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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 15.05. 2009

Judgment delivered on: 20.05.2009

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CRL.A. No.32/2009

RITESH MITTAL @ SHAHI ...Appellant

Through : Mr. R.S.Malik, Advocate and
Mr. Siddharth Ahlawat, Advocate

versus

STATE ...Respondent

Through : Ms. Richa Kapoor, Advocate

CRL.A. No.111/2009

NARENDER CHAUHAN @ GUDDU ...Appellant

Through : Mr. Dhanbir Singh, Advocate
Mr. Deepinder Singh, Advocate

versus

STATE ...Respondent

Through : Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. Case of the prosecution may be noted, with reference to the investigation conducted. The police

machinery was set into motion on 4.1.2002 at 7:05 PM, when on the telephonic call by Prem Mittal PW-1, ASI U.R.Khan PW-10 recorded an entry Ex.PW-10/A, in the PCR Form that Milan, aged 9 years, son of the informant, was missing. The information was transmitted to the missing person's squad from where it was forwarded to PP Pitampura; and as recorded vide DD No.41A, Ex.PW-20/A, at 7:35PM. SI Praveen Kumar PW-20, along with Const. Jasbir from PP Pitampura reached House No.UP-78 Pitampura i.e. the house of the complainant, as they were deputed to investigate the matter. Prem Mittal PW-1, the father of the missing child met them. His statement Ex.PW-1/A was recorded as per which he informed that his son Milan Mittal, aged 9 years, had left the house at 3:30 PM to attend tuition classes and had not returned home. That the child was wearing blue jeans and blue T-shirt and was carrying a school bag. SI Praveen Kumar made an endorsement Ex.PW-2/B on the statement Ex.PW-1/A and sent Const. Jasbir to the police station for registration of an FIR at 8:30 PM. The FIR Ex.PW-3/A was registered for an offence punishable under Section 363 IPC by HC Suraj at 8:55 PM.

2. Two telephones (landline) having numbers 7220285 and 7417368 were installed in the house of Prem Mittal. The latter had a caller ID facility. The former did not have a caller

ID facility. Gaurav PW-19, a cousin of Milan Mittal who was in the house of Prem Mittal attended a call at 9:26 PM on landline number 7220285. The caller informed him that Milan had been kidnapped and demanded ransom in sum of Rs.20 lacs to release Milan. The call got disconnected. Another call was received at the same number on 9:29 PM and the kidnapper warned against informing the police. The information of ransom call being received was passed on to SI Praveen Kumar and the case was converted to one under Section 364-A IPC. Prem Mittal handed over a photograph of his son Milan to SI Praveen Kumar as recorded in the memo Ex.PW-20/C. Since the caller demanding ransom was contacting the family of Milan on the landline number 7220285 inasmuch as said number did not have a caller ID facility and not the other number which has a caller ID facility around 10:00 PM, SI Praveen Kumar got activated a caller ID facility on the landline number 7220285.

3. The next day i.e. on 5.1.2002, Naresh Kumar PW-2 the uncle of Milan, who was in Delhi on 4.1.2002 and on said day had made a day's visit to his native village at Haryana, returned to Delhi and learnt that Milan was missing. He informed SI Praveen Kumar that the previous day i.e. 4.1.2002 when he was standing near Jhulelal Temple, he saw his

nephew Milan with a school bag coming through V.P.Block Park accompanied by a friend. The boy accompanying Milan parted company with Milan and Milan walked towards his house. On the way, someone sitting in a white Santro car which had tinted glasses, parked near the iron gate of the lane, stopped Milan and had a conversation. Milan sat in the front seat of the car and the car backed and went towards WP Block. He noted that the number plate of the car was broken and only the last numbers '1172' were visible. Since Milan willingly sat in the car, he did not suspect any foul play and presumed that some acquaintance had given him a lift. Said facts were recorded in Naresh Kumar's statement Ex.PW-2/DA.

