

Vikas Verma @ Vicky and Ors Vs. State

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Court : Rajasthan Jodhpur

Decided On : Mar-30-2015

Appellant : Vikas Verma @ Vicky and Ors

Respondent : State

Judgement :

DB CrA No.565/2005 & 574/2005 1/23 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

JUDGMENT

:: APPELLANT: RESPONDENTS: Vikas Verma @ Vicky v. State of Rajasthan D.B. CRIMINAL APPEAL NO.565 OF 2005 APPELLANT: RESPONDENTS: Mahendra Singh @ Happy v. State of Rajasthan D.B. CRIMINAL APPEAL NO.574 OF 2005:: Date of Order :

30. March 2015 :: PRESENT HON'BLE MR JUSTICE GOPAL KRISHAN VYAS HON'BLE MR JUSTICE ANUPINDER SINGH GREWAL Mr Mahesh Bora, Sr. Advocate assisted by Mr Nishant Bora, for the appellant- Vikas Verma Mr H.M. Saraswat, for appellant Mahendra Singh Mr J.P. Chaudhary, Public Prosecutor Mr Niranjan Gaur } Mr Mahesh Thanvi } for the complainant BY THE COURT {Per Justice Anupinder Singh Grewal}: These appeals are directed against judgment dated 10.06.2005 passed by the learned Additional Sessions Judge (FT) No.1, Jodhpur in Sessions Case No.78/2003 whereby the accused-appellants were

convicted for offences under sections 365, 364A, 392 and 120B IPC and sentenced as under: Sec.365 IPC - Simple imprisonment for 5 years along with fine of Rs.5000/-, in default of payment of fine to undergo further one year's imprisonment Sec.364A IPC - life imprisonment with fine of Rs.5000/-, in default of payment of fine to undergo further 3 years' imprisonment DB CrA No.565/2005 & 574/2005 2/23 Sec.392 IPC - 5 years' simple imprisonment with fine of Rs.5000/-, in default of payment of fine to undergo further one year's imprisonment Sec.120B IPC - 3 years' simple imprisonment with fine of Rs.1000/-, in default of payment of fine to undergo further one year's imprisonment

2.The factual matrix of the case is that First Information Report Ex.P1 was lodged on written complaint submitted by PW1 Vinay Kumar Jain on 15.12.2002 at 7:10PM at the Police Station, Udaimandir, Jodhpur stating that he has a showroom named M/s Basant Handicrafts near Circuit House, Jodhpur for handicraft business. His son Gaurav Jain had come to the showroom on that day and a person, who had been coming to the showroom for last two days for purchasing articles, asked his son to take him to their handicrafts factory situated at the Industrial Area, Mandore to see some more handicraft articles. His son along with that person went there in his son's Lancer car No.RJ19-1C-6565 for showing him the handicraft items. This information was given to him when he reached the showroom at 3:30PM by Nitin who works at the showroom. When he phoned the factory to talk to his son, he came to know that his son Gaurav has not reached the factory. He tried to contact his son on his mobile phone but the same was out of range. He tried to search for his son but could not find him. Thereafter he informed his friend Mr Madan Jain at about 4:15PM about this fact but since that time he has not received any information about his son. He requested the Police to take necessary action to trace his son Gaurav Jain.

3.On the basis of aforementioned report, the Police registered a case for offence under section 365 IPC and started investigation. DB CrA No.565/2005 & 574/2005 3/23 Subsequently, supplementary statement of the complainant PW1 Vinay Kumar Jain was recorded by Police on 16.12.2002 wherein he had specifically disclosed that ransom of Rs.3 crores has been demanded from him.

