

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

% *Judgment Reserved on : 14th May, 2010*
Judgment Pronounced on: 17th May, 2010

+ **CRL.A. 685/2007**

K.K.SAINI Appellant
Through: Mr.S.S.Gandhi, Senior Advocate
with Mr.Irshad Ahmad, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. The victim Sikander Lal Pahwa residing at A-8, Greater Kailash Enclave-II, New Delhi left his house at about 8:00 PM on 2.3.1994 to purchase a shaving kit from the market nearby. At around 8:30 PM he spoke to his daughter at her matrimonial house and informed her that he would be returning home after 2-3 days. At 10:30 PM a call was received at the house of Sikander Lal Pahwa on the telephone No.6414874 which was attended to by his son Rajat Pahwa. The caller asked him whether he would like to speak to his father and on Rajat Pahwa saying 'Yes', the call was disconnected. Another call was received at 11:05 PM at the No.6414874 but was disconnected the moment, the caller

whose voice was recognised by Rajat Pahwa as that of his father, said 'Hello'. At 11:07 PM another call was received at the No.6414874 which was once again attended to by Rajat Pahwa. His father told him to listen carefully and that informed that one J.P. Bhai Sahab would ring up and he should act as instructed by J.P. Bhai Sahab and that the police should not be informed since it was a matter of his life and Rajat should not bother about money, which could be earned.

2. It was apparent to Rajat that his father had been abducted and was put to fear of his life. Notwithstanding Sikander Lal Pahwa instructing Rajat not to inform the police, after deliberations with his family members, Rajat informed the police at 12:50 AM i.e. at the middle of the night that his father had been abducted. The information was recorded at PS C.R.Park vide DD No.21A and FIR Ex.PW-14/A was registered.

3. It is apparent that the first and the foremost thing required to be done was to put telephone No.6414874 under observation. It was so done by attaching the necessary equipment at the Nehru Place Telephone Exchange wherefrom the No.6414874 was being serviced. The police as also the family members of Sikander Lal Pahwa had an agonizing wait till 7:22 PM on 3.3.1994. A call was received but the number wherefrom it was coming was not showing. The talk lasted for 6 minutes and 59 seconds. Rajat Pahwa spoke to the caller as also to his father Sikander Lal Pahwa who conveyed to him the demand of ransom to be paid to secure his release i.e. Rs.1.5 crores. The investigating officer thought it advisable to add on a parallel line to the No.6414874 and accordingly the parallel line being No.6464486 was put into place by making the said number a parallel connection to the No.6414874.

4. It became another agonizing wait, for the reason, the next call received at the No.6414874 was at 8:53 PM on 4.3.1994, which was tracked at the parallel line activated on the No.6414874 through the No.6464486. Unfortunately for the police even this could not throw any light on the number wherefrom the ransom call was made. This call, which lasted for 3 minutes and 50 seconds was again attended to by Rajat Pahwa. Sikander Lal Pahwa spoke to him. The next day i.e. on 5.3.1994 at 9:34 PM another call was received which lasted for 7 minutes and 12 seconds. It was tracked at the No.6464486. Sikander Lal Pahwa spoke with his son. Unfortunately once again, the telephone number wherefrom the call was made could not be tracked.

5. Sikander Lal Pahwa walked home on 7.3.1994 being set free at around 11:00 PM. He and his son claimed that everything was fine. No ransom was paid. This was not acceptable to the Investigating Officer who decided to pursue the matter.

6. The Investigating Officer contacted the office of VSNL, for the reason he suspected, and rightly so, that since Sikander Lal Pahwa was in India all throughout and he spoke to his son on 3.3.1994, 4.3.1994 and 5.3.1994, it had to be a telephone number in India; since the monitoring equipment attached to the telephone No.6414874 as also on the parallel line No.6464486 could not detect the number wherefrom the call was incoming, it was apparent that the said telephone number in India was linked to the telephone No.6414874 by means of a conference facility through another number which had to be outside the territory of India and additionally had to be a number not on an electronic exchange. The officer concerned at VSNL generated the CDR Dump/Call Data Record

