

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 6th May, 2009*
Judgment Pronounced on: 29th May, 2009

+ **CRL.A.147/2008**

VIKRAM YADAV Appellant
Through: Mr.Brijesh K.Singh, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate

CRL.A.208/2008

NEERAJ KUMAR CHAUDHARY Appellant
Through: Mr.Ramesh Gupta, Advocate with
Mr.Sumit Arora, Advocate.
Mr.Sulaiman Khan, Advocate and
Ms.Meera Kaura Patel, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate

CRL.A.209/2008

RAJENDER SINGH Appellant
Through: Mr.Manoj Kohli, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

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

PRADEEP NANDRAJOG, J.

1. On the intervening night of 21st and 22nd November 2001, Mosami Roy PW-1, received a call around 9 PM from Shri T.K. Roy PW-3, the elder brother of Ratan Roy, enquiring whether Ratan Roy was back from office or not. On being told that Ratan Roy had not returned, T.K.Roy informed Mosami that he had received a call on the mobile phone of Ratan Roy. First Ratan Roy spoke to him and thereafter a kidnapper spoke to him and he learnt that Ratan Roy has been abducted and ransom in sum of Rs.10 Lacs would have to be paid to secure his release. Mosami Roy contacted Harmeeek PW-2, who was a subordinate to Ratan Roy in his office, and was told that Ratan Roy had left the office at around 6.30 PM. On being told that Ratan Roy had been abducted, Harmeeek reached the house of Ratan Roy. Sometimes later she received a call from Romy Chopra PW-5, who was a senior to Ratan Roy in his office i.e. Schnieder Electric India Ltd. Romy informed her that he had received a call from Ratan Roy who told him that he needed Rs.10 Lacs and that the call got suddenly disconnected. He contacted Mr.Deepak Sahni who was the immediate superior of Ratan Roy and told him of his conversation with Ratan Roy. Deepak Sahni contacted him after a few minutes and told him that Ratan Roy had been probably abducted.

2. Mosami Roy rang up police station Dilshad Garden and informed the duty officer that her husband had been abducted and ransom calls were received by his brother and his friend. Said information was noted vide DD No.17A, Ex.PW-14/A, at 12.29 AM and a copy of the same was given to SI Brij Mohan PW-14. Accompanied by Const. Ashok Kumar PW-15 and Const. Vijender, SI Brij Mohan reached the house of Ratan Roy i.e. C-60/2 Dilshad Garden, where he met Mosami Roy and Harmeeek Singh. He informed PS Badarpur about the incident, since the place from where Ratan Roy was abducted, fell under the jurisdiction of PS Badarpur. At PS Badarpur, DD No.29A, Ex.PW-12/A, was recorded at 1.15 AM pertaining to the abduction of Ratan Roy.

3. A copy of DD No.29A was handed over to SI Rahul Sahni PW-26, who along with Const. Ashok PW-24 went to the office premises of Ratan Roy i.e. P-1/A-11, Mohan Cooperatives, Mathura Road and finding nobody in the office SI Rahul Sahni made an endorsement Ex.PW-26/A on the copy of the DD No.29A and sent the same for registration of an FIR through Const. Ashok PW-24. At the police station, HC Vijay Singh PW-12 registered the FIR Ex.PW-12/B under Section 364-A IPC.

4. Thereafter the officials of both the police stations i.e. PS Dilshad Garden and PS Badarpur co-ordinated with each other and decided to meet at Maharajpur Chowk. SI Brij Mohan,

Const. Ashok Kumar and Const. Vijender from PS Dilshad Garden, accompanied by Harmeeek Singh left from the residence of Ratan Roy and reached Maharajpur Chowk. From PS Badarpur, Inspector S.S. Malik PW-32, SI Rahul Sahni PW-26, Const. Ashok Kumar PW-24 and Rohit Kumar Bansal, a colleague of Ratan Roy, left for Maharajpur Chowk. On the way they met Romy Chopra who handed them his mobile phone on which the ransom calls were being received. The two police teams met at Maharajpur Chowk. As per their plan SI Brij Mohan, two constables and Harmeeek Singh were to be seated in the car of Harmeeek Singh. The rest of the officials were to follow the car of Harmeeek Singh in two other cars.

5. Needless to state, the police team had to await for a call to be made by the abductors, who were expected to disclose the place where the ransom had to be paid. This would have enabled the police officers to lay a track. A call was received through the mobile phone of Ratan Roy by Harmeeek Singh on the mobile phone of Romy Chopra since Romy Chopra had handed over his mobile phone to Harmeeek Singh. The caller directed that Harmeeek Singh should reach Seemapuri Border and bring with him the ransom money. In two cars, the police team trailed the car driven by Harmeeek Singh to Seemapuri Border. Another call was received by Harmeeek Singh directing that he should reach GTB Hospital Shahdara. Proceeding

towards GTB Hospital, Harmeek Singh spotted a gold coloured car at Deepak Automobile Petrol Pump. Since Ratan Roy had a car of said colour, he reversed his car up to the petrol pump and stopped his car behind the said gold coloured car. He identified the car as the car of Ratan Roy. It was a gold coloured Ford Ikon bearing registration No.DL 3CS 9438. SI Brij Mohan told his staff to surround the said car and he himself went to the left side window of the car. However, before he could make any enquiries, the persons inside the car opened fire. SI Brij Mohan fired back, as a result of which, the front left side window pane of the car broke. The car sped away in the direction from which it had come. SI Brij Mohan and the constables got back into the car of Harmeek Singh and chased the car. The Ford Ikon hit a street cart being pushed by a vendor. The abductors thereafter threw somebody out of the car. This led the police team to give a short break in the chase to pick up the person who was thrown on the road. He was none other than Ratan Roy. Leaving HC Munsii Lal of PS Dilshad Garden behind to remove Ratan Roy to the hospital, SI Brij Mohan and Harmeek Singh continued the chase; however, they lost track of the car.