4.On 23.12.2002 a Police team headed by Dy.S.P. Mr Arshad Ali arrested the accused-appellants Vikas Verma @ Vicky and Mahendra Singh @ Happy whereupon Vikas informed that Gaurav is under custody of his

mother Nirmala and brother Rajan at Amritsar. Thereafter a Police team headed by Dy.S.P. Mr Hemant Sharma recovered Gaurav Jain from House No.1310, Koocha Kamaldeen in Amritsar and arrested Nirmala and Rajan Verma. 5.The Police filed challan against the accused persons for offences under sections 365, 364A, 392 and 120B IPC in the court of Judicial Magistrate No.3, Jodhpur on 22.03.2003 who committed the case to the court of Sessions Judge, Jodhpur. The learned trial court on 06.05.2003 framed the charges against the accused persons for offences under sections 365, 364A, 392, 120B IPC. The accused denied the charges and sought trial. 6.The prosecution examined 47 witnesses and proved documents Exhibits P1 to P185 and articles 1 to 54 in support of its case. The accused in their statements under section 313 Cr PC denied the allegations levelled by the prosecution and stated that they have been falsely implicated in the case. The accused did not produce any oral evidence but exhibited and proved documents Exhibits D1 to D25 in their defence. 7.Learned counsel for the appellants at the very outset submitted that as the appellants have already undergone more than 12 years of sentence, they are challenging the conviction only to the DB CrA No.565/2005 & 574/2005 4/23 extent that offence of kidnapping or abduction for ransom under section 364A IPC is not established against them. If they are to be convicted only for kidnapping without the motive for ransom they would be entitled to be released as they have already undergone maximum sentence provided therein. 8.Thus, the prosecution case relating to abduction per se has not been assailed and we have only to go into the question as to whether offence of abduction for ransom is made out against the appellants. 9.In support of their contentions, learned counsel for the appellants have also filed written submissions wherein it is stated that the prosecution case as to motive of ransom could not be established as there are several infirmities therein. On the other hand, learned Public Prosecutor and learned counsel for the complainant have submitted that there is cogent evidence on record including statements of PW1 Vinay Kumar Jain, PW3 Gaurav Jain, PW8 Gautam Jain, PW10 Tara Chand, PW11 Ganesh Bhandari and PW16 Surendra Kumar Jain which clearly establishes that the abduction was only for ransom. They have also filed written submissions. 10.We have heard learned counsel for the parties and perused the record. 11.It is necessary to refer to section 364-A IPC, which is reproduced

hereunder: 364-A. 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 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 DB CrA No.565/2005 & 574/2005 5/23 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.

. 12. Section 364A IPC was amended vide Amendment Act No.42 of 1993. It is manifest from the statement of objects and reasons leading to amendment that the Indian Parliament wanted to tackle the menace of kidnapping and abduction with a stern hand. Section 364A IPC provides for death even when kidnapping or abduction has not resulted in the death of the victim. Kidnapping and abduction for ransom appears to have become a thriving industry in the country and hence, it had to be dealt with an iron hand. Those who indulge in such crime for their lust for money can not be shown any undue sympathy or leniency. 13. It is patent from the perusal of section 364A IPC that offence of kidnapping or abduction for ransom accompanied by threat to cause death or hurt contemplates punishment with death. It is, thus, not the requirement of law that death or even hurt should actually be caused for the offence to fall under section 364A IPC. 14. Hon'ble Supreme Court in the case of Akram Khan v. State of West Bengal, reported as 2012 (1) SCC406 has held:

32. Now, we have to see whether the sentence imposed by the trial Court and confirmed by the High Court is appropriate or not?. We have already extracted Section 364-A in the earlier paras which stipulates that if the prosecution establishes beyond doubt that the kidnapping was for ransom, the sentence provided in this Section is death or imprisonment for life and also be liable to fine.

33. In Mulla and Another vs. State of Uttar Pradesh (2010) 3 SCC508 after considering various earlier decisions, this Court held as under:- DB CrA No.565/2005 & 574/2005 6/23

67. It is settled legal position that the punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime.

. We fully endorse the above view once again.

34. It is relevant to point out that Section 364-A had been introduced in the IPC by virtue of Amendment Act 42 of 1993. The Statement of Objects and Reasons is as follows:-

1. Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was]. necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973.

