

Narender, Vs. State

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SooperKanoon Citation : sooperkanoon.com/696551

Court : Delhi

Decided On : May-15-2009

Reported in : 2009CriLJ3613

Judge : Pradeep Nandrajog and; Aruna Suresh, JJ.

Acts : Motor Vehicle Act - Sections 133; Indian Penal Code (IPC) - Sections 34, 120B, 363, 364A, 365 and 368; Code of Criminal Procedure (CrPC) - Sections 100, 103, 165, 165(1), 165(3), 166, 166(3) and 428

Appeal No. : Crl. Appeal Nos. 153, 230, 427 and 429/2001

Appellant : Narender, ;usha, ;satis Kumar and Navin

Respondent : State

Advocate for Def. : Richa Kapoor, APP

Advocate for Pet/Ap. : Ritu Gauba, Adv

Judgement :

Aruna Suresh, J.

1. The appellants have assailed the judgment and order on conviction dated 29th January, 2001 whereby appellants Navin Kumar and Satis Kumar have been convicted for offence under Section 364-A Indian Penal Code (hereinafter referred

to as 'IPC') and are sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default to undergo six months simple imprisonment (SI). Appellants Narender Kumar and Usha Sikka have been convicted for offence under Section 368/34 IPC and are sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default of payment of fine to undergo six months SI. Benefit under Section 428 Cr.P.C. has also been given to the appellants.

2. As per the prosecution case, a seven years old child named Pankhil was kidnapped on 23.1.1999 at about 6.30 P.M. from Rajouri Garden in front of House No. S-37, in a white Maruti car. The child had left his house to buy some samosa and did not return home thereafter.

3. The father of the child Shri Gurdip Singh (PW-7), informed the police about the aforesaid incident. Pursuant to the information recorded vide DD No. 17-A (Ex.PW-1/A), SI Sanjay Kumar PW-21 accompanied by Const. Banwari Lal PW-5, reached the place of occurrence where he met Shri Gurdip Singh. The statement Ex.PW-7/A of Shri Gurdip Singh was recorded and endorsed by SI Sanjay Kumar. ASI Prem Lal (PW-2), Duty Officer at Police Station Rajouri Garden recorded FIR No. 205/2003, Ex.PW-2/A under Section 365 IPC on the basis of the said statement.

4. The telephones of the complainant and his tenant Manmeet Singh were put under observation on 24.1.1999. On 25.1.1999 a ransom call was received at telephone No. 5934524 which belonged to a tenant of Gurdip Singh, namely, Manmeet Singh PW-10, and ransom of Rs. 4,50,000/- was demanded from the complainant. On 26.1.1999 another call was received on the said number and the caller asked to Gurdip Singh if the money had been arranged for. Gurdip Singh, however, had not been able to arrange the money by then.

5. These phone calls were intermittently being made from I.S.B.T. and Old Delhi Railway Station, thus in the morning of 27.1.1999 teams of police officials were deployed near various PCO booths. In the morning of the same day another phone call was received at the aforementioned number and the caller again enquired if the money had been arranged, upon which Gurdip Singh informed him that Rs. 1,50,000/- had been arranged. The complainant was directed to go to

platform No. 6 at Old Delhi Railway Station wherefrom he was supposed to catch a train for Holambikalan and to leave the money near the railway signal at Holambikalan. This call was traced by SI Vijay Singh (PW-15), who was deputed at MTNL telephone exchange Rajouri Garden. He traced the call to platform No. 6 at the Old Delhi Railway Station. The police party consisting of SI Raj Kumar (PW-19), Const. Raja Ram (PW-22) and Const. Devinder (PW-12) who had already been deployed at the Old Delhi Railway Station swung into action on being informed of the same vide D.M. Net. Two perpetrators were apprehended by the police, of which accused Navin was apprehended at the PCO booth itself, while accused Satish tried to escape but was chased and apprehended by Const. Raja Ram.

6. After apprehending the accused persons, the message was flashed on the D.M. Net. On receipt of the message, SHO Rajouri Garden B.S. Dahiya and ACP, Rajouri Garden reached the spot followed by Investigating Officer SI Sanjay Kumar who was accompanied by Lady HC Poonam Tyagi (PW-11), complainant Gurdip Singh and his neighbour Praduman Puri (PW-8). Both the accused persons on being interrogated revealed that the child was confined in the house of accused Navin at Taranagar in Sonapat. The accused persons led the police party to House No. 98, Taranagar, Sonapat and got the child recovered who was found in confinement of accused Narender Sikka and accused Usha Sikka at Sonapat. Vide recovery memo Ex.PW-21/D. Accused Narender Sikka and Usha Sikka were interrogated and on finding the proof of commission of an offence, they were arrested under Section 368 IPC vide arrest memo Ex.PW-21/O and Ex.PW-21/P respectively. The police party, thereafter, returned to Delhi along with the accused persons. Disclosure statement Ex.PW-21/A of accused Navin and Ex.PW-21/B of accused Satish were recorded on the same day.

7. On 29.1.1999, SI Sanjay Kumar went back to Sonapat accompanied by HC Paramjeet Singh (PW-18) and accused Navin. On the pointing out of accused Navin, he took into possession a white Maruti Car which was used for kidnapping Master Pankhil vide recovery memo Ex.PW-21/G from the possession of Sh. Randhawa Singh (PW-20).

8. On 2.2.1999, the records of telephone No. 5934524 for the period from 24.1.1999 to 27.1.1999, Ex.PW-21/H were obtained from the telephone exchange by SI Sanjay Kumar. The statements of the witnesses were thereafter recorded and the investigation was completed.

9. Equipped with the recovery of the kidnapped child, the seizure of the car used in the kidnapping and record of the calls made by accused Navin and Satish and other ocular evidence, charge sheet was filed against the appellants under Sections 364-A/368/34 IPC for having kidnapped Master Pankhil.