through the operating system of VSNL with effect from 1.3.1994 till 8.3.1994 and microscopically looked whether any outstation call from abroad was made to the telephone No.6414874 and saw that on 2.3.1994 three calls and on 3.3.1994 and 5.3.1994 one call each from a telephone installed at Dubai were made. As noted in paras 1 to 3 above, three calls were received on the number 6414874 on 2.3.1994 and one call was received on the said number on 3.3.1994 and 5.3.1994. It thus became apparent that the telephone used for a conference facility was at Dubai. It had only to be ascertained as to which telephone number in India was also in contact with another number at Dubai at the same time. The only problem, which could never have been solved, was to the identity of the said number at Dubai. But, if in respect of all the calls which were received at the number 6414874 or on the parallel line i.e. the No.6464486, if at the same time another number was in touch with Dubai, it was plain and apparent that it was said number which was used to contact the family of the victim.

7. The CDR Dump/Call Data Record, proved at the trial as Ex.PW-18/A, revealed that on 3.3.1994 at 19:22:12 hours a call was registered at the VSNL equipment with landing time at 19:22:14 hours. The answering time was 19:22:24 hours and the clearing time was 19:29:24 hours i.e. the actual time of duration during which the caller and the person called remained intact, was 6 minutes and 59 seconds. This call was logged to the No.6875697. This corresponded to the immediate next call logged from Dubai at 19:22:48 hours with landing time 19:22:50 hours, answering time being 19:22:02 hours and clearing time being 19:23:13 hours i.e. call duration being of 10 seconds at the No.6414874. Similarly this

interconnectivity was noted on 4.3.1994 and 5.3.1994 when at the same time the line from Dubai was in contact with the telephone No.6875697 and the parallel line No.6464486. Surely, it could not be a coincidence that on 3 different occasions on 3 different dates at the same time an unknown number from Dubai would be ringing up at the telephone No.6414874 and at the same time an unknown number from Dubai would be ringing up the telephone No.6875697. It was obvious that the conference facility interconnecting the telephone No.6414874 and the telephone No.6875697 was through Dubai and the same number at Dubai, having a conference facility i.e. a double line, was simultaneously in touch with the said two telephone numbers in Delhi.

8. The task of the Investigating Officer had become fairly simple. All he had to do was to find out the subscriber and the place of installation of the telephone No.6875697. It was easy to gather said information. All what was required was a visit at the concerned exchange of MTNL. It was the telephone exchange at R.K.Puram. With reference to the record of MTNL the Investigating Officer was informed that the subscriber of the said telephone i.e. the telephone No.6875697 was one Mohan Lal Arora and that the telephone was installed at Flat No.1036, Sector XII, R.K.Puram.

9. The flat in question is government property and belongs to the Union Government. Was a government servant in league? A visit by the Investigating Officer to the Directorate of Estates, Union of India furnished information that the flat stood allotted to one Hari Shanker Kekhar Assistant Registrar Supreme Court of India. Hari Shanker Kekhar confessed to the Investigating Officer only the partial truth; denying having sublet the flat, which he apparently did

and we have no reasons to doubt his having not done so. He said that he never shifted to the said flat but allowed one A.K.Singh to use the flat for a few days at the instance of one S.C.Sharma. The Estate Officer, Union of India affirmed that the flat was allotted to Shri Hari Shanker Kekhar, Assistant Registrar, Supreme Court of India on 2.9.1993. Thus, it became apparent that the telephone No.6875697 was activated at said flat No.1036, Sector XII, R.K.Puram sometimes after 2.9.1993. The Investigating Officer had a relook at the record of MTNL and learnt that prior thereto the said number was installed at Arora Tailors in Sarojini Nagar Market. A visit to the market and find out Arora Tailors was all what was needed. It was so done. Surfaced Mohan Lal Arora carrying on business as a Tailor and Draper under the name Arora Tailors at Sarojini Nagar Market who told the Investigating Officer that he was the subscriber of the No.6875697 which was installed at his shop and since he had another number, at the asking of one Anil Raj who also works in the same market and was known to him, he sold the number to one person A.K.Singh and at his instance got the telephone shifted to flat No.1036, Sector XII, R.K.Puram.

