

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

Reserved on: 31.05.2012

Decided on : 25.07.2012

+ **CRL.A. 15/2012 & CRL.M. (BAIL) 31/2012**

VIRENDER Appellant

Through: Mr. Ajay Digpal with
Ms. Arti Bansal, Advocates.

versus

STATE Respondent

Through: Mr. Sanjay Lao, APP.

+ **CRL.L.P. 210/2012 & CRL.M.A. 4880/2012 & CRL.M.A. 4881/2012**

STATE Petitioner

Through: Mr. Sanjay Lao, APP.

versus

DEEN DAYAL & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S.RAVINDRA BHAT

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Crl.M.A.4880/2012 (for exemption) & Crl.M.A.4881/2012 (for exemption) in Crl.L.P.210/2012

For the reasons mentioned in the application, Crl.M.A.4880/2012 and Crl.M.A.4881/2012 are allowed.

Crl.A.15/2012 & CRL.M. (BAIL) 31/2012; Crl.L.P.210/2012

1. The present appeal is directed against a judgment and order of the learned Additional Sessions Judge, dated 31-10-2011 in SC No. 44/2009 whereby the appellant (variously referred to as “the appellant” and by his name, Virender) was convicted for the offence punishable under Section 364-A IPC, and sentenced to undergo life imprisonment with fine. This case was heard expeditiously, since the appellant had already spent more than seven years in jail. The two Criminal Leave Petitions are by the State, which claims to be aggrieved by the acquittal of two co-accused, Deen Dayal and Subhash.

2. The brief facts are that Rajesh Singh and Babita were residing at House No. P7/105, Mangolpuri in 2004; they had two sons, Akash and Aman. Rajesh Singh was working in the Jharkhand Police. Sanjeev @ Kalu (hereafter “Kalu”) was Rajesh’s younger brother, and the paternal uncle (Chacha) of Akash. On 2.10.2004, at about 11 AM, Akash went to a park near his house to play. Kalu was also in the park. Kalu asked Akash to take Monu (called “Prakash” at that time) to Ajay’s house. Monu made Akash to sit in a TSR driven by Subhash. Thereafter Virender (called “Deepak” then) and Monu took Akash to a room and confined him there. At 3 PM, when Akash had still not returned home, Babita, made inquiries, but he could not be traced. She went to the police station at 7.45 PM. SI Ram Singh recorded her statement. The *rukka* was prepared and an FIR bearing no.604/04 under Section 363 IPC was registered. SI Ram Singh was assigned with the investigation; he visited the spot. Late that

night, at about 8.15 PM a telephonic call was received on one Parshuram's telephone bearing number 27910741 installed at his house, No.P7/104, Mangolpuri. The call was attended by Dalip Kumar, a relative of Rajesh Singh, Akash's father. The caller made a ransom demand of Rs.6 lakhs for Akash's release. SI Ram Singh was informed. The telephone (No. 27910741) was put under surveillance. Dalip Singh and Constable Pawan Kumar were deputed to attend the calls. On 3.10.2004 and 4.10.2004 various calls were made by the caller from different telephones which were attended by Dalip Singh and Ct. Pawan Kumar. Rs.6,00,000/- was demanded as ransom. Another demand was made by a telephonic call on 5.10.2004 from telephone No. 25482522 and it was conveyed that the ransom amount should be sent to Kali Mata Mandir through Kalu. SI Ram Singh and other policemen also reached that place but the caller did not go there. Again, on 6-10-2004, various calls were made through mobile No.9811491708 to telephone No.33239487 (of Kalu) demanding that the ransom should be sent through him (Kalu) at the given place but the caller did not turn up at the said place.