10. The trial court framed following charges against accused Navin Kumar and Satish Kumar on 25.5.1999:

That you both the accused Naveen Kumar s/o Narender Kumar and Satish S/o Shri Ram have kidnapped the child Pankhil s/o Gurdeep Singh, at about 6.30 P.M. on 23.1.1999 from Rajouri Garden and subsequently demanded the ransom for the release of the child. Thereby you have committed the offence under Section 364-A IPC....

11. Following charges were framed against accused Narender Kumar and Usha Sikka:

That you both the accused Narender Kumar s/o Pyare Lal and Usha Sikka w/o Narender Kumar knowingly confined and kidnapped the child Pankhil s/o Gurdeep Singh from 23.1.1999 to 27.1.1999. Thereby you have committed the offence under Section 368 IPC...

12. Since the accused persons refuted the allegations made in the charges against them and pleaded not guilty, the case was put to trial.

13. The trial court after discussing the entire evidence of the prosecution found following incriminating evidence against the appellants, sufficient to convict them:

(a) That on 23/1/1999, a wireless message was received in control room at about 6.42 pm with regard to kidnapping in a white colour vehicle and same was conveyed to police station which was recorded vide DD No. 17A Ext. PW1/A.

(b) The prosecution has further proved that the DD Entry No. 17A Ext. PW1/A was handed over to PW6 Krishan Bahadur Thapa, DHG Constable to hand over to PW21, SI Sanjeev Kumar, who in pursuance of DD entry went to house No. S-37, Janta Market, Rajouri Garden alongwith PW5 Const. Banwari Lal and then, he recorded the statement of complainant PW7 Gurdeep Singh, who happened to be the father of kidnapped child and his statement is Ext. PW7/A and he flashed the message of kidnapping of child Pankhil.

PW7 Gurdeep Singh has deposed that at about 6.30 pm he received a telephonic call from his wife that his son had been kidnapped and he lodged the complaint with the police. He further deposed that on 25/1/99, he received a telephonic call from the kidnapper on the telephone of his tenant PW10, Manmeet Singh on telephone No. 5934524 and the kidnapper demanded ransom of Rs. 4,50,000/- and again on 26/1/1999, other telephonic call was received in which he was asked to arrange money. He further stated that on 27/1/1999, another call was received at about 11 am at the telephone of PW10 Manmeet Singh. Thereafter, call was received at 1 pm in which again, he was asked to arrange money and he replied that he could arrange only Rs. 1,50,000/-. He was told on telephone to catch train from Old Delhi Railway Station from platform No. 6 for Columbia Railway Station and then to leave money near the railway signal of Columbia Railway Station. Meanwhile, he received call from police and he went to railway station where the police had arrested two persons. He recognized the voice of accused Naveen Kumar. Disclosure statement of accused persons was recorded by police. He accompanied the police and on pointing out of the accused, child was recovered from the house of Naveen Kumar.

(c) It has further proved by the prosecution that child Pankhil was kidnapped and child was examined as PW14. Master Pankhil has stated as below:

I was kidnapped by the accused persons who has been correctly identified by the witness. I was kidnapped from Delhi and taken to Sonapat. I was given sweets. I was brought back by my father. This fact is also proved by the statement of PW13 Smt. Devender Kaur, mother of child Pankhil. There is nothing on the record on which basis a small child of seven years Pankhil and other prosecution witnesses

can be disbelieved.

(d) The prosecution have further proved the making of threatening calls by examining PW4 Inder Singh J.T.O. and proved the copy of the telephone recording report as Ext. PW-4/A, further by the statement of PW7 Gurdeep Singh, PW10 Manmeet Singh, PW15 SI Vijay Singh who observed the call in telephone exchange and PW18 HC Paramjeet Singh, who was also deputed in switch room on 25/1/1999 and 26/1/1999.

(e) The prosecution has further proved the hiring of Maruti Car No. HR-10B-8507 (which was used for kidnapping) by examining PW20 Randhawa Singh, owner of the car and PW16 Rajender Kumar who sold the car to PW20 Randhawa Singh. The fact has been further proved by examining PW17 SI Satinder, who served him notice Under Section 133 of Motor Vehicle Act Ext.PW17/A upon PW16 Rajender and on PW20 Randhawa Singh and the fact was further proved by IO by making recovery of the above said car at the instance of accused Naveen vide Ext. PW21/G.

(f) The prosecution has proved the arrest of accused Naveen and Satish from Old Delhi Railway Station by examining PW12 Const. Devender, PW19 SI Raj Kumar and PW22 Const. Raja Ram. All the witnesses have deposed in consistent manner that on 27/1/1999, they were deputed at Old Delhi Railway Station. AT about 1.10 p.m. SI Raj Kumar received a message on D.M. Net that kidnapper had made telephonic call from platform No. 6. They rushed to platform No. 6 and apprehended Naveen at the spot. The other accused Satish tried to run away but he was also apprehended. Their arrest is further proved by PW7 Gurdeep Singh, the complainant, who also reached at the spot, PW8 Parduman Puri, PW9 ACP Parmod Singh Kushwah, PW11 WHC Poonam Tyagi and PW21, SI Sanjay Kumar, who also reached at the Old Delhi Railway Station.

(g) The prosecution has further proved the recovery of kidnapped child Pankhil, PW14, from the custody of accused Smt. Usha Sikka and Narender Kumar, parents of accused Navin Kumar from Sonapat. The version of the prosecution is supported by the statement of PW14, Master Pankhil, PW7 Gurdeep Singh, PW8 Parduman Puri, PW11 Lady HC Poonam Tyagi, PW18 HC Paramjeet Singh.

(h) The prosecution has further proved the FIR bearing No. 74 of 99 as Ext. PW2/A by the examination of PW2 ASI Prem Lal.

