

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 03.10.2011

+ 1. CRL.A. 1062/2010

RAJ KUMAR

... Appellant

versus

THE STATE (NCT OF DELHI)

... Respondent

AND

+ 2. CRL.A. 379/2011

RAJENDER KUMAR

... Appellant

versus

THE STATE (NCT OF DELHI)

... Respondent

AND

+ 3. CRL.A. 141/2011

MURARI

... Appellant

versus

THE STATE (NCT OF DELHI)

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr O.S. Soren in CrI.A.1062/2010

Mr Sumer Kumar Sethi in Crl.A. 379/2011
Mr Sumeet Verma in Crl.A. 141/2011

For the Respondent : Mr Sanjay Lao, APP

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

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

VEENA BIRBAL, J

1. These three appeals are filed against the judgment dated 3rd July, 2010 passed in Session's case no.112/06 by the learned Addl. Sessions Judge North District, Delhi, arising out of FIR No.83/06 P.S. Ashok Vihar u/s 363-364-A/302 IPC wherein all the three appellants have been convicted u/s 364-A/302/34 IPC. The appeals are also directed against the order of sentence dated 24th July, 2010 wherein all the three appellants have been sentenced to imprisonment for life and to pay a fine of Rs.1000/- each u/s 364-A IPC and in default of payment of fine to undergo SI for one month. They are further sentenced to imprisonment for life and to pay a fine of Rs.1000/- each u/s 302/34 IPC and in default of payment of fine to undergo SI for one month. It is also ordered that both the sentences shall run consecutively.

2. The case of the prosecution is that on 05.02.2006 the complainant Avdesh lodged FIR No.83/06 Ex.PW5/A in police station Ashok Vihar

about his son Anuj @ Golu, aged about 10 years, having gone missing. It is alleged that on 4th February, 2006, Anuj @ Golu had gone out of the house at about 4 pm. When he did not return, complainant Avdesh (PW-2) searched for the child with his relatives but could not find him and therefore he had lodged the aforesaid FIR Ex.PW5/A. SI Haroon Ahmed PW15 was assigned the investigation of this case. On 6th February, 2006 at about 10.00-11.00 AM, SI Haroon Ahmed PW15 was present at Wazir Pur Village with complainant Avdesh (PW-2) for investigation of the case. In the meantime, a call was received by complainant Avdesh (PW-2) on his mobile phone demanding a ransom of Rs.2 lakhs for release of his son. On inquiry, it was found that the phone call was made from a PCO in Seema Puri area. SI Haroon Ahmed PW15 along with other police staff reached at the PCO at C-485, Seema Puri from where the said call was made. The said PCO was run by one Mohan Lal. On inquiry, he could not tell the details of the caller.

3. On 11th February, 2006, complainant Avdesh (PW-2) informed SI Haroon Ahmad PW15 that his brother Amar Pal PW9 had received two ransom calls on his mobile phone at about 3 and 4.40 pm respectively from mobile phone no.9868584460. The complainant Avdesh (PW-2) further informed the police that he was called at Dadri near Ghaziabad and the caller had informed that the date and time to reach Dadri would be informed later. On inquiry, it was revealed that the aforesaid mobile was registered in the name of Tara Chand resident of A-800, Shastri Nagar, Delhi. SI Haroon Ahmed tried to contact Tara Chand but it was informed that he was working in Parmarth Mission Hospital, Shakti Nagar, Delhi. Tara Chand informed him that he never used the aforesaid

mobile number nor the same was got issued by him. The call details of the said mobile phone were collected and SI Haroon Ahmed PW15 contacted the persons who had made calls from their phone on the said mobile phone and it was revealed that the said mobile number was being used by Vaibhav Kumar PW14. SI Haroon Ahmed PW15 contacted Vaibhav Kumar PW14 who informed that his mobile phone was missing since 10th February, 2006 and he did not make any complaint in this regard.