10. Now, Shri Hari Shanker Kekhar and Shri Mohan Lal Arora both stated that the flat and the telephone respectively were handed over by them to A.K.Singh, said person had to be tracked.

11. The flat in question was put under surveillance and on 28.3.1994 the appellant K.K.Saini was found entering the flat and prior thereto the flat was lying locked. He was apprehended. Since the seizures effected from him have not assumed any incriminating character, we eschew reference

thereto. A crime team was summoned immediately. Chance prints being 19 in number were lifted.

12. When in custody sample fingerprint impressions of K.K.Saini were obtained. Fingerprint impressions of Sikander Lal Pahwa were also obtained and the 19 chance prints lifted from the flat and the sample finger prints of K.K.Saini and Sikander Lal Pahwa were sent for comparison and a report was sent that two chance prints Q-2 and Q-3 matched those of Sikander Lal Pahwa and the chance print Q-9 matched that of K.K.Saini.

13. Shown to Mohan Lal Arora and Hari Shanker Kekhar, they confirmed to the Investigating Officer that K.K.Saini was introduced to them as A.K.Singh. The victim Sikander Lal Pahwa also told the Investigating Officer that K.K.Saini used to be in the flat at R.K.Puram when he was in illegal confinement.

14. It was apparent that the appellant K.K.Saini was a suspect against whom incriminating evidence gathered was of he being the person who purchased the telephone connection pertaining to the No.6875697 and it was he who was the unauthorized sub occupant of flat No.1036, Sector XII, R.K.Puram where said telephone was installed and it was this number which was in contact with the telephone at the house of the victim through a conference facility at a telephone at Dubai, number whereof could not be ascertained by the Investigating Officer.

15. Through the disclosure-cum-confessional statement of K.K.Saini names of 9 persons were disclosed as co-conspirators, 5 of whom remained proclaimed offenders and no incriminating evidence surfacing against the other 4 were

acquitted. The reason for their acquittal is the witnesses of the prosecution turning hostile.

16. The hand of the international gangster Om Prakash Srivastava @ Babloo Srivastava whom the police suspects to be a front man of the international gangster Dawood Ibrahim surfaced. The CDR Dump/Call Detail Record Ex.PW-18/A shows nearly 80 calls from an unknown number at Dubai to the telephone No.6875697 between the date 1.3.1994 and 8.3.1994 were exchanged. It is thus not surprising that all witnesses of the prosecution turned hostile save and except the official witnesses as also Mohan Lal Arora PW-7 and Hari Shanker Kekhar PW-5. The most serious jolt was Rajat Pahwa turning totally hostile and even disclaiming his remembering the talks which he had with his father as also the abductors of his father which surfaced during investigation and in respect whereof the relevant facts stand recorded in his statement recorded under Section 161 Cr.P.C. by the Investigating Officer. Appearing as PW-2 he washed his hands off by saying that he remembers nothing except that his father was abducted. He denied that any ransom was paid. Sikander Lal Pahwa PW-1 also turned hostile by refusing to identify any accused as his abductor(s). He accepted his being abducted and being set free on 7.3.1994 between 10:00 PM to 11:00 PM. Fortunately for the prosecution he admitted having spoken to his daughter and his son when he was in the illegal confinement of his abductors. He also admitted that he was kept in confinement in flat No.1036, Sector XII, R.K.Puram which he recognized with reference to the exterior facia of the flat.