(i) In nut-shell, the prosecution has proved its case that the child Pankhil aged seven years was kidnapped from Delhi and immediately, PW13 Smt. Devender Kaur, mother of Pankhil informed her husband PW7 Gurdeep Singh, who send information which was recorded vide DD entry No. 17/A, Ext. PW1/A and said DD was handed over to PW21 SI Sanjay Kumar through PW6 Const. Krishan Bahadur Thapa and Gurdeep Singh made statement Ext. PW7/A before PW21 SI Sanjay and SI Sanjay send a rukka through PW5 Const. Banwari Lal to police station for the registration of the case where PW2 ASI Prem Lal recorded the formal FIR. PW21 SI Sanjay Kumar recovered a chappal of the child from the spot and deposited with PW3 HC Sri Bhagwan MHC(M) on 23.1.1999 vide making the entry in the register Ext. PW3/A. Thereafter PW15 SI Vijay Singh was deputed in switch room who observed the telephonic call made to PW7 Gurdeep Singh on the telephone No. 5934524 installed at the residence of PW10 Manmeet Singh who happened to be the tenant of PW7 Gurdip Singh. Kidnappers made the telephonic calls on 25/1/1999, 26/1/1999 and 27/1/1999 in which a ransom of Rs. 4,50,000/- was demanded. Kidnappers Naveen Kumar and Satish Kumar hired a Maruti Car No. HR-10-B-8507 from PW20 Randhawa Singh, who purchased the same from PW16 Rajender Kumar. The car was hired on 24/1/1999. The kidnappers accused Naveen Kumar and Satish Kumar made a telephonic call from platform No. 6, Old Delhi Railway Station. The car was detected and they were apprehended by PW19 SI Raj Kumar with the assistance of PW22 Const. Raja Ram and PW12 Const. Devender Kumar. Immediately, the other police officials PW20 SI Sanjay Kumar, HC Paramjeet Singh, PW11 Lady Const. Poonam Tyagi, ACP Parmod Singh Kushwah reached on the spot. Thereafter, PW7 Gurdeep Singh alongwith PW8 Pradhuman Puri also reached at Old Delhi Railway Station. The accused were apprehended while making threatening calls and calls have been proved by PW4 Inder Singh J.T.O. At Old Delhi Railway Station, accused Navin Kumar made disclosure statement Ext. PW21/A and accused Satish Kumar made disclosure statement Ext. PW21/B. At the instance of both the accused persons, PW21 SI Sanjay Kumar took the permission from PW9 Pramod Kumar Kushwah to take accused persons to recover the kidnapped child and on the pointing out of the

accused, PW27, SI Sanjay, PW19 SI Raj Kumar, PW18 HC Paramjeet Singh, PW22 Const. Raja Ram, PW12 Const. Devender, PW11 Lady HC Poonam Tyagi, PW7 Gurdeep Singh and PW8 Pradhuman Puri went to Sonapat where from at the instance of accused persons, child was recovered from Narender Kumar and Smt. Usha Sikka, parents of accused Naveen Kumar vide recovery memo Ext. PW21/D. Accused Narender Kumar was arrested vide Ext.PW21/E and accused Smt. Usha Sikka was arrested vide Ext.PW11/A. Child was brought to Delhi and handed over to his parents. In this manner, case of the prosecution stands proved beyond reasonable doubt.

14. Ms. Ritu Gauba, learned Counsel for the appellants has argued that there are grave and material contradictions in the statement of witnesses which have destroyed and demolished the entire prosecution case. The investigation of the police has been at random and it has failed to prove the case of ransom against appellants Navin and Satish Kumar. She has argued that one of the major contradictions in the testimony of the witnesses, namely, Gurdip Singh (PW-7), Shri Parduman Puri (PW-8), ACP Pramod Singh Kushwah (PW-9), Lady HC Poonam Tyagi (PW-11), Const. Devinder (PW-12), HC Paramjeet Singh (PW-18), SI Raj Kumar (PW-19), SI Sanjay Kumar (PW-21) and Const. Raja Ram (PW-22) is regarding the persons who had gone to Sonapat on 27.1.1999 for recovery of the child and the nature of transport used by the witnesses for going to Sonapat.

15. The contradictions as highlighted by the defence counsel are:

(a) Gurdip Singh PW-7 in his cross examination:..Thereafter both the accused, I, my friend, inquiry officer Sanjay and lady constable were went to Sonipat by my Sumo (my relative's). ACP Kushwaha was on his own car also went Sonipat but I cannot tell that by which vehicle they went to Sonipat....(b) Parduman Puri PW-8 in his cross examination:..We went to Sonipat on Tata Sumo the number of which I cannot say. I also cannot say who was the owner of the Tata Sumo. A Sikh gentleman was driving the Sumo, I, Gurdeep Singh, and Sanjay and both the accused persons were present in the vehicle. I cannot say if any other vehicle accompanied the vehicle in which I was present or not....(c) HC Poonam Tyagi PW-11 in her cross examination:..At about 4.45 P.M. I was asked by Sanjay Singh

to accompany him to Sonipat and I agreed. Sanjay Singh, myself, Head const. Paramjeet, Devender, Raja Ram, Naveen, Satish, Gurdeep left for Sonipat. There was one more Sikh gentleman but I do not remember his name. There was no other person except the persons whose name or description I have given above. All of us went in the same Tata Sumo to Sonipat....(d) Const. Devinder PW-12 in his cross examination: We went on govt. vehicle for Sonipat. That vehicle was Temp Travels. In this tempo travel to accused, 3 police officials (our team) and 1 I.O. And another constable whose name I do not remember went to Sonipat. I cannot tell the registration number of that Govt. vehicle. One or two other private vehicle like cars also went to Sonipat. Both were Maruti cars. I cannot tell the names of the person who were travelling in those cars but one ACP Sh. Khushwa was with them. We left Delhi for Sonipat at 11.45 A.M. and reached at Sonipat in 45 minutes....(e) HC Paramjeet Singh PW-18 in his examination-in-chief: In Tata Sumo from railway station along with S.I. Sanjay, S.I. Raj Kumar, Const. Raja Ram, Const. Devinder, WHC Poonam Tyagi and Gurdeep Singh, Parduman Puri went to Sonipat in the same vehicle....(f) SI Raj Kumar PW-19 in his cross examination: I cannot say where from S.I. Sanjay reached on the spot. After the arrival of S.I. Sanjay, I remained on the spot for about 30-40 minutes. Thereafter I left the railway station along with const. Devinder and came back to Spl. Staff Tagore Garden....(g) SI Sanjay Kumar PW-21 in his examination in chief: ...I took the permission from ACP to go out of station. I along with const. Raja Ram, Const. Devinder, HC Paramjeet, Lady HC Poonam and both accused persons and the complainant and his neighbourer Praduman Puri went to Sonipat in Tata Sumo....