4. On 14th March, 2006, complainant Avdesh (PW-2) told SI Haroon Ahmed PW15 that he had received a call on his mobile phone and the caller had instructed him to come at the platform of 'Kanpur' Train, Railway Station, Delhi on 15th March, 2006 with ransom amount. It is alleged that the said call was from a PCO of Bharan Railway Station, Agra. On 15th March, 2006 Avdesh PW2 and the police reached at the spot as instructed by the caller but, nobody was found. The complainant Avdesh (PW-2) had suspected few persons of his locality including appellant Rajender @ Barka and Murari. The search was made for them but they could not be traced at their respective addresses. On 21st May, 2006, SI Haroon Ahmed PW15 received a secret information that appellant Rajender @ Barka was standing at Ghanta Ghar near Amba Cinema. On the said date, investigation was assigned to senior officer Inspector S.K.Sharma (PW 17). Inspector S.K.Sharma (PW 17) joined SI Haroon Ahmed PW15, Head Constable Jagdish PW11 and Constable Sudhir PW10 in the investigation and they all had reached near Amba Cinema at about 4 pm. At the instance of informer, appellant Rajender Kumar @ Barka who was standing in front of main gate of Amba

Cinema was apprehended. After interrogation, he was arrested vide memo Ex.PW 11/A and his personal search was taken vide memo Ex.PW 11/B. The disclosure statement of appellant Rajender @ Barka was recorded vide memo Ex.PW 11/C. He also disclosed that he could get the dead body of the child recovered. Pursuant to his disclosure statement, they reached Balaswa Jheel where one public person namely Ran Singh @ Rana (PW-4) was joined in the investigation. Appellant Rajinder pointed towards an overturned boat and at his instance the said boat was turned and police officials saw a decomposed dead body of a child without head lying in the water and the head was lying separately. The crime team was called at the spot. The dead body was taken out and the recovery memo was prepared in this regard. Other necessary formalities were completed there. The body was sent to the mortuary of BJRM Hospital. The dead body was preserved there as the father of deceased was out of station. The dead body was highly decomposed and was beyond recognition. Amar Pal PW9 had identified the same from clothes and shoes vide statement Ex.PW9/A on 23.05.2006. On 23.05.2006, at the instance of appellant Rajinder, appellants Raj Kumar and Murari were apprehended from Ashoka Park, Ashok Vihar. They were interrogated and arrested vide memos Ex.PW15/B and C respectively. Before arrest, their personal searches were conducted vide memos Ex.PW15/D & E. Pursuant to their disclosure statements, mobile phone make C-100, Samsung grey colour, was recovered from the possession of appellant Murari. It is alleged that the said mobile phone was used for making alleged ransom calls on 11.02.2006 to Amar Pal PW9. It is alleged that said mobile phone was having sim card (chip) no.8991685065502999934. The necessary formalities were done

for seizing the same and was seized vide Ex.PW 15/H. As per case of prosecution, appellant Raj Kumar disclosed that he had purchased said mobile phone from a “*smackia*” (drug addict) and mobile phone no. 9868323426 was in his name.

5. On 20th June, 2006, blood samples of parents of deceased were taken for DNA test and the same were seized vide memo Ex.PW15/L after completing necessary formalities. The exhibits were sent to CFSL for examination. After completion of necessary formalities a charge sheet was filed before the learned MM, Delhi who committed the case to the Session’s court. The learned ASJ framed charges against the appellants u/s 120B/363/364A IPC read with section 120B IPC and u/s 302/201/34 IPC. Appellants pleaded not guilty in respect of the charges framed against them and claimed trial.

6. The prosecution in all had examined 18 witnesses. Out of which Avdesh, PW-2 is the father of the deceased child and Amar Pal, PW-9 is his uncle. Ran Singh @ Rana, PW-4 is the public witness who is alleged to have accompanied the police officials at the time of the alleged recovery of dead body of the child. Vaibhav Kumar Singh, PW-14 is the person who had lost his mobile no.9868584460 and case of the prosecution is that ransom calls on 11.02.2006 were made from said number. Gopal Sharma, PW-16 and R.D.Sharma, PW-1 are the witnesses from MTNL. Remaining witnesses relate to police and medical evidence.

7. Incriminating evidence was put to the appellants u/s 313 Cr.P.C. They had denied the same. Appellant Rajender had stated that he was lifted from Roshanara Marg at 11.30 am on 21st May, 2006 and he had come from Lucknow and his ticket was taken by the police officials and was taken to the police station where some blank papers were signed by him. The appellants had produced one witness each as defence witness in the trial.