17. Ajit Singh Kataria PW-3, Junior Engineer, CPWD, with reference to the inventory register, relevant abstract being

Ex.PW-3/A, deposed and hence proved that a type IV flat No.1036, Sector XII, R.K.Puram was allotted to Shri Hari Shanker Kekhar, Assistant Registrar Supreme Court of India who occupied the flat as per their record on 2.9.1993 and vacated the same on 11.4.1994. Hari Shanker Kekhar PW-5 accepted allotment of the said flat to him in his capacity as the Assistant Registrar of Supreme Court of India and stated that through one S.C.Sharma he gave possession of the flat to a person who disclosed his name as A.K.Singh and that the appellant K.K.Saini was the one who impersonated as A.K.Singh. Mohan Lal Arora PW-7 deposed that he was the owner of Arora Tailors situated in Sarojini Nagar Market and that telephone No.6875697 was installed at the said shop as he was the subscriber thereof. In March 1994 one Anil Raj introduced him to one A.K.Singh and on the request of Anil Raj he sold his telephone No.6875697 to A.K.Singh, who got the said connection installed at House No.1036, Sector XII, R.K.Puram. He stated that the appellant K.K.Saini was the one who impersonated as A.K.Singh. Tejinder Singh PW-18, the DGM, Traffic Management, BSNL Mumbai deposed that on 8.3.1994 he was in charge of International Gateway Switch VSNL. That Ex.PW-18/A pertaining to the international incoming and outgoing calls from and to Dubai for the period 2.3.1994 to 8.3.1994 were handed over by him to the Investigating Officer after generating the same from the computer in which the same was stored.

18. Inspector Raman Lamba PW-19 who took over the investigation on 3.3.1994 proved the investigation conducted by him and how he stepwise cracked the case and how he reached out to the various witnesses. He proved the various exhibits seized by him. He deposed to having recorded the

statements of various persons under Section 161 Cr.P.C. He deposed of having received the report of the finger print expert. It may be noted that he did not depose as to how he took the sample finger prints of the accused but simply deposed that he sent the sample finger prints to the finger print expert.

19. Vide impugned judgment and order dated 7.9.2007 the appellant has been convicted for the offence punishable under Section 364-A IPC. In returning the verdict of guilt the learned Trial Judge has held that the testimony of S.K.Chadha PW-4 and his report Ex.PW-4/B proved that of the 19 chance prints lifted from flat No.1036, Sector XII, R.K.Puram, 2 were proved to be those of Sikandar Lal Pahwa which evidenced that Sikander Lal Pahwa was kept as captive in the said house; that 1 chance print matched that of the appellant, evidenced even appellant being in the flat in question; that the testimony of Mohan Lal Arora proved that telephone No.6875697 was installed in the flat in question; that the testimony of Ajit Singh Kataria established that the flat in question was officially allotted to Hari Shanker Kekhar and the testimony of Hari Shanker Kekhar established that he had given possession of the flat to the appellant; that the testimony of Ajit Singh Kataria and Ex.PW-18/A established that through an undisclosed telephone at a non-electronic exchange in Dubai conference facility was utilised to connect telephone No.6875697 to speak at the telephone No.6414874 and the testimony of Sikander Lal Pahwa and his son Rajat established ransom calls being received at telephone No.6414874 and thus there was sufficient evidence to prove the fact that the appellant was if not the sole, a part of a group to abduct for ransom Sikander Lal Pahwa.

20. Arguing the appeal, Shri S.S.Gandhi, learned senior counsel for the appellant urged that since neither was the permission taken from the competent Court to obtain the sample finger print impressions of the appellant nor was the mandate of Section 5 of the Identification of the Prisoners' Act 1920 complied with, the learned Trial Judge could not accept in evidence the report Ex.PW-4/B of the finger print expert. Second submission urged was that the rule of best evidence required proof of the fact that telephone No.6875697 being installed at flat No.1036, Sector XII, R.K.Puram through the service provider i.e. MTNL with reference to the records maintained by MTNL to prove that the said connection which as claimed by Mohan Lal Arora was installed at his shop in Sarojini Nagar Market was shifted at his instance to the flat in question. A link submission to this was that Mohan Lal Arora has simply said that he sold his telephone to one A.K.Singh who was actually the appellant and this means that Mohan Lal Arora sold the instrument. Thus, with reference to the second submission and the link submission thereto, it was urged that it could not be positively concluded that the appellant had dominion over the telephone No.6875697 as also there was no proof that the said telephone was installed at flat No.1036 Sector XII, R.K.Puram.

21. We may note that learned counsel for the appellant made no submissions to challenge the finding returned that the testimony of Tejinder Singh PW-18 and the CDR Dump/Call Data Record Ex.PW-18/A proved that through a telephone having conference facility installed in Dubai telephone No.6875697 was put into contact with telephone No.6414874 and the testimony of Sikander Lal Pahwa and his son established ransom calls being received through a caller

speaking from the No.6875697 to the No.6414874 and that Sikander Lal Pahwa was illegally confined at a place where telephone No.6875697 was in operation.