16. It is argued that Parduman Puri (PW-8) does not speak of a Lady Const. having accompanied them to Sonapat, whereas Lady HC Poonam Tyagi (PW-11) claimed that she had gone to Sonapat alongwith other police officials, the appellants Navin and Satish Kumar as well as some more persons one of them being ACP Pramod Singh Kushwah (PW-9). Whereas PW-9 has explicitly stated that he did not go to Sonapat and had given permission to the Investigating Officer and the other staff for going to Sonapat for recovery of the child. Const. Devinder (PW-12) has also stated that ACP Pramod Singh Kushwah (PW-9) had gone with them to Sonapat. Whereas HC Paramjeet Singh (PW-18) is silent about the accused persons having gone to Sonapat with the police party. On the other hand,

SI Raj Kumar (PW-19) has stated that he and Devinder had gone back to Rajouri Garden and did not go to Sonapat.

17. True that, we find these witnesses varying in giving names of the persons who had gone to Sonapat along with Investigating Officer SI Sanjay Kumar (PW-21). However, these variations and omissions in the names of the persons who went to Sonapat are natural as number of persons had gone to Sonapat along with the police party for the recovery of the child. The incident had taken place in such a manner that on receipt of telephone call at about 1.00 P.M. on 27.1.1999 (which was under observation) SI Vijay Singh (PW-15) flashed a message on D.M.Net that the appellants have been making calls from PCO Old Delhi Railway Station, Platform No. 6. The raiding party which had already gone to Old Delhi Railway Station consisting of Const. Raja Ram and Const. Devinder headed by SI Raj Kumar (PW-19) on hearing the message on D.M.Net apprehended appellant Naveen Kumar at Platform No. 6, the moment he put down the telephone receiver. Appellant Satish Kumar tried to escape but, was chased and apprehended by Const. Raja Ram. Investigating Officer SI Sanjay Kumar (PW-21) went to Old Delhi Railway Station along with Lady HC Poonam Tyagi (PW-11) on coming to know about the apprehension of the appellants. Complainant Gurdip Singh (PW-7) and his neighbour Parduman Puri (PW-8) also went in the Tata Sumo to railway station. In the meantime, B.S. Dahiya, SHO and ACP Rajouri Garden Pramod Singh Kushwah (PW-9) had also reached at the railway station. HC Paramjeet Singh (PW-18) had accompanied the SHO and was also present at the spot. Ten persons including the complainant and another independent witness Parduman Puri (PW8) had reached Old Delhi railway station at Platform No. 6 from different places within a short period besides both the appellants who had been apprehended. SI Sanjay Kumar had taken permission from ACP for going out of station after the appellants disclosed that the kidnapped child was kept in the house of appellant Navin at Sonapat. He along with Const. Raja Ram, Const. Devinder, HC Paramjeet, Lady HC Poonam Tyagi, complainant Gurdip Singh, his neighbour Parduman Puri and the appellants went to Sonapat in the Tata Sumo.

18. The only witness who has disputed the departure of Const. Devinder Kumar from Delhi to Sonapat is SI Raj Kumar (PW-19), who in his cross examination has

stated that he along with Const. Devinder had left the railway station and came back to special staff, Tagore Garden. Since all the other witnesses are coherent and consistent with each other regarding the departure of Const. Devinder along with SI Sanjay Kumar and other police officials, the complainant Gurdip Singh, public witness Praduman Puri and the appellants, the inconsistency in the statement of SI Raj Kumar which has crept in the cross examination, does not in any manner affect the prosecution case as to who went to Sonapat for the recovery of the kidnapped child, which otherwise stands proved on the record.

19. Similarly, only Praduman Puri (PW-8) has not stated that Lady HC Poonam Tyagi had accompanied them to Sonapat. This is only an omission and not a contradiction. He being an independent witness unknown to the intricacies of the investigation, probably did not name Lady HC Poonam Tyagi accompanying them to Sonapat. It is pertinent that no suggestion was given to this witness in the cross examination if any Lady Const. had accompanied them to Sonapat. The incident had taken place on 26.1.1999. At that time Praduman Puri was a student of 3rd year B.A. in Shivaji College, may be that he did not feel the importance of disclosing the presence of a Lady HC at the railway station and her accompanying them to Sonapat. Meticulous description of the situation, place, number of persons present, gender, etc. cannot be expected from an independent witness who otherwise is truthful. We do not find this omission damaging the prosecution case.

20. ACP Pramod Singh Kushwah (PW-9) did reach Old Delhi railway station, gave permission to SI Sanjay Kumar for going out of station to Sonapat, did not accompany the raiding party to Sonapat. The only witness for the prosecution who has spoken about ACP accompanying them to Sonapat is Const. Devinder (PW-12) and Lady HC Poonam Tyagi (PW-11) and Gurdip Singh (PW-7).

21. As already discussed above, small discrepancies which have crept in the cross examination of Gurdip Singh (PW-7), Const. Devinder (PW-12) are nothing but a confusion in their mind while recollecting the names of the persons who had gone to Sonapat. Their testimony when read as a whole is credible. Small inconsistencies in their cross examination, therefore, does not jeopardize the prosecution case.

22. Learned Counsel for the appellants has emphasized that no permission was sought by SI Sanjay Kumar (PW-21) for Lady HC Poonam Tyagi and SI Raj Kumar. ACP Pramod Singh Kushwah (PW-9) has categorically deposed that he had granted permission to SI Sanjay Kumar as was necessary to leave the station. Therefore, this submission is of no consequence.