6. The police personnel in the other cars were informed over the phone and they reached Deepak Petrol pump and from there back to GTB hospital where Ratan Roy was

admitted. SI Brij Mohan also returned with Harmeeek Singh to GTB hospital. He collected MLC Ex.PW-35/A of Ratan Roy which declared the patient unfit to make any statement. He prepared a statement of brief facts (RUKKA) Ex.PW-14/B about the incident of firing at the petrol pump and sent the same to PS Seemapuri for registration of an FIR, as the place where the incident took place fell within the jurisdiction of PS Seemapuri. At PS Seemapuri FIR No. 261/2001 was registered.

7. Thereafter SI Raj Kumar PW-36 of PS Seemapuri also joined the investigation. He prepared a rough site plan Ex.PW-36/A at the instance of SI Brij Mohan pertaining to the place where the exchange of fire took place. He got photographed the place of the incident vide photographs marked A1 to A6. Broken pieces of glass and a used cartridge were seized from the place of the occurrence as recorded in memo Ex.PW-6/A. Const. Ashok Kumar PW-14 handed over two empty cartridges from his service revolver which were seized as recorded in memo Ex.PW-15/A.

8. SI Rahul Sahni recorded the statement of Rajbir PW-6, the gunman at Deepak Petrol Pump, who had witnessed the incident. On returning to GTB hospital, SI Rahul Sahni learnt that the injured Ratan Roy had been shifted to Apollo Hospital.

9. Efforts were made to search the car of Ratan Roy in which the abductors had fled and at about 2.30 PM on

22.11.2001, information was received from PP Indirapuram of PS Loni, Ghaziabad, that a car bearing registration No.DL 3CS 9438 was found abandoned near Carbon Factory on Arya Nagar Road. SI Rajkumar proceeded to the said spot and got the car photographed as per photographs marked A-7 to A-14. The left side front window of the car was found broken. Two deformed bullets were found in the car and were seized as recorded in memo Ex.PW-36/D. There were blood stains on the steering wheel of the car which were lifted and seized as recorded in memo Ex.PW-36/C. The car was taken into possession as recorded in memo Ex.PW-36/B. From the car, a mobile phone without a SIM card and a diary were also recovered. Said recovery was recorded in the seizure memo Ex.PW-36/B. It is noted in the seizure memo that a black coloured leather bag having some registers and papers was in the car. But we note that the same i.e. the bag, the registers and papers have not been produced at the trial and even an inventory of the contents of the bag has not been prepared, save and except to broadly note, as noted hereinbefore. SI Raj Kumar took possession of the pistol used by SI Brij Mohan and the revolver used by Const.Ashok Kumar when there was an exchange of fire at the petrol pump the previous day as recorded in the memo Ex.PW-14/C.

10. On the same day, i.e. 22.11.2001, another FIR No.276/01 under Sections 279/337 IPC, was lodged at PS Dilshad Garden pertaining to the injuries suffered by Ram Sharan, the hand cart vendor; the injuries being the ones resulting when the Ford Ikon of Ratan Roy, being driven by the abductors had hit the hand cart.

11. On 23.11.2001 SI Rahul Sahni obtained the call records, Ex.PW-11/B, from Airtel Company pertaining to the mobile number 9810158032 which belonged to Ratan Roy for the obvious reason the abductors had been making the ransom calls on the mobile number of T.K.Roy and on the mobile number of Romy Chopra through said mobile number. On pursuing the call records, it was learnt, that on the night intervening 21.11.2001 and 22.11.2001 i.e. the night in which Ratan Roy was abducted and the night when ransom calls were received, the SIM card pertaining to the mobile No.9810158032 i.e. the mobile number of Ratan Roy was used on a handset bearing No.449125550757180 and after around 12:00 midnight, the said SIM card i.e. the SIM card pertaining to mobile No.9810158032 was used on a handset having IMEI No.449269200615380. Further inquiry pertaining to the handset having IMEI No.449269200615380 revealed that the SIM card pertaining to mobile No.9810590104 was being used on the said handset, till the said handset was used on the SIM

card pertaining to the mobile number of Ratan Roy in the night when Ratan Roy was abducted. The said mobile number as also the handset pertaining to IMEI No.449269200615380 was directed to be kept under surveillance.

12. Ratan Roy expired on 29.11.2001. Post-mortem of the body of the deceased was conducted and the post-mortem report Ex.PW-23/A recorded the cause of death as comma due to head injury caused by blunt force.

13. On 30.11.2001, i.e. immediately after the death of Ratan Roy, the investigation of the case was handed over to Insp. S.S.Malik PW-32. After a few days, information was received from Airtel Mobile Company that the handset having IMEI No.449269200615380 was being used again.

14. Acting under the instructions of Insp. S.S.Malik, SI Rahul Sahni obtained the details of calls respecting instrument bearing IMEI No.449269200615380. The details, Ex.PW-11/DA, revealed that a few landline numbers pertaining to the telephone exchange at Ram Nagar, Ashok Nagar and Shahdara were in contact through the said instrument. On 14.12.2001 at around 8.15 PM a call was received on the instrument having the aforementioned IMEI number. The mobile number traced was 9810590104. Call details Ex.PW-26/C1-C6 pertaining to the said mobile number were obtained for the

period 3.12.2001 to 14.12.2001. Call details were also obtained of a mobile number 9810691713 which was used to call at the aforementioned mobile number i.e. mobile No.9810590104 on 14.12.2001. From the said call records, a landline number 2111031 was revealed as being in frequent contact with the said mobile number.

15. On 15.12.2001 a police party raided the house where the landline number 2111031 was installed. The house was in Ashok Nagar and was in the occupation of Sandeep Sharma PW-7. Sandeep Sharma was asked regarding the mobile number 9810691713 to which he informed that it was his mobile number. He was further questioned regarding mobile number 9810590104. He informed that the said mobile number belonged to appellant Rajender. Sandeep Sharma gave the address of Rajender where the police party headed by Inspector S.S.Malik met Rajender and apprehended him around 12:30 noon. They recovered a mobile instrument Ex.P-5 having IMEI number 449269200615380, lying on the table. The same was seized as recorded in memo Ex.PW-10/F. An I-card, Ex.P-1, of Delhi police in the name of Const.Neeraj Kumar (with his number allotted by the Delhi Police) but with photograph of Rajender thereon was also taken into possession as recorded in Ex.PW-10/G. Rajender was interrogated by Insp. S.S.Malik, who recorded his disclosure

statement Ex.PW-10/B wherein inter alia he stated that appellant Neeraj and Vikram were also involved in the crime and that he could get recovered a country made pistol used in the commission of the crime which he had hidden in the bushes near GTB Hospital. On 20.12.2001, Rajender led the police party to the bushes near GTB Hospital and got a country made pistol Ex.P-2 recovered along with an empty cartridge Ex.P-3; a sketch Ex.PW-32/D of the pistol was prepared by Insp. S.S.Malik. As recorded in the seizure memo Ex.PW-32/E, the pistol and the cartridge were taken into possession.