22. Notwithstanding no submission being urged in respect of the finding returned on the issue noted in para 21 above we have perused the relevant evidence and in respect of Ex.PW-18/A note the calls at serial No.28, 29, 43, 44, 59 and 60, which are as under:-

S. No.	Date	Reg. Time	Landing Time	Ans. Time	Clearing Time	Dura- tion	Phone No.
28.	3.3.94	19.22.12	19.22.14	19.22.24	19.22.24	6.59	6875697
29.	3.3.94	19.22.48	19.22.50	19.23.02	19.23.13	0.10	6414874
43.	4.3.94	20.53.13	20.53.15	20.53.24	20.57.15	3.50	6875697
44.	4.3.94	20.53.43	20.53.45	20.53.56	20.57.59	4.00	6464486
59.	5.3.94	21.31.37	21.31.38	21.31.49	21.42.48	10.58	6875697
60.	5.3.94	21.34.38	21.34.39	21.34.50	21.42.03	7.12	6464486

23. Suffice would it be to state that Sikander Lal Pahwa was kept in illegal confinement somewhere in Delhi and there is evidence that he was made to speak over the telephone, firstly with his daughter and then repeatedly on 3 different dates with his son, at the telephone No.6414874 installed in his residence where he used to reside with his son. It is thus apparent that Sikander Lal Pahwa was confined at a place where a telephone was available. That the source of the incoming call, whenever a call was received at telephone No.6414874 and Sikander Lal Pahwa spoke to his son, was from Dubai makes it further evident that the said phone at Dubai had a conference facility i.e. had a double line and hence could simultaneously be in contact with two telephones. Obviously, one contact was with the No.6414874 and the other

was in contact with the telephone which was at the place where Sikander Lal Pahwa was confined. Now, both telephones i.e. telephone with the No.6414874 and telephone through which Sikander Lal Pahwa spoke had to be in contact with the telephone in Dubai, or to put it differently if at the same time two calls from Dubai and no more were in contact with the telephone No.6414874 and another number, the conclusion is plain and obvious, it has to be the said another number through which Sikander Lal Pahwa spoke. To illustrate a little better, the problem at hand was that the telephone number from where the incoming calls were being received could not be detected. But this was known that the telephone through which Sikander Lal Pahwa was being made to speak at the telephone No.6414874 was connected to said number through a conference facility at a number in Dubai. That two telephones in the city of Delhi were provided with inter-connectivity through a conference facility from a telephone at Dubai, meant that two incoming calls from said number and both being overlapping for some duration of time had to exist. Thus, the first and the foremost thing to be looked at in the CDR Dump/Call Data Record was to locate as aforesaid. If more than two incoming calls, say for example, four were simultaneously incoming from Dubai to four telephones in Delhi, one of which was the No.6414874, it was plain that the inter-connectivity had to be with any of the other three telephones. But if only two incoming calls were being received from Dubai it had to be a case where the telephone where the other call was received was the one through which Sikander Lal Pahwa spoke. Thus, notwithstanding no challenge made on the issue, plain and simple logic tells us that since, when calls were received on 3rd, 4th and 5th March at the telephone No.6414874, two of which were detected on the parallel line

No.6464486, simultaneously the only calls received from Dubai were at the No.6875697, it was plain and simple that Sikander Lal Pahwa was made to speak through the No.6875697 and hence he who had dominion over the said telephone was the suspect, unless he explained the circumstance as to how his telephone was used. This was a fact within the special knowledge of the said person and we see no escape from the applicability of Section 106 of the Evidence Act.

24. In the issue of the person who had dominion over the telephone No.6875697, since it stands proved that Sikander Lal Pahwa spoke to his son using the said telephone connection, it is immaterial whether it is proved through independent evidence other than that relating to proof that the said telephone was installed at a particular place, for the reason the incriminating nature of the evidence is of access through the telephone connection and not access through a place.