3. Rajesh Singh, father of Akash came to Delhi and arranged Rs.1,98,000/ towards the ransom. On 7-10-2004, the caller, (at about 12.15 PM) made another call from Mobile No. 9811491708 to the mobile number 33139487, (of Kalu) which was attended by Dalip Singh. The caller demanded that Kalu should go to Old Delhi Railway Station with the ransom amount on a motor cycle. This information was given to SI Ram Singh and the concerned SHO. SI Ram Singh collected Rs.1,98,000/ from Rajesh Singh, and along with the concerned SHO Inspector K.G. Tyagi, SI

R. Srinivasan, SI Shiv Raj and other policemen went to Old Delhi Railway Station. Kalu too went there on a motor cycle (bearing registration No.DL-8SR 5037) owned by Ajay Kumar. The caller again asked Kalu to reach Hans Cinema, Azadpur instead of Old Delhi Railway Station. The call was also intercepted on a parallel line, of mobile of SI R. Srinivasan. The police party and Kalu reached Hans Cinema at about 3.30 PM.

4. Virender went to Kalu at Hans Cinema and started to talk with him. Kalu handed over the ransom amount kept in a black bag. Virender was nabbed by the police party along with Rs.1,98,000/ kept in a black bag. Virender was interrogated and he made a disclosure statement. He revealed the involvement of Kalu in the kidnapping. Virender was arrested; he was found in possession of one mobile phone (make Alcatel) along with a Hutch SIM Card, with connection bearing No. 9811491708 allegedly used for making the ransom calls. Another SIM card bearing No. 981318700 was also recovered. Kalu too was arrested and his disclosure statement was recorded. SI Ram Singh called Rajesh Singh to Ganda Nala, Budh Vihar, Mangolpuri. He and other policemen with Virender and Kalu also reached the said place. Thereafter all of them went to Rajiv Nagar where Virender and Kalu pointed towards a room forming part of Plot bearing No.149A situated at Khasra no.100/1 Village Karala also known as Rajiv Nagar. Deen Dayal was found outside the room. He was interrogated and he handed over keys of the room in which Akash was confined. The boy Akash was recovered from the custody of Monu in the room pointed out by Deen Dayal. Both were arrested and their disclosure statements recorded. The voice sample of Virender was collected for comparison with voice of the caller whose telephone call was received and intercepted on the mobile of SI R. Srinivasan. Subhash (driver of the TSR) too was arrested. During investigation, his disclosure statement was also

recorded. The statement of Akash, under Section 164 Cr.P.C was recorded. After completion of investigation, the accused were charge sheeted for offences punishable under Sections 363/364A/120B/34 IPC.

5. During proceedings, Kalu and Monu filed applications for sending them to Juvenile Justice Board for trial as they claimed to be the juveniles at the time of commission of offence. The applications were allowed by order dated 26.5.2005. They were ordered to be sent to Juvenile Justice Board for making inquiry on their plea of juvenility. The Principal Magistrate, Juvenile Justice Board by order dated 5.9.2005 held that the said accused (Kalu and Monu) were juveniles on the date of crime and by order dated 13.9.2005 were sent to the Board to face trial.

6. The Trial Court charged the accused (Deen Dayal, Virender and Subhash) for the offences punishable u/s 120B IPC, 363/120B IPC, 364A/120B IPC and u/s 342/120B IPC to which they pleaded not guilty and claimed trial. The prosecution examined 17 prosecution witnesses, and relied on several exhibits. After considering these, and submissions of the parties, the Trial Court, by the impugned judgment, acquitted Deen Dayal and Subhash. By its judgment, Virender was convicted, and directed to undergo sentences described earlier in the judgment.

7. The Trial Court held that there was insufficient evidence to prove that a conspiracy had existed between Deen Dayal, Subhash and Virender. It was held that the only role attributed to Subhash was that he drove the TSR, in which Akash was taken by Monu, after being asked to, by Kalu. As far as Deen Dayal's role was concerned, it was held that he was neither guarding the place, nor was his role mentioned by Akash, in any statement recorded by the police. It

was held further that Virender's role in the crime, was proved beyond reasonable doubt, because the prosecution proved that he had placed the ransom calls, and that the ransom money was recovered from him. It was held that further to his disclosure, the child Akash could be traced.