4. Since information had been flashed to the missing person's squad about Milan being missing and his photograph, which was handed over by Prem Mittal to SI Praveen Kumar had been circulated to the police personnel in Delhi, on 5.1.2002 at about 5:00 PM, upon information received from PS Bawana about the recovery of a dead body matching the description of Milan, SI Praveen Kumar along with Prem Mittal went to West Jamuna Canal Village Kankar Khera, Kalan Road; the place where the body was found. The body was found lying in a ditch on the bank of the canal with a muffler tied around it's neck. The complainant i.e. Prem Mittal identified the said

body as that of his son Milan. The body was seized and SI Umed Singh PW-9 of PS Bawana sent the dead body to Babu Jagjiwan Ram Memorial hospital for post-mortem.

5. Further investigation was handed over to Insp. B.R.Mann PW-25 as the offence had assumed serious proportion i.e. the offence of murder.

6. On 6.1.2002, Dr.R.K.Punia PW-21 conducted the post-mortem of the deceased. In the post-mortem report Ex.PW-21/A, the cause of death was opined to be asphyxia due to ligature strangulation. As recorded in the post-mortem report Ex.PW-21/A, the post-mortem commenced at 9:30 AM on 6.1.2002. While giving the opinion qua the cause of the death of Master Milan, it was opined that the approximate time of death was 36 hours to 48 hours prior to the post-mortem. It is thus apparent that Master Milan had been murdered somewhere around the early part of the intervening night of 4th and 5th January 2002 or may be late evening of 4th January 2002.

7. On 6.1.2002 Satbir Singh PW-13, a tea vendor, saw a bag with some books and notebooks lying on the Khera road. A telephone number was written on them. He contacted at the said number, which needless to state was installed at the residence of Prem Mittal, and passed on the said information.

Inspector B.R.Mann seized the school bag and six notebooks Ex.P-6/1-6 and five books Ex.P-5/1-5 as recorded in the seizure memo Ex.PW-20/D.

8. Since the telephone exchange i.e. exchange 722 pertaining to the telephone No.7220285 was an electronic exchange and it was possible to know from the telephone exchange the details of the last few calls received, it came within the knowledge of the Investigating Officer that the ransom calls were made through mobile No.9811587365. Inspector Sukhvinder Singh PW-17 went to the service provider of said mobile number being Ex.PW-17/A which reveal that a handset bearing IMEI No.445199456405630 was used on the SIM card pertaining to the number 9811587365, as also the fact that the SIM card was got activated on the same day i.e. 4.1.2002. It was further revealed that prior thereto, the said handset was used on the SIM card pertaining to mobile number 9811485780.

9. Since the investigating officer, as per information provided by Naresh Kumar, had knowledge that Milan was last seen leaving in a white coloured Santro car and that the last four digits of the registration number thereof were 1172; with reference to the record of the registration authority under the Motor Vehicles Act 1988, the ownership of a white Santro car

bearing No.DL 4CN 1172, Ex.P-10, got traced to Raj Kumar R/o House No.KP-188, Pitampura Delhi, from where the car was seized on 9.1.2002, as recorded in the seizure memo Ex.PW-20/F. Jitender PW-7, brother of Raj informed, as recorded in his statement Ex.PW-7/DA, that on 4.1.2002 he had borrowed the Santro car from his brother and Ritesh Mittal and Narender Chauhan met him at the dhaba (eatery) of Narender Chauhan and told him to lend the Santro car for some time and in return offered to lend him a Matiz car. Accordingly, he temporarily exchanged the Santro car with the Matiz and that around 8:00 PM he was told by them over the telephone to reach Oasis Hotel so that the cars could be exchanged. He went to Oasis Hotel and returned the Matiz car and took possession of the Santro car and at that time he noted that the rear number plate of the Santro car was missing.

10. Appellants, accordingly, became suspects. The police kept a watch out. On 9.1.2002 itself, appellants Ritesh Mittal and Narender Chauhan were arrested from J.P.Market Pitampura. From the personal search of Narender, a mobile phone Ex.P-18 having IMEI number 445199456405630 as also a slip Ex.P-19 of Bank of Baroda, Maurya Enclave having name of Ratish Mittal and phone numbers 7220285, 7417368, 9868142408 and 9811587365 written thereon were recovered

from the pocket of his pant as recorded in the seizure memo Ex.PW-20/M. No incriminating recovery was made from the person of Ritesh Mittal.