23. All the prosecution witnesses are categorical in their statement when they said that they had gone to Sonapat in Tata Sumo. It has come in evidence that besides Tata Sumo probably one of two other cars also went to Sonapat. It is only Const. Devinder (PW-12) who has deposed that they had gone in Tempo Traveller which was a govt. vehicle and two other private Maruti cars had also gone to Sonapat. Except his statement, we do not find any other witness deposition contrary to the prosecution case that, the entire raiding party including the appellants had travelled by Tata Sumo brought by Gurdip Singh (PW-7), the complainant.

24. When all the witnesses support the prosecution case, but except one, the prosecution story cannot be demolished only on the statement of one witness who makes departure from the prosecution case and that too only in the cross examination.

25. The second limb of argument of the learned Counsel for the appellant is that; not a single witness has been able to tell size, shape, colour, style of the house or topography of the area indicating that alleged story of going to Sonapat is nothing but a bundle of lies. To emphasize, she has highlighted few lines of the testimony of various witnesses as under:

(a) Gurdip Singh (PW-7) in his cross examination:.I went inside the house only upto baranda where child was playing therefore, I cannot tell the number of rooms in the house because I did not went inside the house. When we assembled in the house of the accused, total persons went from Delhi were about 10 in number. Thereafter, we remained in that house for about 1/2 hour....(b) Parduman Puri (PW-8) in his cross examination:.I do not remember whether I entered in the house or not. I do not remember whether the house was single storey or double storey. I cannot say that the house was consisting of how much rooms....(c) Lady H.C. Poonam Tyagi (PW-11) in her cross examination:.The house to which

Naveen led us was a Pakka house, however, I cannot tell whether it was on 100 sq.yds or 500 sq.yds. It was a single storied house.... We went inside a room where a boy and old couple was there....(d) Const. Devinder (PW-12) in his cross examination:.There were several neighbouring houses by the sides of that house and also in front of the house. The house is one side opened....(e) HC Paramjeet Singh (PW-18) in his cross examination:.I entered in the house along with police officials but I cannot tell how many rooms are in that house. Devinder jumped out the gate of house of accused Navin. The door opened in the open space of the house and thereafter there is balcony and then there is a room....(f) SI Sanjay Kumar (PW-21) in his cross examination:.The house of Navin was having Iron Gate whose height I do not remember. Devinder entered the house of Naveen by jumping the wall adjoining the Gate. The child was kept on a cot lying in the courtyard open space. We did not enter into the rooms of the house. I cannot tell how many rooms are in the house....(g) Const. Raja Ram (PW-22) in his cross examination:..The height of the gate of about 6 ft. which was jumped over by Const. Devinder to open the door from inside. There was gap between the gate and roof. The child was sitting in a room when we entered inside.... I do not remember the size of room from which the child was recovered. There were about 2-3 rooms in the house where the raid was conducted....

26. The contradictions as highlighted above, are trivial in nature. A raiding party had gone to Sonapat along with appellants. The house in which the kidnapped child was kept belonged to appellant Navin. Navin had led the raiding party to his house. The police officials, complaint Gurdip Singh, Praduman Puri, a neighbour of the complainant were naturally concerned about the welfare and safety of the child. They had not gone to Sonapat to measure the plot on which the house was constructed, the number of rooms constructed thereon, the house in the neighbourhood, etc. All the witnesses are consistence when they say that the house has an iron gate which was bolted from inside. The boundary wall was about 6 ft. in height. The wall was scaled by Const. Devinder Kumar for going inside the house. This was so done deliberately not to ring a bell of alarm and alert to the persons who were having the custody of the child at that time. Obviously, that was the reason that door was not knocked at for getting it opened but the wall was scaled by Const. Devinder Kumar. Obviously, the complainant and other

persons feared untoward incident which might take place if the persons inside the house were alarmed or suspected the arrival of police outside the house.

27. None of the witnesses went inside the house as the child was found sitting with appellants Narender and Usha on a cot in the barandah where the iron gate opened. Const. Raja Ram (PW-22) did state that child was sitting in a room when they entered inside but he did not remember the size of the room from which the child was recovered. Possibility is that he described barandah as a room. Be that as it may, the description of the house as per his perception given by Const. Raja Ram is insignificant under the facts and circumstances of the case.

28. In 'Rajesh Dalal and Ors. v. State ' as referred to by learned Counsel for the appellants, there was previous enmity between the parties because of marriage of the accused. There were glaring discrepancies in the examination and cross examination of the witnesses. Therefore, in that context, the court found that even non-description of the house in which the kidnapped child, aged about 17 years, a basket ball champion was detained after having been kidnapped from outside the school gate in the presence of huge gathering and not being witnesses of the kidnapping, the court allowed the appeal and acquitted the appellants. This case, therefore, is of no assistance to the appellants.

29. Another argument advanced by the learned Counsel for the appellants is that the prosecution witnesses have given different time of their departure from Delhi to Sonapat and also the time spent by the police party at Sonapat in the house of accused Navin. True that, there are some discrepancies in the statements of the witnesses regarding the time they left Delhi for Sonapat and also the time spent by the police party and persons accompanying the police at Sonapat. However, these contradictions are minor in nature. Graphical accuracy of the time, when the party left Delhi, the time when the party reached Sonapat and the time spent in the investigation of the case at Sonapat is not expected from any of the witnesses, especially when they were all pre-engaged in the investigation of the case and were concerned about the recovery of the child and after the recovery, in the investigation of the case. These discrepancies are bound to occur in a case like this where a minor child of 7 years old was kidnapped and was confined for about

three days before he got recovered.

30. Much has been emphasized on police party not joining any person; local residence of the area, from where the child was recovered, in the investigation of the case. The fact remains, the Investigating Officer did not ask any person from the neighbourhood to join them in the recovery of the child to avoid any lapse of time in search of the house of accused Navin and to recover the child if found there, may be with a view not to give an alarm to the persons who were with the child, fearing any harm might be done to the child if alarm was raised. The kidnapped child Pankhil was recovered from the house of accused Navin at Sonepat and the recovery of the child is fully proved on the record.