8. Counsel for the appellant argued that the Trial Court fell into error, in basing its findings and conviction predominantly on the voice sample match allegedly proved. It was submitted that PW-9 SI R. Srinivasan allegedly handed over the cassette in which ransom call was intercepted and recorded, to PW-16 SI Ram Singh (memo Ex. PW-9/U). PW16 SI Ram Singh deposed that the voice sample of Virender was recorded and that cassette was seized (memo Ex.PW16/B). The prosecution sought to prove that the voice sample matched with the recorded conversation, through the deposition of PW17 Dr. C.P. Singh, Junior Scientist Officer (Physics), CFSL, Chandigarh and his report Ex. PW-17/A. It was argued that the Trial Court fell into error in not being satisfied that the basic requirement spelt out in law, i.e., unless the recorded statements' integrity is vouched under oath, with a positive statement that there was no possibility of its being tampered, and that the maker could identify the voices with specificity, the recording and transcripts are inadmissible. Reliance was placed on the judgment reported as *R.M. Malkhani Vs. State of Maharashtra* 1973 (1) SCC 471; it was argued that in the present case, no such evidence was led before the Trial Court.

9. It was submitted that the prosecution story about the ransom being delivered, tracing and recovery of the boy was not supported by a single independent witness though the police had ample opportunity to join such

people who had no association with the police. Counsel submitted that the ownership of the mobile phone allegedly recovered from the appellant was not proved beyond reasonable doubt. Therefore, the prosecution had not proved that circumstance, much less beyond reasonable doubt.

10. It is submitted that the entire prosecution story is dependent on the testimonies of PWs-2, 9 and 16. Learned counsel argued that PW-2, the child kidnapped, was of tender age and could, therefore, be easily tutored, to implicate the appellant. Learned counsel emphasized that the proof of ransom calls in this case were sought to be proved by the testimonies of PWs- 9 and 16. PW-9 did not show how the alleged parallel line had been set-up and from when he was monitoring the telephone calls, nor was any service provider or telephone company involved in the setting-up of such alleged parallel lines. In these circumstances, the mere statement of PW-9 sought to be corroborated by PW-16, both of whom were concededly police witnesses, could not have resulted in the appellant's conviction.

11. It was also argued that the prosecution could not prove that the mobile telephone from which the calls had been made to the landline, demanding ransom, i.e., 9811491708, allegedly recovered from Virender, belonged to him. There was no proof from any service provider that the SIM Card or the number had been allotted to the appellant; similarly there was no proof that the mobile phone belonged to him. In these circumstances, the said article or even mobile phone could not be said to be an incriminating material, tending to implicate Virender.

12. Learned APP argued that the prosecution had established during the evidence on record that on 02.01.2004, when Akash was kidnapped from the park - Virender was present though he was called Deepak. PW-2 clearly

spoke about this in his testimony. Virender had made ransom calls on 06.10.2004 and 07.10.2004. These were intercepted and recorded by PW-9, SI R. Srinivasan. They were independently corroborated by PW-17, Dr. C.P. Singh. Learned APP emphasized that Sanjeev @ Kalu, co-accused had delivered Rs.1,98,000/-, the pre-arranged amount to Virender, appellant on 07.10.2004 at Hans Cinema. Immediately thereafter the appellant was apprehended and the money seized by Memo, Ex.PW-9/B. It was argued that there was no reason for the police to have planted such a huge amount of cash and manipulated the circumstances to show the arrest of the appellant and recovery of the cash. This single incident itself revealed that the appellant was complicit in the crime and the findings of the Trial Court were justified.

13. Learned APP argued that Virender, at the time of his arrest, was in possession of Alcatel make Mobile phone with SIM card, the service provider of which was Hutch, bearing cell number 9811491708. These were marked as Ex.P-6 and P-7. The evidence led also proved that ransom calls had emanated through the said mobile numbers. Lastly, learned APP emphasized that Virender had led the police party to Rajiv Nagar from where PW-2, Aakash was rescued from a room in the premises in a house in Plot No. 149-A, Khasra No.100/16, Village Karala; Virender was a tenant of those premises.

14. It was argued that the testimony of PW-7 established that Virender, the accused had rented-out the premises from where the child Aakash (PW-2) was rescued. This too was at the instance and after the disclosure statement of the appellant was recorded.

