appellant Saurabh Sharma. Moreover, the prosecution also relied on the recovery of a Debit card and produced the seizure memo in support of it. The trial Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 34 of 45 court has taken into account the voice samples of all the appellants which were sent to CFSL, Chandigarh and in the experts report, it was found that the voice of only appellant Saurabh Sharma had matched with the voice of the caller demanding ransom, which was recorded by the complainant PW1 Shyam Bhai.

60. In our view, the role of Saurabh Sharma becomes more significant as the house where the victim was held captive and finally rescued was leased to Saurabh Sharma and also the matching of the voice samples Ex.PW34/D is the

most important fatal circumstance against the appellant Saurabh Sharma. The results of CFSL report reads as under: Result of examination: The auditory analysis of recorded speech samples of speakers marked Exh-Q2 and Exh-S2 and subsequent acoustic analysis of the recorded speech samples of the speakers marked Exh-Q2 and Exh-S2 by using Computerized Speech Lab (CSL), revealed that voice exhibits of speakers marked Exh-Q2 are similar to the voice exhibits of speaker marked Exh-S2 in respect of their acoustic cues and other linguistic and phonetic features. Hence, the voice samples of speakers marked Exh-Q2 and Exh-S2 are probable voice of the same person (Sh. Saurabh Sharma) 61. A conjoint reading of CFSL report and the recovery of a Debit card from the appellant Saurabh Sharma which belonged to the victim the offence of kidnapping for abduction stands proved against him. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 35 of 45 Appellant Ashish Uppal @ Ashu 62. As regards the role assigned to this appellant, the prosecution's allegations against him are that he was keeping guard over the victim PW4 along with the appellant Sandeep Singh and was caught while guarding the victim PW4 at U-5/45 Phase III, Gurgaon. The trial court while convicting the appellant Ashish Uppal held that as he hired an Indigo Car which was used by him to kidnap the victim PW4 and booked a room in the hotel where the driver of the said Indigo Car was made to stay abandoned during commission of the offence of kidnapping. It was further held by the trial court that the appellant was correctly and distinctly identified by the victim PW4. In this regard, It was contended by the learned counsel for the appellant that the ownership of the alleged Indigo Car was not proved and there is no conclusive evidence to prove that the recovered Indigo Car was the same which was allegedly used in the commission of the offence.

63. To determine the role of the appellant Ashish Uppal @ Ashu, apart from the evidence of the victim PW1 and PW4 Shyam Bhai, it is relevant to discuss the testimony of other material witnesses produced by the prosecution in this case. The Indigo Car which was seized by the Investigating Officer pursuant to pointing out of the appellants was a vital piece of evidence. In order to prove that the seized vehicle was used in the commission of crime, the prosecution examined the owner and driver of the alleged vehicle. PW6 Tikka Ram, owner of seized Indigo Car which was used in commission of the crime deposed in his examination-in-

chief as under: I am Numberdaar of my village. I am the owner of TATA Indigo bearing No.DL4P9941 which I have bought Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 36 of 45 from Anil s/o Sh. Jile Singh. I have employed Tejpal as driver to drive the same. I was paying him Rs.4000/- as salary. I had employed this vehicle on contract with Kamal Taxi Service, Gurgaon. Police had called me near Kamal Taxi Stand. Police had come in a Scorpio vehicle with accused persons. Police had brought the vehicle to Chankyapuri. Police did obtain my signatures on some papers. Seizure memo Ex.PW6/A bears my signatures at pt.A. 64. However, PW6 Tikka Ram, in his cross-examination stated as under: My statement was recorded by the police at the Taxi Stand itself. I had stated to the police that I am Pradhan. I have not stated that I am not Numberdaar. Conf. with statement mark A where he is described as Sarpanch. It is correct that I quite often visit the Courts. It is correct that the Numberdaar furnishes surety bond and are quoted as witnesses. I have not given any document of ownership to the police regarding the vehicle mentioned above. I have not brought the same today also.... 65. PW7 Tejpal, driver of the seized indigo car, which was used in commission of the crime deposed in his examination-in-chief as (Emphasis supplied) under: I am working with Tika Ram as driver. I used to drive TATA indigo bearing No.DL4P9941 On 25/06/2007, Ashu @ Ashish whom I knew three months before, came to me for a taxi. I accompanied him upto Airport in a Taxi as he said that he will be having a party with his friends to the Airport. He took me upto Mahipalpur and said that here in a room we will sit and enjoy and he kept me waiting there and came at about 3 am. He did not come with his friends to enjoy party as he said that I have already enjoyed there very well. Then he asked me to drop him back. I came back to the Taxi Stand. When he had gone to his friends, he had taken the vehicle with him. Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 37 of 45 66. PW7 Tejpal in his cross examination stated as under: No entry is made for the taxi which is booked. It is incorrect to suggest that no such entry was made as the accused Ashu has not hired any taxi. The accused had left me in Guest House East-West at Mahipalpur, before he went away with the hired taxi. I had stated about the East West guests house to the police in my statement. Conf. with statement mark B where it is not so mentioned. At the time the accused persons came to the Taxi stand to hire the