11. Insp. B.R.Mann interrogated the appellants and recorded the disclosure statement Ex.PW-20/G of appellant Narender Kumar as per which he stated that he could get recovered the number plate of the Santro car used in the commission of the crime, as also a plastic bag which was meant to be used by the accused persons to dispose of the dead body and the school bag and notebooks of the deceased. He also interrogated appellant Ritesh Mittal who made a disclosure statement Ex.PW-20/H inter alia stating that he could get recovered the broken number plate of the Santro car used in the commission of the crime and the bag and the books of deceased Milan.

12. As per the record of investigation, appellant Ritesh Mittal led Insp. B.R.Mann to Shiv Shankar Dharam Kanta at Khera Kalan Road, and from a place near the Dharam Kanta, got recovered a book Ex.P-5/6 and a notebook Ex.P-6/7 of Milan which were seized vide seizure memo Ex.PW-20/X.

13. Narender Kumar led the investigating officer to a park called Vaishali Park at Pitampura and pointed out a yellow

plastic bag Ex.P-20 which was seized vide seizure memo Ex.PW-20/Y.

14. The record of investigation does not reveal as to how co-accused Zaffar Abbas (acquitted by the learned Trial Court), became a suspect. Nonetheless, the record of investigation shows that Zaffar Abbas was arrested on 9.1.2002 and on interrogation made a statement Ex.PW-20/S informing the investigating officer that he could get recovered the broken number plate of the Santro car; the bag and notebooks of the deceased and the plastic bag which was meant to dispose of the body of the deceased. He led Insp. B.R.Mann to a dustbin in RU Block, Pitampura and got recovered a broken number plate having written thereon the number 1172, as recorded in the seizure memo Ex.PW-20/T.

15. The investigating officer, Insp. B.R.Mann, tracked down Hardeep Singh PW-8 who was the original owner of the handset having IMEI No.445199456405630 and had also been the subscriber of the mobile number 9811485780. He informed that he had sold the telephone with the SIM card to one Shanty, who, further sold the same to Narender Chauhan in his presence. The investigating officer also tracked Manpreet Singh PW-5 who informed him that he had sold the

SIM card pertaining to mobile No.9811587365 to a customer on 4.1.2002.

16. The charge sheet was filed against the appellants and co-accused Zaffar Abbas for having entered into a conspiracy to kidnap Master Milan and demand ransom for his release. They were charged for having kidnapped Master Milan and demanded ransom for his release and also for having murdered him. Needless to state, the prosecution intended to establish, through the testimony of Naresh Kumar PW-2 that Milan had made a friendly entry at 5:00 PM on 4.1.2002 in the Santro car, the last four digits whereof, in the broken number plate at the rear of the car, were 1172 and that was the last time the unfortunate child was seen alive. Through the testimony of Jitender PW-7, the prosecution intended to establish that the said Santro car was handed over by him to the appellants at around 12:00 noon and that the appellants had returned the car to him at around 8:00 PM and that when the car was returned, the rear number plate was broken. In this manner, the prosecution sought to connect the testimony of the two witnesses to establish that they had made Milan to sit in the Santro car. The recovery of the handset Ex.P-18 having IMEI No.445199456405630 from the side pocket of appellant Narender was intended to be

connected with the call details provided by the service provider pertaining to mobile No.9811485780 and mobile No.9811587365 as also the testimony of Manpreet Singh PW-5 and Hardeep Singh PW-8 to connect the ransom calls being made to the landline number 7220285 installed in the house of Prem Mittal; all cumulatively pointing out to the fact that Narender had a hand in the kidnapping of the child. Further, through the means of the recovery of the slip Ex.P-19 containing the landline numbers at the residence of Prem Mittal; recovery being from the pant of accused Narender, the prosecution sought to corroborate incriminating evidence against accused Narender. Needless to state the recoveries effected pursuant to the disclosure statement of the appellants were intended to reinforce the participation in the crime by the appellants. Against Zaffar Abbas, the recovery of broken number plate having No.1172 pertaining to the Santro car, was sought to be used as evidence of his involvement.