8. Learned trial court relying upon the evidence of recovery of dead body of Anuj @ Golu at the instance of appellant Rajinder and recovery of mobile phone/sim card Ex.P4 and call details Ex.PW1/C and PW16/C held appellants guilty of the offences and convicted them u/s 364A/302/34 IPC vide impugned judgment dated 3rd July, 2010 and sentenced them to undergo life imprisonment vide order of sentence dated 24th July, 2010 as is stated above.

9. Learned counsel appearing on behalf of the appellant Rajinder has contended that case of the prosecution is that appellant Rajinder had the motive to extract money from complainant PW2, father of victim as he knew that he had earned huge amount of money by selling slips of MCD for substituted plots against demolished jhuggis in Bhagat Ram colony, and for that reason, Anuj @ Golu was kidnapped for ransom. It is contended that there is no evidence to show that Avdesh PW2 had earned huge amount from the MCD as is alleged. There is no evidence to show that appellant Rajinder was facing any financial constraints as is alleged. It is contended that there is no evidence led by prosecution to establish the alleged motive. It is contended that as regards evidence

against appellant Rajinder that he had got the dead body of victim recovered on 21.05.2006 from Balaswa lake pursuant to his disclosure statement Ex.PW11/C in the presence of police officials and an independent witness Ran Singh PW-4, the same is doubtful. It is contended that reading the evidence, it cannot be said that alleged recovery stands fully established. It is contended that there are variations of material nature in the deposition of PWs in this regard which makes the alleged recovery doubtful. It is further contended that evidence about arrest of appellant Rajinder is also doubtful. As such, prosecution has failed to prove any case against the appellant Rajinder.

10. It is contended that as regards appellant Murari, the only evidence against him is the recovery of Samsung mobile phone make C-100 grey colour having IMEI No. 35236400589419 with sim card of MTNL bearing no. 8991685065502999934 having mobile no. 9868323426 (Ex.P4). It is contended that the evidence about alleged recovery of mobile phone/sim card Ex.P-4 is doubtful. As per evidence led by the prosecution the appellant Murari had produced the mobile phone/sim card Ex.P-4 by taking out the same from the pocket of his shirt after his arrest. It is contended that prior to his arrest, the personal search of Murari was conducted vide memo Ex. PW15/D wherein no such article was found in his possession. Under these circumstances, the evidence that appellant Murari had produced the mobile phone/sim card Ex.P-4 from his possession is not believable. It is further contended that even the call details of mobile phone no.9868584460 Ex.PW16/C are fabricated. It is contended that the same have not been proved by following the mandatory conditions as are laid down in Section 65(B)(2)

of the Indian Evidence Act. It is further contended that the case of the prosecution is that when mobile phone/sim card Ex.P4 was seized from appellant Murari, it had the sim card with phone number 9868323426. It is not the case of prosecution that said phone number was used for making the alleged ransom calls on 11.02.2006 to Amar Pal PW9. It is contended that as per prosecution case, mobile phone number 9868323426 has nothing to do with the occurrence of this case. In these circumstances, the alleged recovery of sim card having phone no. 9868323426 from Murari and which is subscribed in the name of appellant Raj Kumar is meaningless as the same is not connected in any manner with the alleged occurrence. It is contended that all the appellants have been falsely implicated in the present case and in any event they deserve to be given benefit of doubt and be acquitted in the present case.

11. On the other hand, learned APP has contended that the recovery of dead body of Anuj @ Golu at the instance of the appellant Rajinder stands established beyond reasonable doubt on the basis of evidence on record. It is further contended that call records relied upon by the prosecution i.e., Ex. PW16/C and Ex.PW1/A have been proved in accordance with law and same establish that the appellants have made the ransom calls to Amar Pal PW-9, uncle of the deceased on 11.02.2006. It is further contended that the recovery of mobile phone/sim card Ex.P-4 also stands established from the appellant Murari. The documents of ownership of sim card pertaining to Raj Kumar are also proved by the evidence of Sh. R.D. Sharma PW-1. It is contended that the recovery of mobile phone, sim card and call details

coupled with the recovery of dead body at the instance of appellant Rajinder clearly proves the case of the prosecution beyond reasonable doubt and they have been rightly convicted by the learned Addl District and Sessions Judge, Delhi.