15. It was submitted that the prosecution has proved that the ransom calls

made on 6.10.2004 and 7.10.2004 and intercepted and recorded on the mobile phone of PW9 SI R. Srinivasan were made by Virender. It proved that PW2 Akash was kidnapped for ransom and ransom demands were also communicated to parents of PW2 Akash.

16. Further, argued the APP, the prosecution proved other incriminating evidence against Virender. PW-16 SI Ram Singh deposed that on 7.10.2004 he was informed by PW15 Ct. Pawan Kumar and PW-13 Dilip Kumar that the caller has directed to send Sanjeev @ Kalu along with ransom amount at Old Delhi Railway Station. PW16 SI Ram Singh collected Rs.1,98,000/ from PW12 Rajesh Singh by memo ExPW9/A. Thereafter the police party went to Old Delhi Railway Station and Sanjeev @ Kalu was also asked to go there on motor cycle owned by PW10 Ajay Kumar. PW16 SI Ram Singh deposed that on the way another call was intercepted by the PW9 SI R. Srinivasan on his mobile phone and the caller asked Sanjeev@ Kalu to reach Hans Cinema instead of Old Delhi Railway Station. PW16 SI Ram Singh said that thereafter they reached Hans Cinema, Lal Bagh, Azadpur where Kalu handed over the ransom amount to the accused who was nabbed by the police party, headed by PW16 SI Ram Singh. The prosecution also proved that the said currency notes of Rs.1,98,000/ were seized from the accused. The ransom calls were made from the mobile number; 9811491708. The accused Virender was in possession of an Alcatel model mobile phone with a Hutch SIM card 9811491708. It proved that the accused Virender made ransom calls by using mobile connection no. 9811491708. Counsel highlighted that the accused offered no explanation to the incriminating circumstances,

particularly the knowledge where PW-2 Akash had been hidden after his kidnapping or abduction. These, and the seizure of the ransom amount proved beyond reasonable doubt, his culpability for the offence.

17. It was submitted by the APP that the Trial Court fell into error in acquitting Deen Dayal and Subhash. It was argued that the incriminating evidence against the accused Deen Dayal was that when Virender and Sanjeev @ Kalu led the police party to the room forming part of plot no.149A situated in khasra no.100/16 village Karala (also Rajiv Nagar), the former (Deen Dayal) was present outside the room. Deen Dayal too was arrested and he made a disclosure statement Ex.PW9/2. PW-16 SI Ram Singh deposed that Deen Dayal handed over two keys of the room in which PW-2 Akash was confined and upon opening the room, PW-2 Akash was found there, in Monu's custody. The keys Ex.P3 and Ex.P4 were seized by seizure memo Ex.PW9/O along with two locks. PW2 Akash also deposed that Deen Dayal also used to visit in the room in which he was confined after kidnapping. The said evidence proved complicity of Deen Dayal in the conspiracy hatched to kidnap PW-2 Akash.

18. It was next submitted that the reasoning of the Trial Court leading to acquittal of Subhash only on the ground that he was the TSR driver, is erroneous. It was argued that Subhash drove the TSR in which Akash was kidnapped on 2.10.2004 and later on confined in a room. Akash deposed that the accused made him sit in a TSR which was driven by Subhash. PW16, SI Ram Singh during the investigation seized the TSR bearing no.DL1RE8554, Ex.PW-5/A owned by PW5 Vijay Kumar. PW5 Vijay Kumar deposed that he owned that TSR bearing No. DL1RE8554 and he

never gave it to anyone. Though PW5 did not support the case of the prosecution to prove that the TSR was given to Subhash in which PW2 Akash was kidnapped, yet the child clearly deposed to being taken in that TSR. Counsel submitted that the incriminating evidence against the accused Subhash was the pointing out memo ExPW4/C showing the place from where PW2 Akash was kidnapped; it was prepared at the instance of the accused Subhash. These incriminating materials pointed to Subhash's role as a conspirator with the other accused and that he was actually a party in Akash's kidnapping.