16. At the instance of appellant Rajender, on 15.12.2001, appellant Neeraj was apprehended; the time of Neeraj's arrest is not on record, but since Rajender was apprehended at around 12:30 noon and it was on his disclosure statement that involvement of Neeraj was disclosed, followed by his arrest, it is apparent that Neeraj was arrested after 2:00 PM. Neeraj was interrogated by Insp. S.S.Malik. In his disclosure statement, Ex.PW-10/C, he disclosed that he was driving the car of the deceased when the firing took place at Deepak Petrol Pump and that a bullet had grazed the jacket and a wind sheater at the shoulder worn by him at the time of the offence and had grazed his chin. He disclosed that he could get recovered the jacket and the winder sheater which he had hidden. Neeraj produced from within his house a police jacket

and the wind sheater which were seized as recorded in the seizure memo Ex.PW-32/H. The jacket and the wind sheater were damaged at the top of the left sleeve and at the top of the left shoulder. On 19.12.2001 Neeraj led SI Rahul Sahni to Murti Nursing Home in Barot (UP) where Dr.Narender Kumar PW-19 had treated him pertaining to the injury on his shoulder and chin. Appellant Neeraj was taken to AIIMS Hospital on 26.12.2001, where he was examined by Dr.Varun Dixit who prepared the MLC Ex.PW-38/A recording the following injuries on his person :-

“1. Old healed stitched wound over the chin on the right and the left side size about 2cm on left and 1cm on right. (Stitches already removed)

2. Healed wound on the left shoulder two in number about 1cm each.”

17. The wounds were opined to be more than two weeks old. It was further opined that the possibility of the wounds on the shoulder due to a firearm cannot be ruled out.

18. Appellant Vikram Yadav was arrested on 15.12.2001 at 3.45 PM, at the instance of appellant Rajender and Neeraj. Vikram Yadav got recovered two cheque books Ex.P-7 and Ex.P-8 from an almirah in his house, issued in the name of Ratan Roy by ICICI Bank and Canara Bank which were taken into possession as recorded in Ex.PW-10/N.

19. On 24.12.2001 the appellants were produced before Shri R.B.Singh learned Metropolitan Magistrate Kakardooma Court for Test Identification Parade, but all three refused to participate in the Test Identification Parade. The Ld.MM prepared a report Ex.PW-34/A in this regard.

20. Insp. S.S.Malik sent the exhibits of the case to FSL Malviya Nagar. The FSL report Ex.PW-37/A records that the marks on the cartridge test fired from the country made pistol recovered at the instance of appellant Rajender were found to be identical with the cartridge recovered from the said pistol. Pertaining to the pistol and the revolver used by SI Brij Mohan and Const.Ashok respectively, when the firing took place at the petrol pump, the second report Ex.PW-37/B, opined that the empty shell recovered from the petrol pump where the exchange of fire had taken place, were fired from the revolver used by Const.Ashok and the two deformed bullets recovered from the Ford Ikon car of the deceased were also fired through the said revolver. The Report Ex.PW-37/B also opines that an empty cartridge found at the spot was fired from the pistol used by SI Brij Mohan. That the two empty cartridges seized from the revolver of Const. Ashok were fired from the same revolver. That one of the two deformed bullet recovered from the car was fired from the pistol of SI Brij Mohan. However, the individual characteristic striations found on the other bullet

were found insufficient for comparison. The wind sheater and police jacket recovered from the house of accused Neeraj and seized vide seizure memo Ex.PW-10/K were also examined and no gunshot residue particles were detected on the same. Vide FSL report Ex.CW-1/X the blood stains lifted from the car of the deceased were opined to be of human origin and of group 'A', however it would be pertinent to mention that the blood group of the blood sample of appellant Neeraj could not be detected at that stage and a fresh sample of the blood of appellant Neeraj was taken and the blood in the fresh sample was detected to be of Group 'A', vide Report Ex.PW-32/K dated 24.1.2003 of the serologist.

21. The appellants were charged for the offence of abducting for ransom Ratan Roy and murdering him. They were also charged for the offences punishable under Section 186, 302, 307, 353, 364-A, 384 and 419 IPC; needless to state with the aid of Section 34 IPC as also for the offence punishable under Section 120-B IPC.

22. At the trial, the prosecution examined 38 witnesses. To summarize, the conclusions drawn by the learned Trial Judge from the testimony of the said witnesses and the documentary evidence, the learned Trial Judge has accepted the testimony of SI Brij Mohan PW-14 and Const.Ashok PW-15 who identified the appellants as the occupants of the car belonging to the

deceased in which he was abducted. As per the testimony of the said police officers appellant Neeraj was driving the car. Appellant Vikram was sitting in the front, next to the driver's seat and appellant Rajinder was sitting in the rear seat with the deceased when the firing took place at Deepak Petrol Pump. As the left side front glass window pane of the car in which the appellants were sitting got shattered, the said two police officers claimed to have had an occasion to see the accused. Against appellant Rajinder, the learned Trial Judge has opined that the recovery of the handset having IMEI No.449269200615380 was further incriminating evidence because the call details of mobile number 9810158032 belonging to the deceased showed that on 21.11.2001, in the night calls were made from said number using the handset in question demanding ransom i.e. Rajinder was present in the car with his handset and used the SIM card of the mobile number of the deceased on his handset. The recovery of a fake identity card having the photograph of Rajinder, but the name and other particulars of Neeraj from his house i.e. the house of Rajinder was held to be further incriminating evidence against him. Against appellant Neeraj, apart from his being identified by SI Brij Mohan and Const.Ashok, it has been held that his blood group being 'A' and blood of same group being lifted from the steering of the car in which the deceased