. It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. Therefore, we are of the view that in those cases whoever kidnaps or abducts young children for ransom, no leniency be shown in awarding sentence, on the other hand, it must be dealt with in the harshest possible manner and an obligation rests on the courts as well.

. 15. The term 'ransom' has not been defined in the Indian Penal Code. It has been defined in Concise Oxford English Dictionary 2011 p.1190 as under: DB CrA No.565/2005 & 574/2005 7/23 ransom - n. a sum of money demanded or paid for the release of a captive. v. obtain the release of (someone) by paying a ransom; hold (someone) captive and demand a ransom for their release; release after receiving a ransom.

. 16.In Advanced Law Lexicon 3rd Edition 2005 p.3932, term 'ransom' has been defined as: Ransom. Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize.

. 17.In Black's Law Dictionary 4th Edition p.1426, definition of 'ransom' reads as: RANSOM. The money, price, or consideration paid or demanded for redemption of a captured person or persons, a payment that releases from captivity.

. 18.In Halsbury's Law of England 4th Edition Vol.37 at page 838 it has defined nature of the contract of ransom. as under:

1341. Nature of the contract of ransom. - Ransom is a contract entered into between the captors and the commander of a captured ship, by which the captors permit the captured ship to proceed under safe conduct in consideration of a sum of money paid or promised by the commander in his own name and that of the owners of the captured ship.

. 19.Therefore, ransom is money or any consideration which is demanded or paid for the release of a captive, prisoner or a detinue. Even if an individual is kidnapped or abducted for extracting money which may be due to the abductor it will fall under the definition of 'ransom' as the amount paid or to be paid is for the release of the captive. 20.We now proceed to examine the evidence in support of abduction for ransom. PW1 Vinay Kumar Jain who is complainant and father of Gaurav Jain who was abducted, in his statement DB CrA No.565/2005 & 574/2005 8/23 clearly stated that in the night of 15th & 16 th December 2002 at about 1:30AM he was at his showroom and there were several other persons with him including PW11 Ganesh Bhandari. They were trying to connect to the mobile of Gaurav and connection to Gaurav's phone was made by phone of PW11 Ganesh Bhandari. Some unknown person was speaking from other side and hence, Ganesh Bhandari handed his phone to him. The unknown person told him that they have abducted his son and asked him to arrange for Rs.3 crores and thereafter he will again phone to tell what is to be done and how it is to be done. The unknown person even told him that he will again make contact on the next day at 12 O'clock and had threatened that if the amount of Rs.3 crores is not paid or police is informed Gaurav shall be killed. 21.PW1 further stated that the

abductor also called on mobile phone of his elder brother Surendra Kumar Jain and they talked about ransom and abduction. Supplementary statement of PW1 Mr Vinay Kumar Jain had also been recorded by the Investigating Officer on 16th December 2002 wherein he stated about the demand of Rs.3 crores for the release of his son. There is a minor contradiction about time on which he received call, from 12:45AM to 1AM or 1:30AM which is not very material as the fact remains that the call was received after midnight. 22.The statement of PW1 Vinay Kumar Jain is corroborated by the statement of PW11 Ganesh Bhandari who stated that between 12AM to 1AM on that night he had tried to call mobile number 9829023166 of Gaurav Jain from his mobile number 9829021234 and when connection was established somebody stated that alright you have called SP and then he handed over the phone to DB CrA No.565/2005 & 574/2005 9/23 Mr Vinay Kumar Jain. Mr Vinay Kumar Jain after speaking on the phone told that Gaurav has been abducted and the abductors are demanding money. PW11 Ganesh Bhandari further stated that while talking on the phone the abductor warned that in case the money is not paid then Gaurav would be killed. 23.PW10 Tara Chand has also corroborated the statement of PW1 Vinay Kumar Jain that in the midnight of 15/16th December around 12-1 Hrs abductor made a call on his mobile phone from mobile phone of Gaurav Jain whereby the abductors demanded money and threatened to kill Gaurav in case money is not paid. He has also stated in his cross-examination that he had mentioned this fact in his statement to police which was recorded after about 2 months as he had gone out of station. 24.Further, PW8 Gautam Jain has submitted that he had received a call on his phone at about 7AM on 22.12.2002 wherein caller asked him to speak to Vinay Kumar Jain as Gaurav Jain is not feeling well and he wanted to know about what medicine had to be administered to him. The caller further told him that Gaurav's father is giving less money and he should persuade him to give the amount as demanded. The abductor had again called him and reiterated that Vinay Kumar Jain is not giving full amount. PW8 then told the abductor that they should contact Surendra Kumar Jain who is brother of Vinay Kumar Jain and he gave mobile number of Surendra Kumar Jain to the abductor. The abductor once again stated that in case full amount is not paid Gaurav will be shot. 25.PW16 Surendra Kumar Jain who is brother of the complainant PW1 Vinay Kumar Jain has also corroborated the fact