Analysis and Findings

19. It can be seen from the above discussion that the accused were arrayed for the kidnapping of Akash, a young boy; he deposed as PW-2. The materials put against them were the ransom calls received for the time the child remained kidnapped; the circumstances of the arrest of accused; seizure of currency notes from the appellant, Virender; the rescue of the boy at the disclosure statement of the appellant, seizure of cell phone and sim card from the appellant, and lastly, the deposition of the child, after his rescue.

20. PW-3 Babita deposed how the child went missing on 02-10-2004, after he went to play in a park near her house. Her husband, PW-12 Rajesh Singh, was posted in Jharkhand; he used to work in a para-military force. She said that she was living away from her husband and taking care of her children for five years; she confirmed having reported the matter to the police. PW-13, who was related to PW-12

and the child, deposed about the ransom calls. The first ransom call was attended to by him; it was made to the landline telephone number of a neighbor. The witness attended it. The caller conveyed the demand for ransom, as a condition for release of the child. He deposed that calls were again received on 04-10-2004 and 06-10-2004, and how the caller threatened first to kill the child, and later, chop off his limbs, in case the money was not paid. The witness deposed that PW-12 came to Delhi on 06-10-2004; he also testified to the police about the setting up of a parallel line to monitor telephone calls. He mentioned how a sum of about ₹. 2 lakhs was given to Kalu, and spoke of the latter's attempt to hand it over to fulfill the kidnapper's demand, etc.

21. PW-12's deposition is that he was working in Jharkhand Police and was not in Delhi when his son was kidnapped; he however returned on 6-10-2004. In his testimony, he partly resiled from the statement made under Section 161, to the extent that he tried to help Kalu. However, he clearly mentioned how currency notes were handed over to him, for being given to the kidnapper. He did not support his previous statement about witnessing the rescue of the child, and preparation of the seizure memo, etc; however, he did confirm about his signatures on the seizure memo pertaining to articles recovered from Virender.

22. The testimonies of PW-9 and PW-16 are crucial to the prosecution. PW-16 SI Ram Singh deposed that Virender was nabbed with currency notes of ₹.1,98,000/- kept in a black bag which had been

handed earlier to Sanjay, @ Kalu, who in turn handed it to him. The said currency notes were seized by seizure memo Ex.PW9/B. Virender was questioned and he made his disclosure statement Ex.PW9/C. The witness Ram Singh deposed that on the basis of disclosure statement of Virender, Sanjeev @ Kalu was also apprehended and interrogated (his disclosure statement is Ex.PW9/3). The testimony of PW-16 SI Ram Singh, was that PW-12 Rajesh Singh was joined at this stage and Virender and Kalu led the police party to a room forming part of plot no.149A. He further deposed that Deen Dayal was present outside the room; he was apprehended at the pointing out of Virender and Sanjeev @ Kalu. Deen Dayal was interrogated and he made disclosure statement Ex.PW9/2. PW16 also stated that Deen Dayal pointed to the room and handed over the keys of the room in which PW2 Akash was confined. PW-2 Akash was recovered from said room.

23. PW-9 deposed to being posted on 06.10.2004 at PS Mangol Puri. On that date, and possessing a Reliance make mobile phone; he intercepted three or four ransom calls with that mobile phone. He deposed to going with policemen to PW-3's house, on 07.10.04, i.e., P-7, Mangol Puri, Delhi; SI Ram Singh, IO of the case, also reached there. PW-12 arranged the sum of ₹.1,98,000/-; he also signed all the currency notes. SI Ram Singh seized all those currency notes and prepared memo Ex. PW-9/A. The memo contained PW-9's signatures at point A. The currency notes were given to Sanjeev who was asked by the SI to deliver the amount only after release of kidnapped child. He stated that they went to Kala Mandir Road, Mangol Puri. At about 12.30 PM a call was intercepted on the mobile phone that whatever amount