12. We have heard the learned counsel for the parties and perused the entire material on record.

13. As per the prosecution case, the son of the complainant Avdesh PW2 was missing from his residence on 04.02.2006. When his son was not found, Avdesh PW2 lodged FIR Ex. PW5/A on 05.02.2006. On 06.02.2006 a call was received on the mobile phone of Avdesh PW2 from Seema Puri area from a PCO at 10-11 AM wherein the caller had demanded ₹ 2 lakhs for the release of his son Anuj Kumar @ Golu. On 11.02.2006, his brother Amar Pal PW9 had received two calls from mobile phone no. 9868584460 wherein the caller had again demanded ₹ 2 lakhs for the release of his son. On the same day, at about 4 pm Avdesh PW2 had received a call from the same mobile number wherein demand of ₹ 2 lakhs as ransom money was made. Thereafter on 14.03.2006, Avdesh PW2 again received a call on his mobile number and the caller instructed him to come at platform of Kanpur Train, Railway Station, Delhi on 15.03.2006 with ransom amount. The said phone was from a PCO of Bharon Railway Station, Agra. The complainant Avdesh PW2 suspected the appellant Rajender @ Barka and Murari and few persons of his locality. The search was made for them. The appellant Rajender @ Barka and Murari could not be traced. It is stated that on 21.05.2006, SI Haroon Ahmed PW-15 received a

secret information that Rajender was standing at *Ghanta Ghar* near Amba Cinema. On that day, investigation was assigned to Inspector S.K. Sharma PW-17. Inspector S.K. Sharma PW17 had joined SI Haroon Ahmed PW15, HC Jagdish PW 11 and Constable Sudhir Kumar PW-10 in the investigation and they all had reached near Amba Cinema. According to the prosecution, the accused Rajender was apprehended by the IO PW17 in the presence of aforesaid witnesses on the pointing out by a secret informer. Appellant Rajinder was interrogated by IO PW17 and thereafter was arrested vide arrest memo Ex. PW 11/A. His personal search was conducted vide memo Ex. PW 11/B. He had also made a disclosure statement Ex. PW 11/C. As per evidence of SI Haroon Ahmed PW15, on getting the secret information he had left the police station with Insp. S.K. Sharma PW17, HC Jagdish PW11 and Ct. Sudhir PW10 at 4.00 p.m. for apprehending Rajinder. He has deposed that writing work i.e., disclosure statement Ex. PW11/C of appellant Rajinder was recorded at the place of arrest. Only police officials had gone from Police Station to Amba Cinema. The other witness of arrest and recording of disclosure statement Ex.PW11/C of appellant Rajinder is HC Jagdish PW-11. According to him, the secret informer had accompanied them to Amba Cinema from police station. As per prosecution case, he is a witness to recording of disclosure statement Ex.PW11/C of Rajinder also. In cross-examination he has stated that he did not know as to who had scribed the disclosure statement Ex.PW11/C of Rajinder. On further cross examination, he has stated that the same may be in the hand writing of IO and IO had taken 20 minutes in recording the same. On the other hand, SI Haroon Ahmed PW-15, has deposed in the cross examination that the disclosure statement Ex. PW

11/C of Rajinder was written by him on the instructions of the IO. The other witness to arrest and recording disclosure statement of appellant Rajinder is Constable Sudhir Kumar PW-10. As per his evidence all the documents were prepared at Balaswa Jheel i.e., place of alleged recovery. According to him, after interrogation appellant Rajinder was taken to Balaswa Jheel where all the documents were prepared. He has also deposed that he cannot say as to who had prepared the memos of arrest/personal search, etc. concerning the appellant Rajinder.

There are variations of material nature in the statements of aforesaid PWs, as to who all had gone to the alleged place of arrest. There is also variation as to who had scribed the disclosure statement Ex.PW-11/C of appellant Rajinder and at which place the same was recorded. In his statement under Section 313 Cr.P.C. the appellant has denied his arrest from Amba Cinema on 21.05.2006 at 4.00 p.m. and has denied having made disclosure statement Ex.PW-11/C. The stand of the appellant is that he was lifted from Roshanara Park at about 11.30 am on that day. He had come from Lucknow and his railway ticket was taken by the police officials and was forced to sign certain blank papers. In view of the variations of material nature in the evidence of aforesaid prosecution witnesses as are noted above, it will not be appropriate to rely on the prosecution story as put forth through aforesaid witnesses about arrest and disclosure of appellant Rajinder.