that the DB CrA No.565/2005 & 574/2005 10/23 abduction was for ransom as he categorically stated that he had received a call on 22.12.2002 when he was told that his younger brother is not agreeing to payment of Rs.3 crores for release of Gaurav Jain and in case money is not paid they will shoot Gaurav. He then told them that they do not have so much money and they could arrange an amount of 5-7 Lacs rupees after selling jewellery. He further stated that the abductors had phoned him on 2-3 occasions and even told him that they require the money in dollars to which he replied that they do not have dollars. The abductors further asked him that they require the money in currency notes of Rs.500 each. The abductors thereafter asked him to come to Delhi with an amount of Rs.48 Lacs. He then went to Delhi but abductors asked him to come to Agra where they will inform him as to how the money is to be given. Before reaching Agra this witness received a call from his brother Vinay Kumar Jain that Gaurav has been found at Amritsar and the police has released him from the custody of abductors. The statement of this witness PW11 Surendra Kumar Jain was recorded by Police on 02.3.2003. 26.Further, learned counsel for the accused-appellants have laid much emphasis on the fact that statements of PW8, PW10, PW11 and PW16 were recorded after 1 to 2 months of the incident. The learned counsel for the appellants cited judgment of Hon'ble Supreme Court in the case of Vijaybhai Bhanabhai Patel v. Navnitbhai Nathubhai Patel & others reported as 2004 (3) Criminal Court Cases (SC) 598 in support of his arguments. However, this judgment is clearly distinguishable on facts and not applicable to the instant case. The accused therein had gone to DB CrA No.565/2005 & 574/2005 11/23 the house of deceased and forcibly took him to nearby tree and caused injuries leading to his death. PW4 son and PW7 widow of the deceased who claimed to be eyewitnesses were examined after two days. Their evidence was disbelieved as there was no explanation for their examination after two days of the incident when they were stated to be present at the spot. However, in the instant case, witnesses have stated that they are businessmen and had been going out of station and hence, their statements were recorded after some time. 27.Delay in examination of witnesses by the police has to be considered in the light of facts of the case as it depends on several variable factors including preoccupation of the Investigating Officer with other cases and non-availability of the witnesses. Any delay in

examination of witnesses during investigation cannot alone be a ground to discredit the witnesses if they are otherwise credible. Reference may be made to judgment of Hon'ble Supreme Court in the case of Ganesh Lal v. State of Maharashtra reported as 1992 (3) SCC106 The relevant extract of para 10 is reproduced hereunder: It is true that this court in Balakrushna Swain v. State of Orissa, AIR 1971 SC804 held that the evidence of witness recorded at late stage must be received with a pinch of salt. Delay defeats justice. But each case has to be considered on its own facts. In view of the above facts we have scanned his evidence carefully. We are satisfied that he is a truthful witness. The High Court is well justified in placing reliance on his evidence. In fact material part of his evidence was not subjected to cross examination, except suggesting that he was deposing falsely. Under these circumstances he is a truthful and reliable witness.