31. It has come in the cross-examination of SI Sanjay Kumar (PW-21) Investigating Officer that some persons from the locality had gathered from whom he made inquiries regarding the Maruti car which was used in kidnapping the child who all refused to disclose their names and addresses. The conduct of the public persons who had gathered at the spot during the investigation of the case is obvious as no one from Sonepat would have agreed to stand as a witness in a case to be tried out of the jurisdiction of Sonepat as they would have faced ordeal of going to the court at a far off place i.e. Delhi. City people are quite conscious of sufferings which they have to bear for giving evidence in a criminal court and therefore generally they are vary to signify to such witnessing. Under these circumstances, non joining of a person from public in the investigation of the case does not in any manner adversely affects the prosecution case.

32. The fact remains besides the police party, Gurdip Singh (PW-7) the complainant, Parduman Puri (PW-8) his neighbour; an independent witness were also present at the time of the search of the house of appellant Navin and recovery of the child. The mere fact that the search witnesses were not local persons does not vitiate the search, especially when no independent and respectable witness of the locality was available as they were unwilling to join the search and the investigation of the case.

33. It is emphasized by the learned Counsel for the appellants that the prosecution did not comply with the provisions contained in Section 166(3) Cr.P.C. and non-

compliance, therefore, raises doubt to the prosecution story regarding the search of the house of Navin and recovery of the kidnapped child from the said house at Sonapat. She has placed reliance on 'Manish Dixit and Ors. v. State of Rajasthan AIR 2001 SC 93'.

34. Section 166 Cr.P.C. lays down the procedure to be followed by an Officer In-charge of a Police station where searched are to be made outside the limits of the Police Station concerned. Sub-section (1) requires an officer incharge of a Police Station or a Police Officer not being below the rank of Sub Inspector making an investigation may require an officer incharge of another Police Station, to cause to a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station. It is optional for the former officer to do so. Sub-section (2) enjoins a duty upon such officer, so required to proceed according to provision of Section 165 Cr.P.C. and forward the thing found, if any, to the officer at whose request the search was made. Sub-Section 3 and 4 are relevant in the present case as the Investigating Officer SI Sanjay Kumar (PW-21) along with other staff opted to conduct a search for Master Pankhil (PW-14), the kidnapped child at Sonapat by himself. The said two sub-Sections read as follows:

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under Sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of Section 165, as if such place were within the limits of his own police station. (4) Any officer conducting a search under Sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under Section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in Sub-sections (1) and (3) of Section 165.

35. From reading of the said two sub-sections, it is clear that Investigating Officer belonging to one Police Station is permitted to search any place falling within the limits of another police station in certain exigencies without making any requirement to the police officer of the police station where the search is to be conducted in certain exigencies. One such exigency can be when there is possibility of delay in requisitioning the services of a police officer of another police station and such delay could defeat the very purpose of the search. In such circumstances, when search is conducted by the Investigating Officer without requisitioning the services of the officer incharge of the another police station within whose jurisdiction the search was conducted, under Sub-section (4) he is required to forthwith send notice of the search to the officer incharge of the police station within the limits of which such place is situated, and is also required to send along with such notice a copy of the list, if any, prepared under Section 100 Cr.P.C. He is also required to send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records prepared by him under Sub-Section 1 and 3 of Section 165 Cr.P.C.

36. In this case, admittedly, SI Sanjay Kumar (PW-21) did not give any intimation of the police of Sonapat within whose jurisdiction the raid was conducted before conducting the raid. Similarly, after recovery of the child and arrest of accused Narender and Usha, he did not inform the concerned police station or any Magistrate at Sonapat as was required. The raiding party left Sonapat after the search of the house and recovery of the child for Delhi. Therefore, provisions contained in Section 166 Cr.P.C. were not complied with by the prosecution while conducting search of the house of accused Navin at Sonapat or even after completion of the search and recovery of the child.

37. The question, therefore, to be considered is whether non compliance of Section 166 Cr.P.C. makes impugned search illegal and is fatal to the prosecution case? To our mind, it is not.

38. The failure to comply with the provisions regulating searches may cast doubt upon bona fides of the officers conducting the searches. However, when once the evidence has been believed, it is obviously no defence to say that the evidence

was obtained in an irregular manner. There is no provision in law which makes such evidence inadmissible. However, contraventions of the provisions of the Section only cast duty on the court dealing with the case to examine the matter closely and also to see if the accused has been prejudiced as a result of the deviation from the prescribed procedure. Once the recovery or discovery of a thing is otherwise proved, the manner in which it is made becomes immaterial. Therefore, failure to comply with the provisions of Section 166 Cr.P.C. does not in any manner vitiate the trial or conviction especially when the failure to comply with the said provisions is bona fides and not mala fides.

39. In the instant case, the Investigating Officer deviated from the procedure regulating searches as contained in Section 165 and 166 Cr.P.C. The fact remains, the kidnapped child Pankhil was recovered from the search made in the house of accused Navin at Sonapat overlooking the provisions of Section 165-166 Cr.P.C. The factum of recovery of the child stands fully proved on the record. Therefore, in the facts and circumstances of this case, contraventions of the provisions of Section in no manner nullify the recovery of the child nor makes the recovery illegal. Thus, failure to comply with the provisions on the part of the Investigating Officer was bona fide and not mala fide. Hence, the recovery of the child in pursuance of the alleged illegal search is valid. The trial of the case, therefore, is not vitiated.

40. In 'Radha Kishan v. State of Uttar Pradesh : (1963)11LLJ667SC ', it was held in para 5 as under:

(5) We will deal with the last four points first. So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165, Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues....

41. It is submitted by the learned Counsel for the appellants that prosecution has failed to prove that appellants Navin and Satish had kidnapped Master Pankhil for ransom so as to invite their conviction under Section 364-A IPC.

42. Section 364-A IPC is relevant for this purpose and is reproduced as under:

364A. Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention of the 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 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 organization 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].