was arranged was to be delivered to Sanjeev and placed in a black colour bag and then be sent to a place in front of Old Delhi Railway Station. Half an hour thereafter Sanjeev passed by their side on motorcycle, with a black colour bag and left for D-Block Mangolpuri. They all followed him in three private vehicles. Sanjeev stopped his motorcycle near Hans Cinema, Rana Pratap Bagh Road, Azadpur. They too stopped their vehicles and got off, at a distance of 20/30 yards from Sanjeev, who entered a park in that area. Five minutes thereafter Sanjeev came out from the park; a boy (Virender) went to him. Then Sanjeev handed over the bag containing the currency notes to that boy. When that boy was about to leave that place, the police nabbed him. The bag with currency notes was recovered from him. All currency notes bore signatures of Rajesh, father of the kidnapped child; they were kept in the bag and sealed with the seal bearing impression RSY. Seizure memo Ex. PW9/B was prepared; the witness signed it. Virender was interrogated by the IO; he disclosed about his involvement and that of Sanjeev who had gone to deliver him the money. He further disclosed that the child was confined by them and their companions Monu, Deen Dayal and Sonu in a rented room in Rajiv Nagar, Delhi and that he could get the child recovered. Disclosure statement Ex. PW9/C contained PW-9's signature; he signed on the arrest memo Ex. PW9/D and personal search memo Ex. PW9/E.

24. Virender had in his possession a mobile phone; he stated that it was used to make ransom calls. The mobile phone was seized by recovery memo Ex. PW9/F. An extra SIM card (Number 981318700) was recovered from Virender. The mobile phone was turned into a parcel and then sealed. The extra SIM card was also seized by memo Ex. PW9/G. The witness also deposed to the arrest of Sanjeev and the seizure of motorcycle No. DL8SR

5037 by memo Ex. PW9/K which was signed by him. The police then left for Rajiv Nagar with Virender and Sanjeev. At this stage, PW-12 was joined in the proceeding. The accused pointed to a building, where the police went; they found Deen Dayal, who after questioning disclosed that the kidnapped child was inside the building. Deen Dayal produced two keys. One of them was to open the outer door which was opened. Another locked room was found, which was opened with a key given by Deen Dayal. Akash was found inside the inner room. Rajesh, identified Akash. Monu, the juvenile co-accused was present in that inner room with Akash. The other three accused disclosed that Monu, juvenile was their companion and was keeping a watch over the child. The rescue and recovery of Akash was documented with memo Ex.PW9/N. The witness testified to producing before the IO the cassette in which he had recorded the ransom calls. It was seized by memo Ex. PW9/U. The witness also stated that on 06.10.04 SHO PS Mangolpuri, sought permission from GNCT Delhi for interception of ransom calls from mobile no. 9811491708, which was given and that from that day, interception of calls from the said mobile phone started.

25. The preceding discussion would reveal that the prosecution case and evidence as against Virender, the present appellant are the testimonies of PW-2, PW-9, PW-13 (and to a lesser extent, PW-12), the disclosure memo recorded leading to the rescue of the child, and recovery of the currency notes. Now, the appellant is correct in contending that the cassette recording made by PW-9 has not been proved. The witness does not mention that the recording was made in such a manner that no one could tamper with it, and that he was

present all the time. To that extent, the evidence of the recording and the transcripts cannot be considered. However, as far as the demand for ransom itself is concerned, there is sufficient evidence. The ransom calls were received by PW-13. He speaks about them in his evidence; initially the demand was for ₹. 6,00,000/-. However, the kidnappers agreed to accept ₹.2,00,000/-. PW-12 too corroborated this part; he also mentioned handing over currency notes to be given to the kidnappers. He sought to shield his cousin Sanjeev, by not mentioning that he was involved in handing over the money. He sought to resile from the previous statement about marking of the currency notes handed over by him. PW-12 did not depose about being associated with the rescue of his son; however, that part was deposed to by PW-9 and PW-16. PW-12 agreed that his signatures were found on the currency recovery memo; he also agreed about his signatures on the recovery memo in respect of his son, PW-2.

26. A conjoint reading of the evidence led by the prosecution, i.e., the testimonies of PW-2, PW-13, PW-9 and PW-16 clearly reveal that the boy was rescued after currency was handed over by PW-12. Those currency notes were recovered from Virender. This aspect cannot be overlooked. It is hard to conceive why the police would go to such great lengths to the extent of securing and “planting” a large quantity of cash. This circumstance, and the next one, the knowledge that Virender had regarding whereabouts of Akash, which led to his rescue – facts proved by PW-16 and PW-9, as well as the recovery memo, prove Virender’s culpability, beyond reasonable doubt. The mobile

phone with a SIM card and an extra SIM were recovered from him at the time of arrest.