was abducted as also the fact that he had bullet grazing injuries on his left shoulder and the chin established his being injured inside the car when the firing took place at Deepak Petrol Pump. Needless to the state the police jacket and the wind sheater recovered at the instance of Neeraj and claimed by him to be worn at the time of the shooting were also found to be damaged by a projectile from a firearm, which has been held to be corroborative of the fact that he was injured at the exchange of fire which took place at Deepak Petrol Pump. Qua appellant Vikram Yadav, apart from his being identified by SI Brij Mohan and Const.Ashok the incriminating evidence held established is the recovery of the cheque books issued by ICICI Bank and Canara Bank in the name of the deceased which were recovered from his house. Inference drawn by the learned Judge is that being in possession of a part of the fruits of the crime, Neeraj's involvement was apparent. Lastly, against all three accused, their refusal to join in the TIP has been held to be further incriminating evidence against them.

23. We need not note the testimony of all the witnesses examined for many of them are formal witnesses. Needless to state, we need to note the testimony of such witnesses which establish that Ratan Roy was abducted in the early hours of the night of 21st November, 2001; ransom calls were received through the mobile number of Ratan Roy and that the handset

recovered from appellant Rajinder was used for making the calls using the SIM card of the mobile number of the deceased; the disclosure statements of the appellants and the recoveries effected pursuant thereto; the incident of firing which took place at Deepak Petrol Pump. Needless to state it was not seriously disputed during trial and during appeal that the post-mortem report of the deceased evidencing that the deceased died when he was thrown out of a running car is seriously not in dispute. We also note that the recovery of the Ford Ikon car of the deceased with recovery of two bullets and blood stains on the steering of the car as also the fact that cross firing took place at the petrol pump with the abductors of Ratan Roy being inside the Ford Ikon car is also not a matter in dispute. The dispute is, not whether the crime was committed in the manner as alleged by the prosecution. The dispute is whether the appellants were the offenders.

24. At the trial, Mosami Roy PW-1, deposed that her husband Ratan Roy was working in Schneider Electricals India Ltd. at Mohan Cooperative Industrial Area, Mathura Road. He used to travel in his Ford Ikon car and that he used to ordinarily return from his office by 8.30 PM or 9.00 PM. On 21.11.2001 around 9.00 PM she received a telephone call from T.K.Roy, the elder brother of Ratan Roy, enquiring whether Ratan Roy had returned from office. She informed him that Ratan had not

returned. He told her that he had received a call that Ratan Roy had been abducted and ransom has to be paid for his release. On learning this, she called up Harmeeek Singh, a colleague of Ratan Roy, who came to her house. That she received a call from Romy Chopra informing her that her husband Ratan Roy had contacted him on the phone and told him that the abductors were demanding Rs.10 Lacs. She lodged a report with PS Dilshad Garden about the abduction of her husband.

25. Harmeeek Singh PW-2, deposed that he works in Schnieder Electric India Ltd. and Mr.Ratan Roy was his immediate boss. That on 21.11.2001 he received a call from Mosami Roy wife of Mr.Ratan Roy informing him about the abduction of Mr.Ratan Roy. She requested him to come to her house. He reached the house of Mr.Ratan Roy at about 10:15 PM. Mrs.Mosami Roy had been informed about the abduction by Mr.T.K.Roy, the brother of Mr.Ratan Roy and Mr.Romy Chopra who had both received calls from Ratan Roy. The abductors had contacted Mr.Romy Chopra PW-5, the boss of the deceased and demanded a ransom in sum of Rs.10 lakhs from him. They had called Romy Chopra alone with the amount but on the insistence of Romy Chopra the abductors allowed him i.e. Harmeeek Singh to deliver the ransom amount. Thereafter, he accompanied SI Brij Mohan PW-14 and Const.

Ashok Kumar PW-15 of PS Dilshad garden to Maharajpur Chowk at around 2:45-3.00 AM where they met Rohit Bansal who was present there with Insp. S.S.Malik PW-32 and SI Rahul Saini PW-26 from PS Badarpur. Rohit Bansal handed him the mobile phone of Romy Chopra, the phone on which the abductors were contacting them. The abductors called at said number when they were at Maharajpur Chowk and directed that the ransom be delivered at Mohan Nagar. They reached Mohan Nagar but remained clueless till another call was received directing to reach Shahdra Border. Insp.S.S.Malik, SI Rahul Saini and Rohit Bansal from PS Badarpur moved ahead in their cars while he, along with SI Brij Mohan, Const. Ashok and Const. Vijender from PS Dilshad Garden followed in his Maruti car. At Shahdra also, no one came to collect the ransom and another call was received asking them to come to Guru Tegh Bahadur Hospital. On the way to the hospital while the police cars were moving ahead of the Maruti car driven by him, on the turn towards Guru Tegh Bahadur Hospital he saw a gold coloured Ford Ikon car on the road and he told SI Brij Mohan that probably it was the car of Mr.Ratan Roy. The Sub-Inspector asked him to reverse the car as the Ford Ikon entered a petrol pump. He drove his Maruti car into the petrol pump on the instructions of the Sub-Inspector and parked the car near the Ford Ikon. Thereafter the police officials got down

from the car and fired, he ducked inside the car and could only hear the sound of the shots being fired. After sometime the police officials again sat in the car and asked him to chase the Ford Ikon. The Ford Ikon hit a rehri at some distance and a person was thrown out of the car. Thereafter, the Ford Ikon car sped away and could not be traced. The person thrown out of the car was Ratan Roy who was admitted to a hospital and he expired on 29.11.2001.

26. We may note here that Harmeen Singh did not identify any one of the appellant; needless to state the reason being he claimed to have ducked inside his car and as a result could not see who were the occupants of the Ford Ikon car in which Ratan Roy was abducted.

27. T.K.Roy PW-3, deposed that he received a phone call from Ratan Roy, his younger brother, at about 8:30-9.00 PM on 21.11.2001 who told him that some CBI officials had caught him and were demanding bribe to release him. His brother handed over the phone to the persons with him, who informed him i.e. T.K.Roy that they were not from the CBI and that his brother had been abducted by them. He told them that they were a service class family and what could the abductors expect from them. He kept on receiving calls from the mobile phone of his brother who told him that he was alright.