43. Bare reading of Section 364-A IPC, therefore, indicates that kidnapping for ransom would be attracted when the kidnappers make a demand to pay ransom. To attract the provisions of Section 364-A IPC, the prosecution has to prove:

(i) That the accused kidnapped or abducted a person;

(2) Kept him in detention after such kidnapping or abduction;

(3) The kidnapping or abduction was for ransom.

44. In the present case, from the testimony of Smt. Devender Kaur (PW-13), Gurdip Singh (PW-7), the complainant, Master Pankhil (PW-14); the kidnapped child, it is proved that minor child was kidnapped by appellants Navin and Satish. The minor child Pankhil as PW-14 has deposed:

I was kidnapped by accused persons who have been correctly identified by the witness. I was kidnapped from Delhi and taken to Sonipat. I was given sweets. I was brought back from sonipat by my father (papa).

Thus, it is clear that he was taken away by appellants Navin and Satish to Sonapat after he was given sweets. He came to know the name of place from his father

where he was recovered from the custody of the appellants Narender and Usha. The trial court found his statement trustworthy. The child duly identified the appellants in the court. The disclosure statements Ex.PW-21/A of accused Navin and Ex.PW-21/B of accused Satish recorded by SI Sanjay Kumar at Old Delhi Railway Station on 27.1.1999 led to the recovery of the child from the house of accused Navin Kumar at Sonapat. The trial court also found the testimony of Gurdip Singh PW-7, father of the child credible. Besides, from the testimony of SI Sanjay Kumar (PW-21), SI Raj Kumar (PW-19), HC Paramjeet Singh (PW-18), Const. Raja Ram (PW22), Const. Devender (PW12), Lady HC Poonam Tyagi (PW11), Gurdip Singh (PW7) and Pradhuman Puri (PW8) who all went to Sonapat, the confinement of the child in the house of accused Navin by the appellants Navin, Satish, Narender and Usha is also proved as the child was recovered after three- four days of his kidnapping. The child was recovered from the house, the main door of which was found bolted from inside.

45. The testimony of Randhawa Singh (PW-20) also proves that Navin Kumar had hired Maruti car No. HR-10-B-8507 from Sonapat on 18.1.1999 for a week and the vehicle was returned to him on 24.1.1999. This vehicle was used for kidnapping Master Pankhil on 23.1.1999 at about 6.30 P.M. when the child had gone to purchase samosas.

46. Kidnapping of the minor and his confinement by appellants Navin and Satish and his confinement by appellants Narender and Usha therefore is proved on the record. We do not find any reason to disagree with the findings of the learned Sessions Judge so far as the kidnapping of the minor and his confinement is concerned.

47. The only question left to be considered is whether the last ingredient of Section 364-A IPC has been proved by the prosecution i.e. whether prosecution has successfully proved that the kidnapping of the child was for ransom. In its endeavor to prove that kidnapping was for ransom, the prosecution has examined Manmeet Singh (PW-10); tenant of the complainant Gurdip Singh. It was at the telephone number 5934524 of Manmeet Singh that ransom calls were being made from 25.1.1999 intermittently. Gurdip Singh (PW-7), the complainant and father of

the kidnapped child has testified as under: On the next day on 25.1.99 we received a telephonic call from the kidnapper on the telephone of our tenant who called me and I heard the telephone call. I was informed on the telephone that your son is in my custody and I should arrange a ransom of about 4,50,000/- and then telephone was cut off. Again on 26.1.99 another telephone call was received. I was called on the telephone by my tenant. I was asked whether the money has been arranged. I replied that I am a poor person. My wife has become unconscious and you get the arrange talk of the child with my wife. On this the telephone call was cut off.

On 27.1.99 at about 11 a.m. our tenant attended the telephone on which he was asked to call Gurdip (Me). I went to up stair and sat near the telephone to wait for call. At about 1 p.m. again there was a telephonic call. I picked up the phone. From the other side, it was asked whether Gurdip is speaking. I replied it positive. From the other side, it was further asked whether the money has been arranged. I replied that sum of Rs. 1,50,000/- has been arranged. On my asking, the kidnapper told me that my son was wearing blue jeans, yellow sweater, red patka and chappal in one foot. I was told to catch hold the train from old Delhi Rly. Station at platform No. 6 wherefrom to catch train for Colambia and then to leave the money near the Rly. Signal of Colambia Rly. Stn....

48. From his testimony thus it is clear that the kidnappers did not extend any threat to the life or to cause hurt to the child. From the conduct of the kidnappers as indicated in the testimony of the complainant, it cannot be inferred that kidnappers by their conduct gave rise to a reasonable apprehension that the child might be put to death or hurt or the kidnappers had caused hurt or death to the kidnapped child in order to compel the complainant to pay ransom of Rs. 4,50,000/- as demanded by him.

49. Master Pankhil (PW-14) has not spoken anything of being tortured, threatened or injured or hurt by any of the appellants since after his kidnapping till his recovery. He was found sitting on the cot with appellants Narender and Usha when the raiding party entered the house of Navin at Sonapat. One of the witnesses has even said in the cross examination that child was found playing in

verandah. There is no evidence to indicate that the kidnapped child Master Pankhil was frightened in the company/custody of Narender and Usha.

50. The telephone owned by Manmeet Singh on which the calls were being received was kept under observation from 24.1.1999. The call record has been proved in evidence as Ex.PW-4/A by Shri Inder Singh Aneja, JTP, MTNL (PW-4). Thus, the prosecution has successfully proved that there were telephone calls demanding ransom of Rs. 4,50,000/- made by the kidnappers Navin and Satish, rather one of these calls helped the prosecution to apprehend and arrest Navin Kumar at the spot i.e. coin collection booth at Old Delhi Railway station and the accused Satish was also apprehended and arrested at the spot after a little chase.