27. PW-2, Akash was clear in his testimony; his statement had been recorded earlier. His deposition was consistent; it implicated Virender. The child stated that on 2nd October 2004 he went out to play in the park. He said that Parkash (i.e. Virender, who was identified in court) met him there. Kalu, who was in the park asked him to take Parkash to Ajay's house. He went with Parkash to the house of Ajay; in a TSR driven by Subhash. He clearly stated that Parkash was apprehended by the police and that Parkash and Deepak had confined him in a room in their house. The child was also aware of the ransom demands made for his release. He stated that Deepak and Parkash used to beat him regularly. The evidence of the landlord, PW-7, also clearly points to Virender being tenant of the premises, from where the child was rescued.

28. This evidence, in the opinion of the Court, clearly established the ingredients of the offences Virender was charged with, i.e. kidnapping of the child, confining him, demanding ransom and holding out a threat of bodily harm to the victim in case the demands were not met with. In this context, PW-13 also had deposed that in two calls, threats to the physical well being of the child had been held out.

29. As far as Subhash is concerned, the Trial Court held that the only evidence against him was his being driver of the TSR which took Akash to the place where he was confined. It was argued that Subhash drove the TSR in

which Akash was kidnapped on 02.10.2004 and later on confined in a room. Akash no doubt stated that in his evidence. However, there is nothing beyond that fact, to implicate Subhash. PW-5 Vijay Kumar deposed that he owned that TSR and he never gave it to anyone. The prosecution relied on a pointing out memo said to have been prepared at the instance of Subhash, to say that he was aware that the boy was confined there. However, that circumstance cannot be used, firstly because the disclosure did not lead to recovery of Akash; the prosecution clearly stated that the rescue was due to the statement of Virender. Secondly, even if Subhash was aware of the premises; that only proves that he took the child, at the behest of the accused, in the TSR, to that place, on the day of the kidnapping. Therefore, Subhash's acquittal and the findings pertaining to it are reasonable; there is no substantial or compelling reason to interfere with the Trial Court's findings on that score.

30. As regards Deen Dayal the incriminating circumstances put against him were that when Virender and Sanjeev @ Kalu led the police party to the room forming part of plot no.149A situated in khasra no.100/16 village Karala (also Rajiv Nagar), he was present outside the room. He too was arrested and he made a disclosure statement ExPW9/2. PW-16 SI Ram Singh deposed that Deen Dayal handed over two keys of the room in which PW-2 Akash was confined and upon opening the room, PW-2 Akash was found there, in Monu's custody. The keys Ex.P3 and Ex.P4 were seized by seizure memo Ex.PW9/O along with two locks. PW-2 Akash also deposed that Deen Dayal also used to visit in the room in which he was confined after kidnapping. The said evidence proved complicity of Deen Dayal in the conspiracy hatched to kidnap PW-2 Akash. The Trial Court discounted the prosecution's

allegations. This Court notices that in support of the prosecution story, there is no objective evidence; no public witness was associated. As far as Virender is concerned, there is considerable objective evidence; his statement did not mention Deen Dayal. Furthermore, according to the prosecution, Deen Dayal handed over two keys. The first one opened the outer door of the premises, and the second one opened the room where the boy was confined. The improbability of this aspect is that on opening the locks, the police also found another accomplice, Monu (a juvenile). There is no rationale for this behavior. Furthermore, there is also no reason for Deen Dayal, who lived in the neighbourhood of PW-12 and PW-13 to be present at the time of the police raid in the premises. Therefore, in his case too, the court could have taken a view leading to acquittal. In such circumstances, the High Court would not be justified in interfering with the judgment. There is no substantial or compelling reason to do so.

31. In view of the above reasons, the Court finds no reason to interfere with the judgment and findings of the Trial Court. Crl. A. 15/2012 and Crl.L.P. 210/2012 are accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

July 25, 2012