14. The further case of the prosecution is that after the arrest of Rajinder from Amba Cinema, the appellant Rajinder had led them to Balaswa Jheel. On the way, one public witness Ran Singh PW-4 was

also joined in the investigation by IO PW17. It is alleged that at Balaswa Jheel, appellant Rajinder got a decomposed headless body recovered. The further case is that the head was lying separately. Both were seized by the IO PW-17 vide memo Ex. PW 4/A. The witnesses to the alleged recovery are SI Haroon Ahmed PW-15, HC Jagdish PW-11, public witness Ran Singh PW-4. As per the evidence of SI Haroon Ahmed PW-15, appellant Rajinder had pointed out an over-turned boat and the said boat was up-turned and they saw a decomposed headless body lying there. The decomposed head of the dead body was also lying there. He has deposed having signed memo Ex. PW4/A. In cross-examination he has deposed that at about 5 pm they had all reached Balaswa Jheel. He has deposed that the boat was over-turned by them. The other witness HC Jagdish PW-11 has deposed that the boat was over-turned by Ran Singh PW-4 who had brought a *balli* and he had turned the boat and then decomposed body was seen. As per his deposition, the head was searched and thereafter it was found in the water. In cross-examination, he has deposed that he along with Constable Sudhir PW-10 and Ran Singh PW-4 had pulled out the dead body.

Constable Sudhir PW-10 has also deposed that a headless dead body was found under the boat and they had made search for the head which was found lying in the water. Ran Singh PW-4, an independent witness to the alleged recovery of dead body, has not stated on which date, month, year the dead body was got recovered. He has also not stated the place from where the alleged recovery was made. He has also not stated that the body was upturned by him by a '*balli*', as is stated by

the other two PWs. He has also not stated the condition in which the body was allegedly recovered i.e. whether it was decomposed or the head was lying separate, as is stated by other PWs. The IO PW-17 has deposed that pursuant to disclosure statement Ex.PW17/C of appellant Rajinder, they had reached Balaswa Jheel and PW-4 was joined as public witness in the investigation. There the appellant Rajinder had pointed out an over-turned boat. At his instance, the boat was upturned and a headless body of a child was seen and head was lying near the body. The same were taken out. In cross-examination, he deposed that Ran Singh PW-4 with the help of police officials had over-turned the body. Constable Dalbir Singh PW-3 who had taken photographs has stated that the head of the body got separated in the process of taking out the dead body. He has also stated in his cross-examination that dead body was taken out by the IO with the help of some labourers.

Reading the entire evidence of alleged recovery of dead body, it is seen that there are variations of material nature in the statements of prosecution witnesses as to the manner in which the dead body was lying. There are also variations as to who had over-turned the upturned boat underneath which it is alleged that the body was lying. SI Haroon Ahmed PW-15 has stated that the boat was upturned by them. He has further deposed that the head was lying separately near the dead body. HC Jagdish PW-11 has deposed that Ran Singh PW-4 has brought a *balli* and the boat was upturned by him. He has deposed that the head was searched in the water and thereafter it was found. According to crime team, witness Dalveer Singh DW-3 the head was separated in the process of taking out the dead body.

There is also no cogent evidence that appellant Rajinder had led them to the alleged place of recovery. As per Constable Dalbir Singh, PW-10, the police official along with Rajender had gone to Bhalswa Jheel near Mukundpur village. It is nowhere stated that it is the appellant Rajinder who had led them to aforesaid place. IO Inspector S.K. Sharma PW-17 has also deposed that pursuant to disclosure statement of appellant Rajender they had reached at Bhalswa Jheel.

In view of above discussion, the evidence about alleged recovery at the instance of appellant Rajinder does not inspire confidence.

15. The further case of the prosecution is that on the pointing of appellant Rajender, appellants Murari and Raj Kumar were arrested vide arrest memos Ex.PW15/B and Ex.PW15/C respectively on 23.05.2006 from Ashoka Park, Phase-IV, Ashok Vihar, Delhi. It is alleged that the appellant Murari on interrogation had made a disclosure statement Ex.PW15/F and had produced one mobile phone make C-100 Samsung grey colour having IMEI No. 35236400589419 which was having sim card (chip) bearing No. 8991685065502999934 i.e., Ex.P4. It is alleged that from the said mobile phone set two ransom calls were made to Amar Pal PW-9 on 11.02.2006. Further case of the prosecution is that on interrogation, appellant Raj Kumar @ Bobby had disclosed that aforesaid sim card having mobile no. 9868323426 was issued in the name of Raj Kumar by MTNL. With the above alleged recoveries both Murari and Raj Kumar had been linked up with the alleged occurrence.