25. The prosecution has led evidence to prove that Sikander Lal Pahwa had dominion over the telephone connection No.6875697 through the testimony of its registered subscriber Sh.Mohan Lal Arora PW-7. This takes us into the second submission urged by learned counsel for the appellant. We may dispose of the link submission that Mohan Lal Arora stated that he sold his telephone to one A.K.Singh who actually happened to be the appellant and therefore what Mohan Lal Arora has proved is the sale of an instrument and not the connection. We are afraid, the submission is bereft of any substance for the reason Mohan Lal Arora has deposed that he sold the telephone No.6875697 to the appellant. What Mohan Lal Arora has conveyed is that being the registered subscriber of the telephone connections he transferred the same to the

appellant. Let us not forget that the year 1994 was the beginning of the era of liberalization when people had to wait, sometimes for over a decade, to get a telephone connection and there was an illegal trade of sale of telephone connections and in this illegal regime, the staff in the Ministry of Telecommunication made millions by accepting false documents of transfer of residence or business and on sale of telephone connections, would shift the number to a new address falsely stated by the subscriber to be the place of residence or business. Not only did the staff in the Ministry of Telecommunication mint money but even those in the Ministry of Food and Civil Supplies as also the Ministry of Commerce or the Ministry of Industries made money. The reader would wonder how? Well, proof of change of residence was being accepted then, by means of a ration card. Roaring business was being done by the staff in the Ministry of Food and Civil Supplies to issue ration cards at ghost addresses. Proof of change of place of manufacture or trade was through licenses issued either by the Ministry of Industry or Ministry of Commerce. Roaring business was being done by the staff in these Ministries to issue false trade certificates as proof of change of place of manufacture or trade. All made good money and shared in the illegal booty.

26. Now, if the truth tumbled out, cover-up operations were resorted to. Thus, proof of the truth had to be in the context of the prevailing corrupt system. The proof that the corrupt system was manipulated is writ evident in the instant case. Mohan Lal Arora's claim of having sold his telephone connection has not even been refuted in cross-examination. His claim that the number was transferred from his shop at Sarojini Nagar to flat No.1036, Sector-12, R.K.Puram has also

not been challenged. The further proof of the prevailing corrupt system is that Hari Shanker Kekhar who earned his livelihood by working as the Assistant Registrar in the Supreme Court of India, the highest seat of the temple of justice, was himself a party to make hay in the sunshine of corruption. The thriving black market of illegal subletting of government accommodation was accessed by him and he admitted having parted company with a government accommodation being flat No.1036, Sector-12, R.K.Puram to the appellant. Thus, in the prevailing regime of corruption, profiteering and black marketing in the year 1994, it is plain evident that the prosecution has successfully proved the appellant having dominion of not only the telephone connection No.6875697 as also flat No.1036, Sector-12, R.K.Puram during the period 2.3.1994 till 7.3.1994. The rule of best evidence envisages a normal situation in which the players have to play and not with one player taking advantage of the prevailing mess and the other being tied to purity. That apart, the rule of best evidence requires a party to lead primary evidence to prove a fact for example in case of sale of goods, to prove the sale through a bill or an invoice. Failure to do so would justify an inference that the party has not brought the best evidence on record for the reason it was adverse to the interest of the said party. But, in a case of the instant kind where the sale of the telephone connection could never be evidenced by any document, for the sale itself was a clandestine activity, being prohibited by law, its proof had to be by no other means except the testimony of he who illegally sold the same. It is plain obvious that installed at flat No.1036, Sector-12, R.K.Puram, in the official records the connection continued to remain in the name of Mohan Lal Arora and no useful purpose would have been served to summon somebody from the office

of the MTNL to prove as to who was the registered subscriber thereof. The only thing which could have been proved was that the said telephone connection was shifted from a shop at Sarojini Nagar Market to the flat in question and to this extent the investigating officer should have been careful to have collected better evidence by seizing the relevant record of MTNL. But where a fact is otherwise satisfactorily proved keeping in view the course of conduct followed by the society at a point of time, as held in the decision reported as 2008 (16) SCC 372 Aqeel Ahmad Vs. State of UP lapses on the part of investigating officer that do not affect the credibility of prosecution version have to be ignored.