17. At the trial, various witnesses were examined. But we note the testimony of only such witnesses as would be relevant for discussion of the admissible evidence led and the contentions urged in appeal; noting at the outset that the appellants have not disputed that the dead body of Milan was discovered on 5.1.2002.

18. Prem Mittal PW-1 deposed that his son Milan Mittal used to attend tuition classes with a friend from 3:30 PM to 5:00 PM everyday after returning from school. On 4.1.2002 at about 5:30 PM he received a phone call from his wife who told him that his son Milan had not returned home after tuition. Milan was wearing brown shoes, blue T-shirt and blue jeans that day and was carrying a school bag containing notebooks wherein his name and telephone number were mentioned. They kept searching for the child for about 1½ hours and thereafter the police was informed. Police from Police Post Pitampura came and recorded his statement Ex.PW-1/A. At about 9:25 PM Gaurav PW-19 attended a call on the landline number 7220285 installed on the first floor of the house. The caller informed him that Milan had been kidnapped and demanded a ransom in sum of Rs.20 Lacs. Soon thereafter another call was received from the kidnappers and the caller again confirmed that Milan was in their captivity and threatened that the police should not be informed. At about 10:00 PM the same day, the police installed a caller ID on phone No.7220285 on which the ransom calls were received but no call was received on the number after the installation of the caller ID. That the other telephone connection in his house having No.7417368 had a caller ID facility.

19. In cross examination, Prem Mittal stated that Ritesh was the real son of his elder brother Mahavir and used to reside about 20 steps away from their house. He stated that till he was arrested Ritesh used to come to their house for short durations and that on 4.1.2002 he was present in his house at 9:30 PM and that he remained in their house till 10:00 PM when the caller ID was installed on the second telephone line.

20. Smt. Surekha Khanna PW-23, deposed that Milan used to visit her house for tuitions after school and that on 4.1.2002, Milan came to her house for tuition at 3:30 PM and left with another boy named Hitesh at 5:00 PM.

21. Naresh Kumar PW-2 deposed that on 4.1.2002, at about 5:00 PM he had gone to a barber's shop to get a shave, but since there were already a few customers at the shop, he came outside and went to a plot nearby to ease himself where a car of Santro make was already parked. He saw his nephew Milan Mittal crossing the park along with a friend, who, after crossing the park parted company with Milan and went towards a gali. Milan stood near the parked Santro car and started talking with a person sitting inside the car. He could not see the person sitting inside the car since the glasses of the car were tainted. Thereafter Milan sat on the seat adjacent

to the driver's seat in the car and the car sped past him at a speed. He noted that the number written on the broken rear number plate of the car was 1172 and the car had a scenery sticker affixed on the doors. He went to his native village in Haryana for a day and on his return the next day at about 11/12 noon when he visited the house of Prem Mittal he was informed that Milan had been kidnapped. He informed aforesaid facts to the police which were recorded in his statement Ex.PW-2/DA and that the car Ex.P-10 was the one in which he had seen Milan leave the place.

22. Jitender PW-7, deposed that on the day of the incident, at about 12:00 noon he drove down to the dhaba of accused Narender Chauhan @ Guddu in the Santro car No.DL-4CN-1172 Ex.P-10 belonging to his brother. Accused Ritesh Mittal met him at the dhaba and asked him to lend his Santro car for a few hours and in return gave his Matiz car bearing No.8825. Thereafter, accused Ritesh Mittal left the dhaba along with accused Narender Chauhan and accused Zaffar Abbas in the Santro car. At about 8:00 PM, the same day, when accused and Ritesh Mittal along with other accused met him in front of the Oasis Hotel to return the Santro car, he noted that the rear number plate of the car was broken and the stepney of the car had been replaced. When he questioned

accused Ritesh Mittal about the broken number plate he gave a vague reply saying that some children must have broken the number plate.

23. Manpreet Singh PW-5 deposed that he had sold the SIM card pertaining to mobile No.9811587365 to a customer on 4.1.2002.

24. Hardeep Singh PW-8, deposed that he owned a mobile handset of Seimens make together with a SIM card of mobile No.9811485780 in the year 2001. He had sold the same to one Shanty, who had further sold it to appellant Narender Chauhan in his presence.