28. Romy Chopra PW-5, deposed that he was the Vice-President of Schnieder Electric India Ltd. That on 21.11.2001 he received a phone call from Mr.Ratan Roy at about 9:30 PM asking him to arrange an amount in sum of Rs.10 Lakhs on urgent basis. He called the residence of Ratan Roy, where it was confirmed by the wife of Ratan Roy, that he i.e. Ratan Roy had been abducted. Thereafter, he kept on receiving regular phone calls from Mr.Ratan Roy at an interval of every 10-15 minutes, while he tried to arrange as much money as he could. He met Rohit Bansal and the police at Delhi-Noida border at about 2.00 AM and handed over his mobile to Rohit Bansal since all the calls from Ratan Roy were being received on his mobile phone and he returned home. Rohit Bansal further handed over the phone to Harmeeek Singh. His mobile number on which the calls were received was 9810089860.

29. Rajbir PW-6, a gunman at Deepak Petrol Pump, deposed that on 22.11.2001 at about 6 AM a longish car came to the petrol pump followed by a white Maruti car; some police officials got down from the Maruti car and firing took place. The rear wind screen and the left side window glass of the long car were broken in the course of the firing. The firing continued at the petrol pump for a period of about 5-6 minutes. After that, the long car sped away from the petrol pump followed by the Maruti car. On being cross-examined,

Rajbir stated that the police persons did not go up to the long car. That the glasses of the long car were tinted and were rolled up when the car stood at the petrol pump and nothing was visible. That he had seen one country made pistol, glasses and cartridges being picked up from the spot. That he could not say if the bullets fired by the police had hit any of the occupants, as he had immediately run for his own safety.

30. We may note that even Rajbir did not identify the appellants as he claims to have run for his safety when the firing started.

31. Sandeep Sharma PW-7, deposed that he had a mobile phone bearing No.9810691713. He had made two calls to appellant Rajinder on 14.12.2001 at about 8.15 PM. When he called for the first time the conversation with the appellant Rajinder did not go beyond 'Hello! Hello!'. The second time someone else received the call and told him that he had dialed a wrong number. That the police visited him on 15.12.2001 and that he gave them the residential address of accused Rajinder who had a mobile phone, but could not recollect the number thereof.

32. R.K.Singh PW-11, from Airtel mobile company deposed that the documents viz. the call details Ex.PW-11/B of mobile number 9810158032 for a period from 20.11.2001 to 23.11.2001; the call details Ex.PW-11/D of IMEI number

449269200615380 and cell ID location chart Ex.PW-11/E have been issued by his company, being computer generated print outs, showing that the same instrument was used on the SIM card of mobile No.9810158032 (deceased's number) which was used on the SIM card of mobile No.9810590140.

33. Dr.Narender Kumar PW-19, deposed that appellant Neeraj had come to his clinic about 8 to 12 months ago for getting treatment for injuries on his chin and shoulder. The accused told him that the injuries were caused to him in a fight with his brother and hence he did not lodge any report about the same. On being cross-examined by the counsel for appellant Neeraj he stated that he could not comment as to whether the injury was caused by a bullet as he had looked at the injuries only in a casual manner.

34. Dr.Manish Kumar PW-38 deposed that Dr.Varun Dixit had left the hospital i.e. AIIMS and that he could identify the handwriting and signatures of Dr.Varun Dixit and that the report Ex.PW-38/A and the opinion thereon were in the handwriting of Dr.Varun Dixit.

35. Ashish Hariok PW-20 deposed that he was employed as the Manager of ICICI Bank. That the ATM card account record Ex.PW-20/B of deceased Ratan Roy showed that an amount of Rs.15,000/- was withdrawn from Preet Vihar branch of the bank at 22:58 hours on 21.11.2001 and an additional amount

of Rs.15,000/- was withdrawn from B-1, Krishna Nagar Lal Quarter on 22.11.2001 at 00:36 hours.

36. Shri S.K.Khanna PW-21, an employee of Canara Bank deposed that as per Ex.PW-21/B, the copy of a register maintained, recorded the issuance of cheque books, and that the cheque book having cheque No.902531 to 902540 was issued to Mr.Ratan Roy on 14.7.2001.

37. Shri R.B.Singh PW-34, the Metropolitan Magistrate working in Delhi deposed that appellant Neeraj, Rajender Singh and Vikram Yadav were produced before him with muffled faces for test identification parade and the accused refused to join the test identification parade stating that they had already been shown to the witnesses.

38. SI Brij Mohan PW-14, deposed that on the intervening night of 21st and 22nd November 2001 he received DD No.17-A concerning the abduction of a person and he went to C-60/2, Dilshad Garden i.e. the residence of Mosami Roy and met Harmeeek Singh and Mosami Roy and was told that Ratan Roy, working at Mohan Cooperatives, Badarpur had left the office at around 6:00 PM in his car and had not reached home and his brother T.K.Roy had received ransom calls. He told Mrs.Roy that her husband had been abducted under jurisdiction of area assigned to PS Badarpur, but he would help her. He spoke to the SHO Badarpur as also the SHO of his police

station who then spoke to each other. His SHO instructed that he should go to PS Badarpur with two constables and work according to the instructions of the SHO Badarpur. He and Harmeeek went to his police station. Const.Ashok and Vijender joined him. They also got issued arms and ammunition. He spoke to the SHO Badarpur who told him to meet at Maharajpur Chowk. He along with the police officers and Harmeeek reached Maharajpur Chowk where they met the police personnel of PS Badarpur. Harmeeek was having the mobile phone of Romy Chopra with him and on his mobile phone ransom calls were received. When they were at Maharajpur Chowk a ransom call was received by Harmeeek directing to reach Mohan Nagar Chowk. Harmeeek, two constables and he sat in Harmeeek's maruti car. The SHO Badarpur and his staff sat in a gypsy and another car. The convoy proceeded to Mohan Nagar Chowk where Harmeeek stationed his maruti car and the other police personnel concealed their vehicles and took possession. They waited for sometime but none came. Another call was received directing to reach Apsara Border. They reached Apsara Border and waited, but none came. Another call was received directing to reach GTB Hospital. They proceeded to GTB Hospital with Harmeeek's car forming the tail. On the way when they took a turn from Deepak Automobile Petrol Pump, a