51. However, the prosecution has failed to adduce any evidence on record that appellants had threatened to cause death or to cause hurt to the kidnapped child or the appellants by their conduct had given rise to a reasonable apprehension that the kidnapped child could be put to death or hurt to make Gurdip Singh (PW-7) to pay ransom. Mere demand for ransom amount for release of a kidnapped child is not sufficient to attract the provisions of Section 364-A IPC. Unless it is proved that the kidnapped child was threatened to put to death or hurt or that the conduct of the kidnappers was such which gave rise to a reasonable apprehension that he would be put to death or hurt if the ransom amount was not paid. The appellants, at no stage, while making ransom calls by their conduct gave rise to a reasonable apprehension to the complainant or member of his family that in the event of ransom amount being not paid, the kidnapped child would be put to death or hurt. There is total absence of evidence in regard to any threat or cause death or hurt to the kidnapped child. In the absence of any evidence about the appellants conducting themselves in a way which could give rise to a reasonable apprehension that child would be put to death or hurt, the ransom demand simplicitor under the circumstances of the case, is not sufficient to convict the appellants Navin and Satish for an offence punishable under Section 364-A IPC.

52. In 'Rafiq and Anr. v. State 2008 II AD (Delhi) 441', the Division Bench of this Court, in similar circumstances, where ransom calls were made on telephone with no threat of any kind, calls were simplicitor calls for ransom which led to the

recovery of the child, this Court observed, that in the total absence of evidence in regard to any threat to cause death or hurt to the kidnapped child and also for lack of evidence in regard to the appellants conducting themselves in a way that could give rise to a reasonable apprehension that the child would be put to death or hurt, the ransom demand simplicitor could not have brought the offence within the ambit of Section 364-A IPC and the court accordingly set aside the conviction and sentence of the appellants in the said case for offence punishable under Section 364-A and 365 IPC and maintained the conviction only under Section 363 IPC.

53. In 'Suman Sood @ Kamal Jeet Kaur v. State of Rajasthan : 2007 CriLJ4080 ', R was kidnapped by D and S and other persons. S happened to be the wife of D. The trial court convicted D for offence punishable under Section 364-A/120-B IPC besides other offences and was sentenced accordingly. However, the trial court acquitted S for the offence punishable under Sections 364-A/120-B IPC but, convicted her for offence punishable under Section 365/120-B IPC besides other offences. S was convicted for offence punishable under Section 364-A/120-B IPC in appeal by the High Court. Reversing the judgment of the high court, the Supreme Court observed that S was not a conspirator in kidnapping for ransom. No witness had directly or even indirectly deposed about the ransom by S and therefore from the evidence on record, it could not be said that she had committed offence punishable under Section 364-A IPC read with Section 120-B IPC. However, maintaining her conviction under Section 365/120-B IPC and other sections, it observed that S was being wife of D and living with him was very much aware of the fact that R had been kidnapped by her husband D and his companion. Rather she was keeping watch on the victim, provided the victim with food, medicine, etc.

54. In 'Jai Singh v. State NCT of Delhi Criminal Appeal No. 85/2001', decided on 20th February, 2009, while disagreeing with the submissions made by counsel for the appellant, we had observed in para 29 and 30 as under:

29. The submission of learned Counsel for the appellants ignores the expression 'or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt?' in Section 364-A IPC.

30. Implicit in every demand of ransom, as a condition to release the kidnapped child, is the threat that if the ransom would not be paid, the child would not be released and would be harmed. The very act of kidnapping a child and demanding ransom for his release, by the very nature of the act, would give rise to a reasonable apprehension that the child would be hurt or killed if ransom is not paid.

55. Aforesaid observations need to be explained with reference to the facts of said case. It was deposed by the witnesses therein that the caller had said that if he wanted the safety of his child, the ransom should be paid as demand.

56. Coming back to the present case, as already discussed above, there is no iota of evidence on record to reflect on the conduct of the appellants which might give rise to a reasonable apprehension that the child might be put to death or hurt. Admittedly, there was no such threat extended to the complainant by the kidnappers when ransom calls were made. Hence, prosecution has failed to bring home the guilt of the appellant for offence punishable under Section 364-A/34 IPC.

57. Since kidnapping and confinement of the kidnapped child Pankhil within the meaning of Section 365 has been proved on record, the appellants Navin, Satish, Narender and Usha Sikka are found guilty of having committed offence punishable under Section 365 IPC.

58. Appellants Narender and Usha Sikka have been convicted for offence punishable under Section 368 IPC.

59. Prosecution has successfully established on record that the child was recovered from the custody of appellant Narender and Usha Sikka from their residence i.e. House No. 98, Taranagar, Sonapat as the child was found sitting there, where he was confined.

60. Section 368 IPC becomes applicable when anyone is found guilty of having kidnapped or abducted such person with knowledge that the said person so confined has been kidnapped/abducted and such person has to be detained in the

same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or details such kidnapped/abducted person in confinement. Since in this case, we have found appellants Navin and Satish had kidnapped the child and confined him in a house at Sonapat with a condition to release him on receipt of amount stated by them to the complainant, we hold that appellants Narender and Usha had confined the kidnapped child with the same intention as that of Navin and Satish.

61. Under these circumstances, appellants Narender and Usha Sikka are liable to face sentence as prescribed under Section 368 IPC.

62. Since Appellants Navin and Satish are found guilty for offence punishable under Section 365 IPC, their conviction under Section 364-A is hereby set aside, instead they are convicted for offence punishable under Section 365/34 IPC.

63. Appellants Navin and Satish are hereby sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/- each and in default of payment of fine, to undergo simple imprisonment for six months for offence punishable under Section 365 IPC.

64. Since appellants Navin and Satish are on bail, they are directed to surrender themselves before the trial court to suffer the remaining sentence inflicted upon them within one week of this order. Benefit under Section 428 Cr.P.C. is also given to appellants Navin and Satish Kumar.

65. Appellants Narender and Usha Sikka, considering their age being senior citizens, are sentenced to undergo imprisonment already undergone by them and to pay a fine of Rs. 5,000/- each, in default of payment of fine to undergo simple imprisonment for six months for offence punishable under Section 368 IPC. They shall deposit the fine within ten days from the date of the order, failing which they shall surrender themselves before the trial court to face the sentence in default of payment of fine.

66. Trial court record be sent back immediately with the copy of the order.