. 28. Hon'ble Supreme Court of India in the case of Narinder DB CrA No.565/2005 & 574/2005 12/23 Kumar v. State of Jammu and Kashmir reported as 2010 (9) SCC259 has held:

23. It was also contended by Mr. Gupta that statements of some of the eyewitnesses were recorded belatedly. This aspect too has to be seen in the background of the facts and circumstances of the case. Whether or not delay has affected the credibility of the prosecution is a matter on which no straitjacket formula can be evolved nor any thumb rule prescribed for universal application. The Courts below have, in our opinion, correctly appreciated this aspect and rejected the contention that the delay in the recording of the statements of some of the witnesses was fatal to the case. That is specially so when the prosecution version, based on the statement made by Balwant Raj was known on the date of the incident itself. PW Balwant Raj had in the said statement attributed the gunshot injury sustained by deceased to the appellant. Delay in the recording of the statements of the other eyewitnesses, two of whom were brothers of the deceased was not, therefore, used to falsely implicate the appellant.

. Therefore, in the light of the aforementioned principles, the delay in recording the statements of PW8, PW10, PW11 and PW16 alone does not discredit these witnesses as their testimony is otherwise trustworthy. It corroborates the evidence

of PW1. 29.PW43 Chen Singh Mahecha, the I.O., clearly stated that he recorded supplementary statement of PW1 Vinay Jain on 16.12.2002 wherein demand of ransom has been mentioned. He denied the suggestion that section 364A IPC was added after arrest of the accused. He clarified that when demand of ransom was disclosed by PW1 on 16.12.2002 then section 364A IPC was added. In his cross-examination also, he has stated that in his case diary it has been mentioned on 17.12.2002 that DB CrA No.565/2005 & 574/2005 13/23 the supplementary statement of Vinay Kumar PW1 was recorded on 16.12.2002 wherein the demand for ransom was disclosed. 30.Even if there is discrepancy in recording of statements not much relevance can be attributed thereto. We have to bear in mind that the Police and the relatives have to tread very carefully towards recovery of the abducted person without any harm. The reluctance of relatives to share or withhold certain facts or not to divulge some detail would not lead to any adverse inference. Primary concern of the relatives is to ensure that the abducted person is released without any harm. 31.However, the most significant witness in the case is PW3 Gaurav Jain who was the person abducted. He was about 22 years of age at the time of the incident and hence his testimony would be of great significance. He categorically stated that he was forcibly taken away at gun-point by the abductors who had asked him to sit in their car. They threatened him with knife and pistol. He further stated that the accused-appellants had asked about financial status of his father including details of bank accounts and fixed deposits by putting a knife on his abdomen and pointing a pistol at his temple. When he declined to give information they threatened to kill him. They aimed pistol at his temple and threatened that the pistol is having silencer and if he does not tell true details of his father's finances they would shoot him. PW3 Gaurav also stated that they told him that if his parents give money to them he would be released. The accused put him in such fear that he was always under threat of his safety. He DB CrA No.565/2005 & 574/2005 14/23 stated that the accused had demanded amount of two 'khokha' (Rs.2 crores) from his parents. He further stated that he can not submit that what information was given by him with respect to finances of his father. This discrepancy about amount of ransom in the statement of PW1 Vinay Jain who had stated that Rs.3 crores were demanded from him whereas PW3 Gaurav Jain stated that Rs.2 crores were demanded as ransom is