Taxi, 3-4 persons were present. 67. A reading of the testimony of PW7 would show that PW7 knew appellant Ashish Uppal three months prior to the incident, PW7 was working with Tikka Ram (PW6) as a driver and used to drive Tata Indigo car bearing registration No.DL4CP9941 On the fateful day, the appellant Ashish Uppal took him upto Mahipalpur in a Taxi as the appellant told him that he would be having a party with his friends at the Airport. PW7 next deposed that the appellant Ashish Uppal said that there in a room they would sit and enjoy and he kept him waiting there till about 3 am. However, PW7 in his cross-examination stated the name of the guest house and further stated that the appellant Ashish Uppal had left him in a Guest House East-West at Mahipalpur before he went away with the hired taxi. PW7 had further stated that he already told about the East West Guest House in his statement to the police, but to the contrary he had not stated the same. After perusal of the aforementioned testimonies, we are of the considered view that the testimony of PW6 coupled with PW7 remain uncontroverted and inspire confidence of this Court. The recovery of TATA indigo car used in the kidnapping of the abductee along with the testimony of CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 38 of 45 PW7 Tejpal is sufficient to prove the guilt of the appellant Ashish Uppal. Appellant Sandeep Singh @ Guddu 68. As far as the appellant Sandeep Singh @ Guddu is concerned, the prosecution's allegations against him are that he was keeping guard over the victim PW4 at the place where he was rescued from. It is the case of the prosecution that the appellant Sandeep Singh was caught red handed together with Ashish Uppal while guarding the victim Raju Himmat Bhai at U-5/45 Phase III, Gurgaon. The trial Court while convicting the appellant Sandeep Singh held that as he was correctly and distinctly identified by the victim in the Court and from the facts of the case it has been proved that he also accompanied other appellants to the Palam Airport where from they all kidnapped the victim PW4.

69. Having regard to the evidence of the victim PW4 who not only identified appellant Sandeep Singh @ Guddu but also deposed that he was present in the car, he had beaten him and pushed him between the seats, confined him in a room and tortured him and also the fact that the appellant was caught red-handed while guarding the victim, in our view, the appellant has been rightly convicted by the Trial Court for the offence of kidnapping for ransom as there is ample evidence

on record which show his involvement.

70. It stands established that the appellants Sandeep Parmar @ Bunty, Saurabh Sharma, Ashish Uppal and Sandeep Singh @ Guddu were involved in the commission of Kidnapping for ransom. Direct CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 39 of 45 evidence of common intention is seldom available. Such common intention of the accused can only be inferred from the evidence, facts and circumstances of the case. It has been proved that the appellants Sandeep Parmar @ Bunty, Saurabh Sharma, Ashish Uppal and Sandeep Singh @ Guddu were party to a Criminal Conspiracy and had been persuading PW1 to pay the ransom amount for the release of the victim PW4. The object and purpose of the conspiracy was clear and the manner of organizing and planning the activities to achieve the ultimate objective i.e kidnapping for ransom has been amply established against both the appellants.

71. Since the offence of kidnapping for ransom has been committed and the prosecution has successfully proved against the appellants Sandeep Parmar @ Bunty, Saurabh Sharma, Ashish Uppal and Sandeep Singh @ Guddu, hence, they are entitled to the same punishment for the offence under Section 120B which is provided for the original offence i.e. under Section 364A of the Indian Penal Code. Appellant Manoj Kumar 72. As far as appellant Manoj Kumar is concerned, the only role attributed by PW4 Raju Himmat Bhai was that he used to finance the other appellants and visited the place of kidnapping 2-3 times during his captivity. In this regard, it is relevant to discuss the cross -examination of the victim PW4 wherein he stated as It is correct I was blind folded when I was in alleged custody/confinement. I saw accused Manoj for the first time in court. It is correct that on the basis of hearsay I pointed out to accused Manoj in the court. So far as the recovery of CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 40 of 45 wrist watch from the appellant Manoj is concerned, the relevant part of the cross-examination of the victim PW4 wherein he categorically stated as I was wearing only one watch. There was no other watch in my bag. Recovery of watch from Manoj was not done in my presence. I had stated in my statement u/s 161 that the said watch was recovered from Manoj. (Confronted with Ex.PW4/DA where it is not so recorded). The trial Court had found the recovery of

the wrist watch of the abductee from the appellant Manoj, pursuant to his disclosure, to be untrustworthy and disbelieved the same. On this aspect, we concur with the view of trial Court and find no infirmity in it. However, the trial Court considered the abscondence of the appellant Manoj after the recovery of the abductee till he surrendered as a circumstance against him for convicting him. In this regard, it would be fruitful to peruse the view taken by the Honble Supreme Court in Matru versus State of U.P. reported in AIR 1971 SC1050 wherein para 19, it was held as under: 19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 41 of 45 Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.