gold coloured car came from the opposite direction which was recognized by Harmeek as that of Ratan Roy. When this fact was told to him by Harmeek, he told Harmeek to stop the car. The gold coloured car turned into the petrol pump. Harmeek Singh reversed his car and drove it inside the petrol pump and parked his car behind the gold coloured car and re-identified it to be the car of Ratan Roy. He asked his staff to surround the car while he went to the left side of the car. However, before he could enquire anything, the people inside the car fired towards them. He fired back and a window glass of the car broke. He saw the driver of the car wearing a blue coloured jacket. The Ford Ikon sped away. The first two rounds of his firing had struck the driver of the car. They joined Harmeek Singh in his car and started chasing the gold coloured Ford Ikon. The Ford Ikon met with an accident with a hawker and after sometime, somebody was thrown out of the car. Harmeek Singh identified the person to be Ratan Roy. They resumed the chase but lost track of the car after some time. Ratan Roy was removed to GTB Hospital. PS Seemapuri was informed as the place where the firing took place fell within the jurisdiction of said police station. SI Raj Kumar from PS Seemapuri joined the investigation. That appellant Rajinder was sitting on the back seat next to Ratan

Roy in the car and appellant Neeraj was driving the car and appellant Vikram was sitting in the front next to the driver's seat.

39. On being cross-examined, he stated that the firing incident took place within a few seconds. He could not say whether the glass panes of the Ford Ikon car were tinted or not. He stated that the left window pane of the car was 1/4th open. He denied that a country made pistol was recovered from the petrol pump. He admitted that the accused persons were arrested on 15.12.2001 and that their photographs were telecasted on the TV and newspapers on 16.12.2001.

40. Const. Ashok Kumar PW-15, deposed pari materia the same facts as were deposed to by SI Brij Mohan till they reached the petrol pump where the firing took place and hence we need not note said part of his testimony. Pertaining to the firing which took place at the petrol pump, he deposed that he took position a little behind SI Brij Mohan at the petrol pump. Two shots were fired from the car when SI Brij Mohan went up to the left front side window of the car to ask the occupants of the car to get down. A bullet fired by SI Brij Mohan, broke the glass of the front left window of the car. When the accused were trying to escape from the petrol pump in the car, he fired at the tyres of the car but he missed his aim and the bullet hit the body of the car instead. That

Rajinder was sitting in the right side at the rear seat and that Neeraj was driving the car and that appellant Vikram was sitting on the seat next to the driver's seat.

41. On being cross-examined he stated that their car was at a distance of about 5-6 meters from the car of the appellants. That the glasses of the car in which the appellants were sitting were not tinted and that the entire incident took place within 15-17 seconds.

42. SI Rahul Sahni PW-26 deposed that on the intervening night of 21st -22nd November 2001 he received copy of DD No.29A regarding the abduction of Mr.Ratan Roy. That a report had also been lodged at PS Dilshad Garden by Mosami Roy wife of Ratan Roy as Ratan Roy was a resident of Dilshad Garden. Therefore, he got in touch with SI Brij Mohan of PS Dilshad Garden who was also investigating the matter. SI Rahul Sahni along with SHO and Rohit Kumar Bansal, a colleague of Ratan Roy who had lodged the report, left the police station and met Romy Chopra at Delhi-Noida Border. Romy Chopra handed over his mobile phone to Rohit Bansal as the abductors were calling on his number. Romy Chopra did not accompany them. They reached Maharajur Chowk and met SI Brij Mohan who had reached there with Harmeeek Singh and two constables. The abductors called Harmeeek Singh alone at Mohan Nagar. It was decided that SI Brij Mohan and

two constables were to accompany Harmeek Singh in his car while the others were to follow in two other cars. They reached Mohan Nagar but nobody came there to collect the money. They were instead called at Seemapuri border. There also nobody came. Finally they were called at GTB Hospital. It was decided that the police cars would lead and car of Harmeek Singh would be the last. When the two cars with police officers in front were on the way SI Rahul Sahni was informed by Harmeek Singh over the phone that firing had taken place at Deepak Petrol Pump. They reached Deepak Petrol Pump and learnt that firing had taken place between the occupants of a Ford Ikon car and occupants of Maruti car in which Harmeek Singh and three police officers were travelling and that both cars had gone towards the border. They learnt that the Ford Ikon had met with an accident with a vegetable hawker and had thrown out somebody from the car. The injured was identified as Ratan Roy and was shifted to GTB Hospital. At the hospital SI Brij Mohan, the two constables and Harmeek Singh also reached and informed them that the Ford Ikon had escaped. SI Brij Mohan got FIR No.261/2001 registered at PS Seemapuri regarding the incident, and SI Raj Kumar from PS Seemapuri joined the investigation. On 23.11.2001 he obtained call records pertaining to the mobile number of Ratan Roy from Airtel wherefrom it was revealed

that on the night of the incident after midnight, the IMEI number had been changed. That the subsequent IMEI number was not currently in use. On 29.12.2001 Ratan Roy expired without making any statement and the investigation of the case was handed over to Inspector S.S.Malik PW-32.

43. SI Raj Kumar PW-36 deposed that on 22.11.2001 he was posted at PS Seemapuri and was handed over the investigation of the case. He prepared site plan Ex.PW-36/A at the petrol pump where the firing took place. He got the place of occurrence photographed. He seized broken pieces of glass and an empty shell recovered from the spot. At about 2:30 PM he received information about car No.DL-3CS-9438 being found stationed at Arya Nagar Road. He inspected the spot and took possession of the car. The left window pane whereof on the front was broken. He lifted blood sample found on the steering wheel of the car and two bullets from the car. He seized a pistol and a revolver which were used by SI Brij Mohan and Const.Ashok at the time of the incident. On 20.12.2001 he formally arrested the 3 accused persons. The accused were taken for TIP proceedings, however, they refused to participate.