25. Satbir Singh PW-13, deposed that he was a tea vendor and that he found an abandoned school bag on Khera road. It contained books as well as notebook. On opening the bag he found name of Mittal scribed there with a telephone number mentioned. He rang up the said number. The police came and he handed over the school bag to them.

26. Gaurav PW-19, deposed that the deceased was his cousin (bua's son) and he learnt on 4.1.2002 at about 8:15 PM that Milan was missing. He was present in the house of his bua at 9:15 PM and at about 9:25 PM a call was received at phone No.7220285. He had responded to the call. The caller demanded Rs.20 lacs and told him that the police should not

be contacted. There was disturbance in the phone. After 2 or 3 minutes the bell rang again. The caller repeated the ransom demand of Rs.20 lacs. The police was informed.

27. Deepak Gupta PW-16, Deputy Manager Legal and Regulatory, Hutch Essar Telecom deposed that Major Gurpreet Singh was working him and left the company on 13.11.2003. That he had brought the record with details of mobile No.9811485780 for the month of November 2001 and the mobile details of the number 9811587365 for the month of January 2002 and that the same were Ex.PW-16/A and Ex.PW-16/B.

28. We may note at this stage that the print out of the two call details is available at page No.619 and 621 of the Trial Court Record, but without any exhibit mark thereon. It appears that during testimony the call records proved by the witness were inadvertently not identified by recording thereon the exhibit mark.

29. Insp. B.R.Mann PW-25 the investigating officer deposed that he was handed over the investigation of the case after the recovery of the body of Milan Mittal. He narrated the sequence of events in the investigation of the case as noted above. He deposed that the disclosure statement of accused Zaffar Abbas was recorded subsequent to the disclosure

statements of the other two accused. Subsequent to his disclosure statements accused Zaffar Abbas had got recovered a broken number plate of the car from the dustbin of RU Block Market Pitam Pura. On being cross-examined the witness admitted that he had recorded the statement of Narender Chauhan first. SI Praveen Kumar PW-20 deposed the facts qua the investigation conducted by him i.e. the facts noted in para 1 and 2 above.

30. Vide impugned judgment and order dated 21.11.2008, the learned Trial Judge has acquitted accused Zaffar Abbas, holding that the alleged recovery of the broken number plate of the Santro car having No.1172 written thereon does not inspire any confidence inasmuch as the evidence was not clear, whether, when the car was returned, as claimed by Jitender PW-7, the full number plate or a broken number plate was affixed at the rear of the car. Secondly, the learned Trial Judge had noted that the appellants who were arrested prior had already made a disclosure statement that they can get recovered the broken number plate of the car. Lastly, the learned Trial Judge has noted that in his statement recorded by the police under Section 161 Cr.P.C., Jitender PW-7 had not stated that when he took back the Santro car at 8:00 PM, even Zaffar Abbas was present with the other co-accused. The

learned Trial Judge has noted that Jitender PW-7 has improved upon his statement recorded by the police as regards the involvement of Zaffar Abbas.

31. Qua the appellants, the learned Trial Judge has held that Ex.PW-16/B i.e. the call details of the mobile number 9811587365 showed 3 calls made to the landline number 722 0285 between 9:25 PM to 9:29 PM. The same showed that the handset used was having IMEI No.445199456405630. This document corroborated the testimony of PW-19 Gaurav that he had responded to ransom calls between 9:25 PM and 9:20 PM on 4.1.2002. The recovery of the handset having IMEI No. 445199456405630 from the right side pant pocket of accused Narender together with the testimony of PW-5 and PW-8, established that Narender was in possession of the said handset and that previously the handset was used on their mobile number 9811485780 and on 4.1.2002, for the first time it was used on mobile No.9811587365. The learned Trial Judge has held that this evidence establishes the involvement of Narender in the crime. With reference to the testimony of Naresh Kumar PW-2 and Jitender PW-7, the learned Trial Judge has held that the testimony of Naresh Kumar establish that Ritesh was last seen entering the Santro car, possession whereof was taken by the appellants from Jitender at 12:00