inconsequential. It is a matter of common knowledge that abductors keep altering their demands depending upon the change in circumstances. 32.PW3 Gaurav further stated that the accused had talked to his mother on landline phone and asked him to talk to his mother. He told his mother that he was fine and she should do whatever accused wanted her to do. He was told by the accused that if his parents would give them money he shall be set free. 33.The statement of mother of Gaurav has not been recorded but not much significance can be attached to this aspect. The statement of several other witnesses indicating abduction for ransom has been recorded and recording statement of his mother might have lead to multiplicity of evidence. There is no necessity for the prosecution to multiply witnesses to prove and establish the case. Evidence is to be weighed and not to be counted as it is the quality and not the quantity of the evidence which is of significance. 34.It is noteworthy that the statements of PW1 Vinay Kumar Jain the complainant and father of the captive and PW3 Gaurav Jain the captive himself are very material and their evidence pointing DB CrA No.565/2005 & 574/2005 15/23 towards abduction for ransom by the accused-appellants can not be brushed aside as they will be last people to let the real culprits go scot free. There is no absolutely no reason for them to falsely implicate the accused. Only a vague suggestion has been made that Mahendra Singh @ Happy had some financial dealings with the complainant but no details are forthcoming. However, this aspect in a way supports the factum of abduction for ransom as the accused-appellant would then be well aware about financial status of the complainant to pay ransom and in any case could not be a factor for the complainant to falsely implicate the accused. 35.Nevertheless, there does seem to be merit in the submission of the learned counsel for the appellants that the call details relied upon by the prosecution are inadmissible as they have not been proved in accordance with provisions of section 65-B of the Evidence Act. Exhibit P180 is itemized call detail containing the detail of calls made from mobile phone of PW3 Gaurav Jain (9829023166) and that of PW10 Tara Chand (9829022284). It also shows that calls were made from the aforementioned mobile phone of Gaurav Jain to landline number 0291-2543395 installed at Gaurav's residence in the name of Gaurav's father PW1 Mr Vinay Kumar Jain in the midnight of 15/16th December 2002. This call detail was obtained by PW44 Hemant Sharma who was the investigating

officer. Exhibits P107 and P108 indicate calls made from mobile numbers 9826248189 on 22.12.2002 from 07:06AM to 11:20PM to PW8 Gautam Jain (98290-23188) and PW16 Surendra Kumar Jain (9897081800). This computer printout obtained from BTA, Gwalior has been produced by SI Gur DB CrA No.565/2005 & 574/2005 16/23 Bhupinder Singh. Ex.P107 has signature over the seal of BTA, Gwalior but without any description of designation or name of the signatory. 36.PW9 Divya Gupta was Manager of the Oasis company at Jodhpur at the relevant time. In his statement he deposed that there is no document on record issued by the Oasis company, Jodhpur which proves that during the night intervening 15th December and 16th December 2002 call from mobile number 9829023166 of PW3 Gaurav Jain was ever made to mobile number 9829022284 of PW10 Tara Chand. 37.Electronic records including call details are admissible in evidence in terms of section 65 of the Evidence Act provided conditions stipulated under section 65-B are fulfilled. For ready reference, section 65-B of the Evidence Act is reproduced hereunder: 65-B. Admissibility of electronic records:- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output.) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: - (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use DB CrA No.565/2005 & 574/2005 17/23 of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not

operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities. (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether - (a) by a combination of computers operating over that period; or (b) by different computers operating in succession over that period; or (c) by different combinations of computers operating in succession over that period; or (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly. (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, - (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the DB CrA No.565/2005 & 574/2005 18/23 production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer; (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it. (5) For the purposes of this section, - (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise

than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities; (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

. 38.Hon'ble Supreme Court in the case of Anvar P.V. v. P.K. Basheer and ors reported as 2014 (10) SCC473has held:

15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are DB CrA No.565/2005 & 574/2005 19/23 satisfied: (a) There must be a certificate which identifies the electronic record containing the statement; (b) The certificate must describe the manner in which the electronic record was produced; (c) The certificate must furnish the particulars of the device involved in the production of that record; (d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, the question would arise as to the genuineness thereof and in that

situation, resort can be made to Section 45-A - opinion of Examiner of Electronic Evidence.

18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

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23. The appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to DB CrA No.565/2005 & 574/2005 20/23 the ground.