44. Inspector S.S.Malik PW-32 deposed that on 30.11.2001 investigation of the case was handed over to him. That on basis of secret information accused Rajender Singh was

arrested on 15.12.2001. On the same day accused Neeraj and accused Vikram Yadav was also arrested by him. He deposed that he recorded the disclosure statements of the appellants and that pursuant to the disclosure statement of appellant Neeraj his police jacket Ex.P-13 and the wind sheater Ex.P-15 were got recovered by Neeraj from inside his house which were seized by him and that he seized the mobile phone Ex.P-5 having IMEI No.449269200615380 and the identity card Ex.P-1 in the name with particulars of Neeraj, but with the photograph of Rajinder thereon when Rajinder was apprehended. That the cheque books Ex.P-7 and Ex.P-8 issued by ICICI Bank and Canara Bank in the name of the deceased were seized by him after appellant Vikram made a disclosure statement that he had the same in his possession and produced the same from within his house. That the recovery memos pertaining to the seizures aforementioned were drawn up by him.

45. Neeraj led defence evidence. To summarize the defence evidence, through the testimony of DW-1 and DW-2 he proved certified copies of the testimony of Ram Sharan, the vegetable vendor who was injured when the Ford Ikon of the deceased hit his handcart, in respect whereof a separate FIR was registered as also the decision pertaining to the said offence. The same evidence that Ram Sharan deposed that a Sikh was

driving the Ford Ikon car and as a result thereof the learned Metropolitan Magistrate acquitted Neeraj of rash and negligent driving and causing injury by a rash and a negligent act. But, it may be noted that only Ram Saran and HC Mool Chand, the duty officer PS Dilshad Garden were the only two witnesses examined at said trial. The other witnesses proved certain telegrams which were sent to various officers at around 11:20 AM on 15.12.2001 informing that Neeraj had been picked up by police personnel.

46. Needless to state, if the testimony of SI Brij Mohan PW-14 and Const.Ashok Kumar PW-15, pertaining to the identification of the appellants is accepted by this Court, that would be the end of the fate of the appellants, at least in this Court. Thus, we take up for consideration the testimony of said two witnesses pertaining to the said witnesses identifying the appellants as occupants of the car of Ratan Roy.

47. We note at the outset that learned counsel for the appellants did not dispute that the Ford Ikon, occupants whereof had an exchange of fire with SI Brij Mohan and Const.Ashok, was proved to be the car at Deepak Petrol Pump and that the said car sped away after the fire was exchanged and that the evidence establishes that the deceased was thrown out of the said car and that the car belonged to the deceased. Learned counsel restricted submissions by making

pleas that the testimony of SI Brij Mohan and Const.Ashok, pertaining to they identifying the appellants as the occupants of the car was shaky and hence could not be believed. It was urged that the acquittal of Neeraj for the offence of rash and negligent driving and causing hurt by rash and negligent driving to Ram Saran, conclusively established that the driver of the Ford Ikon was a Sikh gentleman as stated in Court by the injured Ram Saran. Thus, it was urged that the issue as to who was driving the Ford Ikon stood concluded by a judicial decision, which had attained finality and hence could not be re-agitated at a separate trial. Alternatively, it was urged that as admitted by SI Brij Mohan and Const.Ashok, their encounter with the occupants of the Ford Ikon car lasted less than 20 seconds. There was cross-firing and hence even said police officers would be shooting and ducking; it was urged that it was not possible for the said two officers to have had more than a fleeting glimpse of the occupants of the car, thereby rendering it highly improbable that they could identify the appellants as the occupants in the car while deposing in Court, more so for the reason, urged the counsel, the Ford Ikon had tinted glasses. It was urged that from the testimony of DW-3 to DW-5, it was apparent that Neeraj was picked up by the police at around 05:00 AM on 15.12.2001 and that there was no question of Neeraj being apprehended pursuant to the

disclosure statement of Rajender which was recorded after 12:30 PM on said date.

48. We find no evidence of the Ford Ikon having tinted glasses. SI Brij Mohan and Const.Ashok have categorically refuted the suggestion that the said car had tinted glasses.

49. That the driver of the Ford Ikon was injured is apparent from the fact that human blood of group 'A' has been lifted from the steering wheel of the said car. It is apparent that the bullet fired by either SI Brij Mohan or Const.Ashok had hit the driver of the car. The testimony of SI Raj Kumar PW-36 establishes that the left front side window pane thereof was broken. His testimony also establishes that he picked up broken pieces of glass from the petrol pump where the firing took place in the night of 21.11.2001. It is apparent that the left front side window of the Ford Ikon got broken when a bullet hit the same. In their testimony, SI Brij Mohan and Const.Ashok have deposed that they fired from the left side of the Ford Ikon. As per their testimony, the firing lasted for about 20 seconds. Even if the two officers, shot and ducked, it is apparent that they had sufficient opportunity to have, more than a glimpse, of at least the front two occupants of the car i.e. appellant Neeraj and Vikram. It has to be kept in mind that both of them are police officers and were aware of the seriousness of the crime they were investigating. Finding

being fired upon by the occupants of the Ford Ikon car and being police officers it would certainly be at the back of their mind that they should try and have the picture of the accused etched in their memory so that they could identify the accused if and when required to do so. We find that the testimony of the said two police officers on said fact in issue inspires confidence and there is no reason for us to doubt their testimony. Thus, we hold that on the basis of eye-witness account alone, qua appellant Vikram, Neeraj, the prosecution has successfully established that they were present in the Ford Ikon car of Ratan Roy who was abducted and was thrown out of the car after the firing incident took place. Thus, the prosecution has successfully established the charges against said two appellants.

50. We ignore the incriminating circumstance against said two appellants of refusing to join at the test identification parade for the reason SI Brij Mohan PW-14 has admitted that the photographs of all the accused were telecasted and printed in newspapers on 16.12.2001 i.e. the features of the appellants were made know to all and sundry and hence the test identification parade which was scheduled for 24.12.2001 was an idle formality.

51. We ignore the incriminating evidence of recovery of the cheque books of the deceased pursuant to the disclosure

statement of Vikram and at his instance from within his house as we agree with the submission of his counsel that since SI Raj Kumar PW-36 has not entered the contents of the bag recovered from the Ford Ikon car, there is every possibility of the two cheque books issued by ICICI bank and Canara bank in the name of the deceased being planted on Vikram.