noon and returned to him at 8:00 PM i.e. the appellants remained in possession of the car in which Milan was kidnapped. The recovery of the slip Ex.P-19 from the pocket of Narender having written thereon telephone No.7220285, the landline number in the house of the kidnapped child, a number qua which Narender had no concern, has also been held to be incriminating piece of evidence against Narender. Qua appellant Ritesh, besides accepting the testimony of PW-2 and PW-7, the learned Trial Judge has held that the fact that no ransom call was made on landline number 7417368 which had a caller ID facility and that no calls were made on the number 7220285 after 10:00 PM when caller ID facility was activated on said number, coupled with the fact that Ritesh was the cousin of the deceased and as per testimony of PW-1 was present in the house when caller ID was activated on said number showed that the kidnappers were aware of what was going on in the house of the kidnapped child and said knowledge could be only through appellant Ritesh.

32. We note that the recovery of the book Ex.P-5/6 and the notebook Ex.P-6/7 at the instance of Ritesh and the recovery of a yellow plastic bag Ex.P-20 at the instance of Narender have been negated by the learned Trial Judge as incriminating evidence because Satbir Singh PW-13 had

categorically deposed that he had picked up the bag containing the books and notebooks of Milan when he saw an abandoned bag on Khera road and that he had handed over the same to the police. Obviously, Ex.P-5/6 and Ex.P-6/7 could be planted. Qua the yellow coloured bag Ex.P-20, the same was not linked to the crime and hence had no evidentiary value.

33. During argument of the appeal, learned counsel for appellant Ritesh argued that the testimony of Naresh Kumar PW-2 did not inspire any confidence because had he seen Milan sit inside the car which sped of, it should have alarmed him, and since he was related to Milan, his normal conduct ought to have been to immediately inform the parents of Milan that their child had gone in a car with a stranger. Counsel argued that it is not normal human conduct to note down the number of a car, unless one finds a car to be moving in a suspicious manner or there is something which compels the mind to note the number of the car, and that something had to be a suspicion. Counsel argued that obviously Naresh Kumar felt nothing suspicious, for had he felt so, he would have informed the parents of Milan that their child had left in a car. It was urged that as per Naresh Kumar he was present near the car where the Santro car was parked as he had gone to a

barber's shop. Counsel urged that nobody was examined from the barber's shop to prove said fact. Counsel further urged that the Matiz car allegedly exchanged by the appellants with PW-7 was not seized. Counsel further urged that the incriminating evidence pertaining to the slip Ex.P-19 was not put to Ritesh when he was examined under Section 313 Cr.P.C. Learned counsel urged that the Santro car did not belong to Jitender PW-7. It admittedly belong to his brother Raj Kumar who took possession of the car on superdari and while moving the application for release of the car, did not state that on 4.1.2002 he had handed over the car to Jitender.

34. Learned counsel for accused Narender questioned the conduct of PW-2 on the same reasoning as was pressed into aid by learned counsel for Ritesh. It was additionally urged that PW-2 was obviously lying when he deposed that he had seen the rear number plate of the car broken and had noted the last digits 1172 for the reason in his statement under Section 161 Cr.P.C., PW-7 had stated that when the car was returned to him, the rear number plate was completely missing; counsel urged that PW-2 had improved upon said statement while deposing in Court and stated that the number plate was broken with the last 4 digits intact. Counsel urged that for this reason, co-accused Zaffar Abbas had been given

the benefit of doubt and the same benefit had to be extended in favour of his client. Questioning the recovery of the mobile phone Ex.P-18, learned counsel urged that the possibility of the same being planted on Narender Chauhan cannot be ruled out.

35. Qua the testimony of Naresh Kumar PW-2, it has to be noted at the outset that his statement under Section 161 Cr.P.C. was recorded the very next day i.e. on 5.1.2002. He informed, as per said statement, that he had seen Milan sit inside a white coloured Santro car, the rear number plate whereof was broken and the last four digits of the registration number were 1172. PW-7 could be tracked by the investigating officer after a few days and his statement under Section 161 Cr.P.C. was recorded on 9.1.2002. Naresh Kumar has not been proved, by the defence, to be having any connection with PW-7. This lends assurance to the truthfulness of the testimony of Naresh Kumar that he had seen Milan enter a white Santro car after talking with somebody inside the car; the last four digits of the number whereof, as per the rear number plate, was 1172. That Naresh Kumar did not immediately inform Milan's parents that their son had left with somebody in a car, is no ground to suspect the testimony of Naresh Kumar, for we see no reason for him