16. It is an admitted position that aforesaid sim card with mobile phone no. 9868323426 which was allegedly recovered from appellant Murari and as per evidence of Sh. Gopal Sharma, Sub-divisional Engineer in MTNL, PW16, which is subscribed in the name of appellant Raj Kumar, had not been used for making alleged ransom calls to Amar Pal PW-9. It is in evidence that when the alleged ransom calls were received on the mobile number of Amar Pal PW9 the calling no. of mobile set was 9868584460. The investigation was made about the subscriber of said phone number and it was found that the same was subscribed in the name of one Tara Chand. It has also been revealed in evidence that during investigation, Tara Chand was contacted by SI Haroon Ahmed PW15 and found him working in Parmarth Mission Hospital, Shakti Nagar and the said person told him that he had never used the said phone number nor had he got the same issued. Thereafter, call details of said phone number were collected and the persons who were making calls on the aforesaid phone number were contacted and it was found that the said phone number was being used by Vaibhav Kumar PW-14. As per evidence on record, Vaibhav Kumar PW-14 was contacted who informed that his mobile phone was missing since 10.02.2006 and also informed him that he did not make any complaint to the police about its disappearance. It may be mentioned that the alleged ransom calls to Amar Pal PW-9 from mobile phone no. 9868584460 was an important piece of evidence. Despite that, police did not cite Tara Chand as a witness in this case. No investigation has been done by the police as to how phone no. 9868584460 which was in the name of Tara Chand was being used by Vaibhav Kumar PW-14. Vaibhav Kumar PW14 had appeared as a witness in this case and even he did not explain

as to how he was using the said phone when it was in the name of Tara Chand. Even at the appellate stage, it is not explained by the prosecution. This is a serious lapse on the part of the prosecution. Prosecution has placed on record letter Ex.PW1/B which is proved by Mr R.D. Sharma PW1, Nodal Officer of MTNL to show that the phone number 9868584460 is in the name of Tara Chand, resident of A-800/12, Shastri Nagar, Delhi and the said phone number was issued in his name on 01.01.2004. The call details of the said phone number were collected during the investigation which is proved on record by the aforesaid witness. The call details in Ex.PW1/A in respect of phone no. 9868584460 are from 01.02.2006 to 11.02.2006. However, in Ex.PW1/A there is no record of alleged ransom calls dated 11.02.2006 alleged to have been received by Amar Pal PW-9, uncle of the deceased on 11.02.2006 at 3 p.m. and 4.40 p.m. Accordingly call details Ex.PW1/A is of no help to the prosecution. Prosecution has also placed on record another set of call details Ex.PW16/C pertaining to mobile phone no. 9868584460 to prove the ransom calls dated 11.02.2006. Sh. Gopal Sharma, Sub-divisional Engineer, MTNL, PW16 has exhibited the said call details. It may be noted that the said witness was summoned for proving the ownership of mobile no. 9868323426. Learned counsel for appellants has contended that the call details Ex.PW16/C cannot be taken into consideration as the mandatory conditions as laid down in Section 65B(2) of the Evidence Act have not been followed in proving the said document whereas prosecution has argued to the contrary.

17. The details in Ex.PW16/C are as under:-

“Name : Tara Chand

Address: A-800/12, Shastri Nagar, New Delhi.