52. Though with a less incriminating value, the injury sustained by Neeraj on his shoulder and on his chin and the corresponding damage to his shirt Ex.P-13 and the wind-sheeter Ex.P-15 at the shoulder top lends assurance to his being injured at the firing which took place at the petrol pump on 21.11.2001 and the same can always be used, and we do use the same, as evidence to re-assure ourselves that the testimony of the police officers i.e. SI Brij Mohan and Const.Ashok inspires confidence. The fact that a fake identity card with all the particulars of Neeraj, but with the photograph of Rajinder affixed thereon, was recovered from Rajinder also lends assurance to the fact that Neeraj was a cohort of Rajinder and was collaborating with Rajinder. We clarify that the incriminating value thereof is being treated by us as very minimal and we are using the same only as evidence of re-assuring the guilt of Neeraj, which stands conclusively established, through the testimony of SI Brij Mohan and Const.Ashok. The fact that the blood group of Neeraj is 'A' and

that blood of same group was lifted from the steering wheel of the Ford Ikon car also lends assurance to the fact that there is a probability of Neeraj being on the driver's seat, notwithstanding the fact that DNA profiling has not being got done and by itself, blood group matching is not conclusive evidence of involvement. But, the twin fact that Neeraj had an injury on the top of his left shoulder and on his chin and that his blood group was 'A' i.e. the same blood group detected on the blood lifted from the steering wheel of the car, co-jointly viewed, certainly lend a degree of assurance to the testimony of the two police officers.

53. That Neeraj has been acquitted at the trial where he was charged for the offence of causing injuries to Ram Saran is neither here nor there for the reason at the said trial neither SI Brij Mohan nor Const.Ashok were cited as witnesses. Only Ram Saran was cited as a witness. He turned hostile. Neeraj is a constable employed by Delhi Police. Obviously, he had a clout sufficient enough to stifle the voice of Ram Saran. Said acquittal by a Metropolitan Magistrate, coupled with the said trial being a shoddy affair cannot operate as a binding precedent. As held in the decision reported as AIR 1962 SC 1211 Sunder & Ors. vs. State of Punjab, though relating to a case where an accused was acquitted at a trial an appeal was filed by the accused who were convicted; issue being whether

the appellate court could consider the evidence pertaining to the acquittal of the accused notwithstanding said acquittal having attained finality, while considering the case of the other accused. It was held that if in dealing with the case presented before it on behalf of the appellants it becomes necessary for the High Court to deal indirectly or incidentally with the case against the accused who was acquitted, there is no legal bar at all for the High Court to consider the evidence as a whole and come to a conclusion that the evidence which was been discarded against the accused who was acquitted, was good evidence, the role of the accused acquitted could be considered by the Court with respect to the appeal. The decision guides us that where indirectly and incidentally a case against a person who has been acquitted is required to be considered, it is always open for a Court to do so while considering the evidence as a whole. Besides, the rule of res judicata is that the matter in issue at the two trials has to be substantially the same and that the former Court whose decision is sought to be projected as res judicata should have jurisdiction to try even the subsequent litigation. Thus, the acquittal by the Court of the Metropolitan Magistrate in the charge of rash and negligent driving and causing hurt cannot bind the Court of Session where the accused has been charged of an offence qua which the Metropolitan Magistrate had no

jurisdiction to try the same. It is no doubt true that telegrams have been sent by the relatives of Neeraj at 11:20 AM on 15.12.2001 informing that Neeraj has been lifted at 5:00 AM. It is true that as per the prosecution Neeraj was arrested after Rajender was arrested and that the evidence shows that Rajender was arrested at 12:30 noon; meaning thereby that Neeraj was arrested after 12:30 noon. There is a hiatus between the two situations. But that would not be fatal for the reason it appears to be a case where the time of arrest appears to have been incorrectly shown. We could have appreciated the effect of said controversy, if it was argued that the jacket and the wind-sheater has been planted on Neeraj. In said situation, the time and place of arrest of Neeraj would have assumed significance. No such submission was urged during arguments of the appeals.

54. Pertaining to appellant Rajinder, the evidence on record establishes that when he was apprehended the instrument Ex.P-5 having IMEI No.449269200615380 was recovered from his possession as recorded in the seizure memo Ex.PW-10/F. The call records pertaining to mobile No.9810158032, proved to be the mobile number of the deceased through the testimony of Harmeeek Singh PW-2, T.K.Roy PW-3 and Romy Chopra PW-5, i.e. Ex.PW-11/B and the call details Ex.PW-11/D pertaining to the handset having IMEI No.449269200615380

establish that the SIM card of the mobile No.9810158032 was used on the handset having IMEI No.449269200615380 at 00:35:30 on 22.11.2001 i.e. the intervening night of 21st and 22nd November 2001. The said call records show that on the handset having IMEI No.449269200615380, using the SIM card of the mobile No.9810158032, as many as 16 calls were made to the mobile No.9810089860 belonging to Romy Chopra and handed over to Harmeeek Singh, the callers not only demanding ransom but informing the place where the ransom has to be delivered.

55. Rajinder has not stated that he had handed over the said handset to any other person. Being recovered from him, unless a satisfactory explanation was furnished by Rajinder, the inevitable conclusion which has to be drawn is that either Rajinder himself or somebody else who was accompanying him made calls from the said handset using the SIM card of the deceased as deposed to by the witnesses of the prosecution and said evidence, standing alone by itself, is sufficient to link Rajinder as a conspirator and an active participant in the crime.

56. With reference to the testimony of SI Brij Mohan and Const.Ashok, assuming that, since Rajinder was seated in the rear seat of the Ford Ikon car, the said two police officers could not identify him and over-stated in Court, i.e. discarding said

evidence against Rajinder, we hold that for the reasons recorded in para 55 above, on said evidence alone, Rajinder's involvement in the crime is fully established. The circumstance of Rajinder possessing a fake identity card issued by Delhi Police in the name of Neeraj also assumes significance and lends re-assurance to his involvement along with Neeraj in the commission of the crime.

57. We find no merits in the appeals.

58. The appeals are dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

May 29, 2009
mm/dk