to have gone running to the house of Milan. As per his testimony, Milan had a conversation with somebody in the car and thereafter Milan entered the car. The friendly entry into the car by Milan would obviously raise no alarm in the mind of Naresh Kumar compelling him or necessitating his informing the parents of Milan that their son had left in a car with somebody. The mere use of the expression that the car sped away, while deposing in Court, does not lead to any inference of a circumstance where from further inference has to be drawn that the said event ought to have raised an alarm in the mind of Naresh Kumar. It could well be an inappropriate expression used! How on earth could Naresh Kumar ever conceive of the fact that there exists a Santro car, white in colour, the last four digits whereof are 1172; a trinity of facts admittedly proved at the trial. This strange coincidence, if it is so, inspires confidence qua the truthfulness of the testimony of Naresh Kumar. The fact that the car Ex.P-10 i.e. the white coloured Santro car in which Milan made a friendly entry at around 5:00 PM was in the possession of the appellants stand established through the testimony of PW-7. The blemish in his testimony of deposing that when the car was returned to him at 8:00 PM even Zafar Abbas was with the appellants, is not so fundamental or fatal as to destroy the worth of his entire

deposition, even qua the appellants. That a benefit of doubt has been given to Zafar Abbas on said limited point does not require the same logic to be extended to give the benefit of doubt to the appellants, who, as per the testimony of PW-7 were known to him. Zafar Abbas was not known to the witness and was identified by him for the first time in court. The twin effect of the testimony of PW-2 and PW-7 is the proof that the appellants were in possession of the Santro car from 12:00 noon to 8:00 PM and that Master Milan had been kidnapped in the said car at 5:00 PM.

36. Ex.PW-16/A and Ex.PW-16/B are proof that the handset having IMEI No.445199456405630 was used till 4.1.2002 on the SIM card pertaining to mobile No.9811485780 and that on 4.1.2002 it was used on the SIM card pertaining to the mobile No.9811587365 on 4.1.2002. Ex.PW-16/B further establishes that the said handset was used through mobile No.9811587365 to contact landline No.7220285, which as per the testimony of PW-1 and PW-19 was installed in the house of the father of the kidnapped child. The testimony of PW-5 and PW-8 establish the fact that the handset and the SIM cards of both mobile numbers were with Narender Chauhan. Thus, in the absence of any satisfactory explanation by Narender Chauhan, the only presumption required to be drawn is that

either Narender Chauhan himself or somebody else, at his instance or in association with him, used the handset to contact the family of Milan through mobile No.9811587365. The testimony of PW-19 that he responded to two calls around 9:25 PM on mobile No.7220285 also stands corroborated through the call details of the said mobile number. The testimony of PW-19 establishes that ransom calls were raised.

37. It assumes significance that no ransom call was made on the landline No.7417368 since it had a caller ID facility. It assumes significance that ransom calls were made on landline number 7220285, which did not have a caller ID facility. It assumes significance that a caller ID facility was activated on said number at around 10:00 PM and thereafter no ransom call was received even on said number. It assumes significance that appellant Ritesh is the son of the elder brother of PW-1, the father of Milan and has been proved to be present in the house at around 9:30 PM till 10:15 PM; having knowledge of what was going inside the house. The fact that Milan made a friendly entry in the Santro car also establishes that somebody known to Master Milan was sitting in the car and that is why the innocent child willingly sat inside the car.