CALLING NO	CALLED NO	START DATE	START TIME	CALL DURATION	A PARTY LAST CELL	A PARTY FIRST CELL	B PARTY LAST CELL	B PARTY FIRST CELL	CALLING IMEI	CALLED IMEI
919868584460	09868743699	11-Feb-2006	6:01:39 PM	31	10012	10012	10102	10102	35236400589419	35567400152
919868584460	09837405703	11-Feb-2006	12:23:27 AM	0	7432	7432	0	0		
919868584460	9868584460	11-Feb-2006	12:26:37 AM	0	7432	7432	0	0		
919868584460	9868584460	11-Feb-2006	12:26:37 AM	0	7432	7432	0	0		
919868584460	919868091837	11-Feb-2006	2:59:24 PM	92	0	0	7252	7252	35236400589419	35000530051
919868584460	919868091837	11-Feb-2006	4:42:17 PM	127	0	0	7252	7252	35236400589419	35000530051
13-Feb-2006 2:07:23 PM Page 1 of 1										

The document Ex.PW16/C is not signed by any official of the service provider, nor does it bear any stamp. Sh. Gopal Sharma, PW16 has nowhere stated that Ex.PW16/C was taken from the computer/server by mechanical process. Nothing has come in his evidence by which it can be said that conditions set out in Section 65B(2) of the Indian Evidence Act are satisfied. There is a fault of A.M. and P.M. also in Ex.PW16/C. The call made later in time is recorded prior to calls made earlier in time and vice versa. Further, the said witness was summoned for giving the name of subscriber of phone no.9868323426. The relevant call record was also not brought by him.

18. It may also be mentioned that the prosecution has placed on record call details Ex.PW1/C and Ex.PW16/C of mobile phone no. 9868584460 for proving the alleged ransom calls dated 11.02.2006. The call details Ex.PW1/C is proved on record by Nodal Officer of MTNL, which is at Page 172 of the Paper Book. However, these call details contain no record of alleged ransom calls dated 11.02.2006 alleged to have been received by Amar Pal PW-9. The said call record Ex.PW1/C is taken out on 17.12.2006 at 12.46 p.m. The call record Ex.PW16/C which is alleged to contain two ransom calls dated 11.02.2006 is taken out on 13.02.2006 i.e., prior in time as compared to Ex.PW1/C. No effort has been made by the prosecution to explain the said discrepancy. Even at the time of arguments at appellate stage the same has not been explained. Further, no call record of mobile phone of Amar Pal PW-9 who is alleged to have received the ransom calls is seized during investigation of the case to show that he had received the alleged ransom calls from mobile phone no. 9868584460 on 11.02.2006 especially when discrepancy was there in

the aforesaid two records i.e., Ex.PW1/A and Ex.PW16/C respectively. Under these circumstances, Ex.PW16/C cannot be relied upon to prove the alleged ransom calls. Further, prosecution has failed to explain how a mobile phone number which is in the name of Tara Chand was being used by Vaibhav Kumar PW-14. Further, as per prosecution case, Vaibhav Kumar had lost the mobile phone on 10.02.2006. Vaibhav Kumar PW-14 has stated that he had lodged FIR in P.S. Roop Nagar. No such FIR is produced in the court. Even the call details Ex.PW1/A and Ex.PW16/C show that the subscriber of the phone number is still Tara Chand. Further, the evidence of IO PW17 and SI Haroon Ahmed PW15 about seizure of Ex.P4 vide memo Ex.PW15/H from Murari is also not believable. As per the evidence on record of aforesaid PWs the personal search of said appellant was conducted vide memo Ex.PW15/D wherein nothing was found in his possession. In that event, evidence of Murari having produced the mobile phone Ex.P4 from his pocket is not believable. There is also no recovery of sim card with phone no. 9868584460 which is alleged to have been used in making the ransom calls. The sim card with phone no. 9868323426 which is alleged to have been found in mobile phone Ex.P4, has not been used in the alleged occurrence. On the basis of above evidence, it cannot be said that appellants Murari and Raj Kumar are connected with the alleged occurrence in any manner.

19. There are allegations against appellant Rajinder that he had a motive to extract money from Avdesh PW2 and due to that reason the alleged crime was committed. Motive is a relevant factor in criminal cases whether based on testimonies of eye witnesses or on circumstantial

evidence. In cases based on circumstantial evidence, if prosecution proves motive, the same is of great significance and is counted as one of the circumstances. There is no investigation on the motive part in the present case.

20. In view of above discussion, appellants deserve to be given benefit of doubt. Giving benefit of doubt, we set aside the impugned judgment of conviction dated 03.07.2010 and order on sentence dated 24.07.2010 passed by the learned Addl Sessions Judge, Delhi. Accordingly, the present appeals are allowed. The appellants, who are in custody be released forthwith, if not required in any other case.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

October 3, 2011

ssb/srb/kks