27. It being proved that Sikander Lal Pahwa spoke at the telephone No.6414874 through the telephone No.6875697 dominion whereof at the relevant time was with the appellant, irrespective of proof of fact where telephone No.6875697 was installed, the inevitable conclusion has to be that the appellant must suffer the conclusion of being a conspirator to the crime, unless the appellant proves a fact which breaks the fact upon which the presumption has been raised i.e. proves that between 2.3.1994 to 7.3.1994 he had lost dominion over telephone No.6875697. The appellant not having done so i.e. having not discharged the presumption against him as per the mandate of Section 106 of the Evidence Act, we see no escape other than the conclusion that with respect to this evidence and ignoring everything else, a correct verdict of guilt has been returned against the appellant.

28. We must deal with the first contention urged by learned counsel for the appellant, lest we be accused of doing a shoddy job.

29. As noted above, the investigating officer, nor any other police witness, have thrown any light as to where, when and how the sample fingerprint impressions of the fingers of the appellant were taken. In any case, there is no proof that permission was taken from the competent Court to do so. There is no proof that the prisoner was duly identified as per the requirement of Section 5 of the Identification of Prisoners Act 1920. Explaining the Constitutional Bench decision of the Supreme Court reported as AIR 1961 SC 1808 State of Bombay Vs. Kathi Kalu Oghad, in the decision reported as AIR 1980 SC 791 State of U.P. Vs. Ram Babu Mishra, which decision was followed with approval in the decisions reported as 1994 (5) SCC 152 Sukhvinder Singh & Ors. Vs. State of Punjab and State of Haryana Vs. Jagbir Singh & Ors. AIR 2003 SC 4377 it was held that unless permission is taken from the Court of competent jurisdiction and further unless the prisoner is identified as per the requirements of Section 5 of the Identification of Prisoners Act 1920 reports of fingerprint experts based upon sample fingerprints taken when an accused is in custody of the police would be inadmissible in evidence. Thus, we discard the report Ex.PW-4/B of the fingerprint expert which has been used by the learned Trial Judge against the appellant.

30. But, from proof of the fact that during the period of illegal captivity Sh.Sikander Lal Pahwa spoke on three different dates with his son through telephone No.6875697, with further proof of the fact that during said period dominion of the said telephone was with the appellant, we hold that said evidence is sufficient wherefrom the guilt of the appellant can safely be inferred since the appellant has failed to displace the presumption which can be drawn against him as per the

mandate of Section 106 of the Evidence Act. It was a fact within the special knowledge of the appellant as to who was using the telephone in question on the said date. It was a fact within the special knowledge of the appellant as to how Sikander Lal Pahwa was given access to the said phone.

31. Before parting with the instant case, we must highlight as to how the greedy citizens of this country who try and squeeze every penny are responsible for terrorists, extortionists and the underworld to flourish. Instant case is of an international mafia operating. The CDR Dump/call data record Ex.PW-18/A shows calls from Dubai constantly being made to the telephone No.6875697. The calls from Dubai are from a number which has been successfully screened by the mafia from being detected. The said number has been used to provide conference facility. Had Mohan Lal Arora remained happy by stealing cloth cuttings, for which he had ample opportunity as a tailor, and not try and make an extra buck by illegally and clandestinely selling his telephone connection and had Hari Shanker Kekhar not traded upon government property by sub-letting his occupancy rights, the mafia would have found it difficult to operate. The thriving black market where everything is done in the darkness of secrecy provides a thriving and a fertile ground for the mafia to grow. If citizens of this country conduct themselves as required by the rules of law, we see little scope for the mafia to spread its tentacles, and if any grows it would be spotted in a clean and a transparent environment. It is time for each one of us to reflect on our being as a human and use our conscience to reflect upon our actions and do a self audit as to whether our actions breed darkness and secrecy where the microbes of the underworld, not only thrive but multiply with impunity. The

likes of Mohan Lal Arora and Hari Shanker Kekhar need to stir their conscience and our appeal is directed to them and their like.

32. We find no merit in the appeal which is dismissed.

33. Since the appellant is still in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 17, 2010
dk/mm