38. What is the quality of circumstantial evidence wherefrom a presumption of guilt can be raised? The normal

expression used in the decisions is that the circumstantial evidence should bring out a chain of circumstances, so complete, that an inference of guilt can be inferred from the said chain of circumstances. But, we would prefer to put it a little differently. Where the quality of circumstantial evidence is such that any logical mind is led to the irresistible conclusion that unless the accused explains, he or they, must admit the guilt, said evidence would be good evidence to sustain a conviction, for the reason it can be said that said evidence forms a complete chain of circumstances wherefrom guilt can be inferred. The plea that the mobile phone number has been planted on Narender Chauhan is without any factual basis for the reason no such suggestion of planting was given to the investigating officer Inspector B.R.Mann PW-25. Further, the mobile phone had a distinctive IMEI number which is unique to every mobile handset. Before such a unique distinctive handset could be planted by the police, there has to be evidence that the police could have possessed the same. Ex.PW-16/B, the mobile call details pertaining to the SIM card of mobile No.9811587365 conclusively establish that the said handset was with the person who had purchased the SIM card of the mobile No.9811587365 and that calls were made using the said handset, through the said mobile number to the

landline number 7220285 in the house of Master Milan. There is no evidence that the police had possession or had access to the said handset at any point of time till it was seized upon the arrest of accused Narender Chauhan.

39. Qua appellant Narender, he has rendered no explanation of who made the telephone calls from the handset having IMEI No.445199456405630 recovered from the right side pant pocket at the time of his arrest as per recovery memo Ex.PW-20/M. The fact that from this handset, using SIM card of mobile No.9811587365, calls were made at the landline number 7220285 at the house of the deceased, coupled with appellant Narender along with appellant Ritesh being proved to be in possession of the Santro car Ex.P-10 between 12:00 noon and 8:00 PM on 4.1.2002, in which car Master Milan was abducted at around 5:00 PM, is sufficient evidence wherefrom any logical mind would reach the irresistible conclusion qua the guilt of Narender. Qua Ritesh the evidence of his being in possession of the Santro car between 12:00 noon and 8:30 PM on 4.1.2002 and Master Milan being abducted in the said car at around 5:00 PM with further evidence that Ritesh and Milan were cousins and that Milan made a friendly entry in the car are sufficient evidence wherefrom any logical mind would reach the irresistible

conclusion qua the guilt of Ritesh. The fact that no ransom call was made at the landline number which had a caller ID facility and that when the caller ID facility was activated on the other landline number, when Ritesh was present in the house of Master Milan, no further calls were received lends assurance to the involvement of Ritesh in the crime. Further, for the reasons noted in para 6 above, it is apparent that Master Milan was murdered either in late evening of 4.1.2002 or during early hours of the intervening night of 4th and 5th January 2002. There is proximity of time between the deceased last seen alive in the company of the appellants and the death. In the absence of any satisfactory explanations by the appellants of the time and place on/at which they parted company with the deceased another link to the chain of incriminating circumstances can safely be added against the appellants.

40. The submissions that nobody was examined from the barber's shop to corroborate the presence of Naresh Kumar and that no evidence has been led qua the ownership of the Matiz car has hardly impressed us, for the reason, the prosecution has to lead evidence to prove its case and not all and sundry evidence. Similarly, it hardly matter whether Raj Kumar, brother of Jitender PW-7 was examined or not, for the

reason, Raj Kumar was not the witness to the exchange of Santro car with the Matiz car.

41. We ignore the evidentiary value of the slip Ex.P-19 recovered from the pocket of Narender on which the landline number 7220285 as also two more mobile numbers were written for the reason the evidentiary worth of said evidence is near minimal.

42. But, we note that there is no evidence to prove any conspiracy save and except the confessional statements of the accused. The only evidence is the commission of the crime by the appellants who abducted Master Milan and were last seen with him at 5:00 PM on 4.1.2002. The dead body of Master Milan was noted by somebody who informed the police on 5.1.2002. The appellants have not rendered any explanation as to when and where did they part company with Master Milan. The circumstance of Master Milan being missing in the company of the appellants and his being found dead is of a nature wherefrom the only inference possible is that the appellants had committed the crime of not only abducting Master Milan but even murdering him. It appears to be a case of appellant Ritesh, an immature criminal, panicking and since he would obviously be identified by Milan, being compelled to do away with a witness.

43. The appeals are accordingly partially allowed. The conviction of the appellants for the offence of conspiracy is set aside. The conviction of the appellants for the offence punishable under Section 364-A and 302/34 IPC as also the offence punishable under Section 201/34 IPC and the sentence imposed qua said offences is upheld.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

May 20, 2009
mm/Dharmender