. 39. Tested in the light of the principles laid down in the aforementioned case, the call details Exhibits P107, P108 and P180 are computer generated. They have not been signed by any officer of the telecom company who has issued those details. There is also no certificate of any authorized officer about genuineness of those call details in terms of conditions provided in section 65-B of the Evidence Act. It was incumbent upon the prosecution to have produced the certificate from the authorized officer to establish the genuineness and authenticity of those call details. These are mandatory safeguards to rule out fabrication or tampering of the electronic record. Failure to comply with these requirements would result in excluding such evidence from consideration. Therefore, these call details would not be admissible in evidence under section 65-B of the Evidence Act. However, this does not dent the prosecution case in the wake of statements of prosecution witnesses who have established the case. It could only be construed as lapse on the part of the prosecution. 40. Learned counsel for the accused-appellants have also stated that there were several other defects in the investigation besides the delay in recording statements of witnesses and call details not being obtained in certified form. However, these aspects can not help case of the accused-appellants as it is settled law that any defect in investigation is not a ground for acquittal of the accused. Reference can be made to judgment of Hon'ble Supreme Court in the case of C. Muniappan and others v. State of Tamil Nadu reported as

2010 (9) SCC567 wherein it has been DB CrA No.565/2005 & 574/2005 21/23 held 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 de hors 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 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.

. 41. We had put it to the counsel for the appellants that as they are not challenging the finding of conviction per se what could be the motive or purpose behind abduction by the accused- appellants if it was not for ransom. Learned counsel for the appellants submitted that it is for the prosecution to establish its case and kidnapping or abduction can well perhaps be because of Gaurav Jain's engagement being planned to a girl by his family although he was interested in another girl of his choice or that there were financial dealings of the complainant and his son with one of the accused Mahendra Singh @ Happy. 42. As far as question of Gaurav being interested in another girl is concerned it has come in the evidence of his father PW1 Vinay DB CrA No.565/2005 & 574/2005 22/23 Kumar Jain that he had not been engaged nor was there any plan to do so. No other evidence has come on record except that one of the accused - Nirmala had been in touch with Gaurav before abduction in order to entice him. It cannot be believed from the evidence on record that abduction was in any manner related to his engagement or that Gaurav would enact the drama of abduction. Even assuming

that there were financial dealings of one of the accused-appellants Mahendra Singh @ Happy and he wanted to recover money from the complainant it would also amount to ransom. There is absolutely no evidence on record which points to the fact that Gaurav Jain and his father may have falsely implicated the accused. 43. Further, the entire facts and circumstances in the case point to meticulous planning by the abductors while executing the abduction of Gaurav Jain. They stayed in various hotels for 7 days under fictitious names. Evidence of PW2 Asheesh who produced register of Hotel Paradise, PW29 Vasudeo Singh who produced register of Hotel Priya and PW30 Parbat Singh who produced register of Hotel Maharaja Keniya, where Vikas stayed in the name of Manish and PW34 Amit Kumar who produced register of Hotel Poonam where Mahendra Singh @ Happy stayed substantiates this aspect. The car used for abduction was also purchased in fictitious name and they purchased sim cards with fake identities. Gaurav Jain was ultimately recovered by the police from the accused at Amritsar after 7 days. It is rather difficult to comprehend that such an exercise would have been undertaken by the accused for an object other than ransom. It further lends credence to the prosecution case of abduction for DB CrA No.565/2005 & 574/2005 23/23 the purpose of ransom. 44. Therefore, on the basis of the aforementioned evidence we have no hesitation to conclude that PW3 Gaurav Jain was abducted with intention to obtain ransom. He had been detained by the accused-appellants at gunpoint under threat of causing him death or hurt. It is reiterated that it is not necessary that any hurt or harm should have actually been caused to the abducted person. The manner in which Gaurav Jain has been abducted, threatened and kept at gunpoint for 7 days clearly establishes that he was under reasonable apprehension that he may be caused hurt or death. 45. Thus, the prosecution has proved the case beyond reasonable doubt that Gaurav Jain had been abducted with an intention to obtain ransom by keeping him under threat of death or hurt. 46. Consequently, the instant appeals have no merit and the same are hereby dismissed. [ANUPINDER SINGH GREWAL], J.

[GOPAL KRISHAN VYAS], J.

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