73. From above it is apparent that the victim PW4 categorically stated that (Emphasis supplied) during the entire period of his captivity he was blindfolded and he had seen the appellant Manoj for the first time in Court and had identified him in the Court on the basis of hearsay. From the evidence on record, there is nothing to link the appellant with the present offence. Therefore, merely because the victim had identified the appellant in Court. It would be highly unsafe to convict the appellant Manoj Kumar on the basis of it. We differ with the view taken by the trial Court with respect to the appellant Manoj Kumar. In the light of Matrus judgment (supra) coupled with the uncorroborated testimony of the victim PW4 we extend benefit of doubt against the appellant Manoj Kumar. Respondent Mukul

Yadav 74. As far as role of Mukul Yadav, the respondent in the State appeal is concerned, learned counsel for Mukul Yadav vehemently argued that the recovery was against Mukul Yadav were not proved and also in the arrest memo his place of arrest was mentioned as U-5/45, Phase- III, D.L.F., Gurgaon which is contrary to the case of prosecution wherein they have asserted that Mukul Yadav was arrested from F- 19D, Royal Residency, Sushant Lok, Gurgaon, guarding the victim. Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 42 of 45 75. The prosecution has made out a case against Mukul Yadav that he was the person who drove the Indigo Car in which the victim was abducted and was fully involved in the commission of the crime. The prosecution further fortifies their case against Mukul Yadav that he was named by the victim being one of the person involved in commission of the crime.

76. We find from the record that PW4 in his examination-in-chief distinctly named Mukul Yadav as one of the persons who tortured him in the room alongwith the appellants. However, in Court PW4 identified all the appellants correctly except Mukul Yadav. Moreover, on perusal of Ex. PW arrest memo of Mukul Yadav we found that the place of arrest of this appellant is shown as U-5/45, Phase- III, D.L.F., Gurgaon which dents the case of the prosecution in relation to arrest of Mukul Yadav. Further the recoveries made at the instance of Mukul Yadav are also doubtful as the prosecution was not able to connect the motorcycle allegedly recovered in the present case with Mukul Yadav. Also, the laptop and digital camera recovered in this case was claimed by PW4, but to the contrary, record reveals that PW4 at the initial stage, has reported snatching of mobile phone, wrist watch, driving licence, clothes, debit card, documents by the appellants and the respondent Mukul Yadav and there was no mention of laptop and digital camera. As per PW34 SI Sanjeev Kumar, Investigating Officer, laptop and digital camera belonged to Mukul Yadav and the same were used for making of alleged CD.

77. In view of the above, we find that the non-identification of Mukul Yadav by the victim and also the fact that the prosecution has failed to prove recoveries against him weakens the case of the prosecution Crl.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 43 of 45 against Mukul Yadav and he is

entitled to be given benefit of doubt. Accordingly, we sustain the order of acquittal passed by the learned trial Court in relation to Mukul Yadav. Conclusion:

78. In the light of the above discussion, we find no merit in the appeals preferred by the appellants Sandeep Parmar, Saurabh Sharma, Ashish Uppal and Sandeep Singh @ Guddu and maintain their conviction. We also do not find any merit in the appeal preferred by the State. The prosecution has failed to adduce cogent, reliable, and clinching evidence against the appellant Manoj Kumar and the respondent Mukul Yadav for committing the crime in conspiracy with the appellants Sandeep Parmar, Saurabh Sharma, Ashish Uppal and Sandeep Singh @ Guddu. As no incriminating material was proved from their possession or at their instance. They did not make any ransom call to PW1, brother of the victim; no article of the deceased was recovered from their possession. Keeping in view the aforesaid facts, we feel that the prosecution has not been able to prove and establish the case against the appellant Manoj Kumar and the respondent Mukul Yadav. The evidence against them is very scanty to record their conviction under the offence of Kidnapping for ransom under Section 364A of the Indian Penal Code. Hence, they deserve benefit of doubt and are acquitted.

79. Criminal Appeal 1422/2010 is accordingly allowed. The appellant Manoj Kumar be released forthwith if not required to be detained in other case. Appeals are disposed of accordingly. CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 44 of 45 80. Copy of this order be sent to Jail Superintendent, Tihar Jail, Delhi.

81. Trial Court Record be returned.

82. In CrI.A.890/2012 personal bond is cancelled and surety stands discharged. G.S.SISTANI, J SANGITA DHINGRA SEHGAL, J JULY10h , 2017 // CrI.A. 58/2011, 1240/2011, 27/2011, 1422/2010, 1384/2013 & 890/2012 Page 45 of 45

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