

\$~2

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

DECIDED ON: 02.01.2012

+

CRL.A. 1365/2011
CRL.M. (BAIL) 1926/2011
CRL.M.A.17434/2011

RAJESH SINGH ADHIKARI @ BABLOO Appellant
Through: Mr. Bankim Kulshreshtha
Shivanand with Mr. Sudhir Kumar,
Advocates.

versus

STATE NCT OF DELHI Respondent
Through: Ms. Richa Kapoor, APP.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE S.P. GARG

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The present Appeal is directed against a judgment and order of the learned Additional Sessions Judge dated 15.09.2009 in SC No.19/2011 whereby the appellant (hereinafter referred to by his name - Rajesh) was convicted for committing the offence punishable under Section 364A/120B IPC, and directed to undergo life imprisonment besides fine.

2. The subject matter of the present appeal relates to a kidnapping incident which occurred on 22.07.1997. On that day, a young boy Tarun Puri (who deposed before the Trial Court as PW-3) was kidnapped. The FIR (No.238/1997) was lodged and after investigation, the police arrested various accused persons. The main judgment of the Trial Court was rendered on 15.5.2002. That became the subject matter of an appeal before this Court being Criminal Appeal No.439/2002 along with other connected Appeals. It would be useful to recount the facts mentioned in the judgment of this Court - *Sushil Kumar Nagar v. State & Ors.* 2007 (1) JCC 403. The relevant factual background has been set out in this case which are extracted below: -

“3. *The facts of the case culled out from the trial Court record are like this: Accused Rajesh Singh Adhikari @ Babloo(who absconded during the trial and was declared a proclaimed offender) and appellants herein were members of a notorious gang of kidnappers. Besides these appellants there were some other members also of the gang who were also involved in the present incident of kidnapping but they could not be arrested by the police during the investigation and so they were kept in column No. 2 of the challan. It appears that most of these gangsters were from Uttar Pradesh. Since Rajesh @ Babloo was living in Delhi his co-gangsters asked him to find out some rich man of Delhi who could be abducted and then crores of rupees could be extracted from that person. The father of the accused Rajesh @ Babloo(PO) used to supply milk in the house of the complainant Virendra Puri(PW-5) and he often used to*

visit his house because of which he was quite aware about his affluence. Accused Rajesh @ Babloo also used to visit the house of the complainant. The complainant had only one son Tarun. He was studying in Bal Bharti Air Force School, Lodhi Road, New Delhi and was about nine years old in July, 1997(when he was kidnapped). Rajesh @ Babloo knowing that the complainant was a very rich man and had only one son passed on that information to his co-gangsters and all of them then decided to extract huge amount of money as ransom from the complainant by kidnapping his son Tarun.

4. On 21-07-97 appellants Trilok, Leelu, Brijesh, Jeetpal (who was in fact a constable in UP police but joined these gangsters) and their co-accused, Sanjay and Rajesh @ Babloo(proclaimed offenders) stayed during the night at the STD booth of accused Sushil Nagar in Delhi and on 22-07-97 they went to the house of the complainant in Golf Links in two vehicles at about 7.40 a.m. which was the time for the son of the complainant to go to school and started waiting outside the house for the son to come out. Around 7.45 a.m. the complainant Virender Puri along with his wife Smt. Meena Puri(PW-6), his son Tarun (PW-3) and their maid servant Maya(PW-7) came out of the house No. 89 and the moment they started going towards their car appellant Leelu and his co-accused Sanjay(PO) and Brijesh rushed towards them. All these three accused were having fire-arms in their hands at that time. They surrounded the complainant, his wife, son and the maid servant and started snatching Tarun and when the complainant and his wife resisted the three accused fired 5/7 shots from their weapons. The complainant shouted but these three accused managed to take away his son Tarun in the Zen car driven by accused Trilok.

Thereafter the police was informed of the incident. On receipt of that information police officials from the local police station reached the complainant's house where the complainant's statement(Ex.PW-5/A) was recorded in which he narrated the afore-said incident. On the basis of his statement an FIR(Ex. PW-32/A) under Section 364-A/34 IPC was registered at Tuglak Road police station. From the place of occurrence the police seized three fired cartridge cases. The complainant after some days of the kidnapping of his son received a telephone call on 08-08-97 from someone who disclosed his name as Vijay(who as per the prosecution was the deceased accused Arvind @ Narender @ Vijay) and demanded ransom of rupees five crores for the release of his son Tarun. The complainant had also received some letters(Ex. PW-5/C-F) before 08-08-97 demanding ransom.

5. Investigation and search for the kidnapped child and the kidnappers was undertaken by the anti-kidnapping/anti-extortion cell of Delhi police. During the investigation the appellants herein, the proclaimed offender Rajesh @ Babloo and the deceased appellant Arvind @ Narender were arrested on different dates. Accused Rajesh Adhikari @ Babloo was the first one to be arrested on 09-08-97. He disclosed about his co-accused and then on the same day accused Sushil Nagar, Jeet Pal and Dhanvinder Guni were arrested. The kidnapped child was confined at different places by the gangsters and was finally recovered in the wee hours on 10-08-97 from a house in village Bahadurgarh which belonged to one Karamvir Singh (who has, however, neither been prosecuted by the police nor even made a prosecution witness and instead his wife Shashi was made a prosecution witness but she did not support the prosecution regarding recovery of Tarun from her

house). At the time of the recovery of the child he was found sleeping with appellants Trilok Singh and Virender Singh. They were also arrested. At the instance of the appellant Brijesh one country made pistol and one live cartridge were recovered. One 5.56 mm/.223" caliber NORINCO rifle and eleven live rifle cartridges were got recovered by the deceased appellant Arvind and when the said rifle was sent to Forensic Science Laboratory along with the three fired cartridge cases recovered from the spot it was found on examination by the ballistic expert(PW-42) that the three fired cartridge cases recovered from the spot had been fired from the afore-said rifle(Ex. PW-34/A-7) got recovered by accused Arvind @ Narender(since deceased).

6. During investigation the police arranged for a Test Identification Parade by a Magistrate in respect of appellants Brijesh, Arvind, Leelu but they refused to participate in the same. On completion of the investigation the investigating agency found that the son of the complainant was kidnapped for ransom by the surviving seven appellants herein along with their other co-gangsters who are proclaimed offenders and the deceased appellant Arvind @ Narender @ Vijay pursuant to a well planned conspiracy. Thirteen persons in all were charge-sheeted out of whom four were shown in column No. 2 of the challan since they could not be arrested. Nine accused persons including the seven surviving appellants herein were then tried by the Court of Additional Sessions Judge for the offences under Sections 120-B IPC read with Section 364-A, 307/120-B IPC and 368/120-B IPC. Against accused-appellant Brijesh and Arvind charges under Sections 25/27 of the Arms Act were also framed. All the nine accused had pleaded not guilty and claimed to be tried. The prosecution then examined as many as 42 witnesses to

prove the charges against the accused persons. Thereafter all the nine accused were examined under Section 313 Cr.P.C. and they pleaded false implication. None of them, however, adduced any evidence in defense.”

3. Rajesh - who was on bail - apparently absconded after his statement under Section-313 Cr.P.C. was recorded. He was subsequently arrested in 2006 and brought to trial. By a previous judgment dated 15.09.2009 Rajesh was convicted for the offence he was charged with. He appealed to this Court. The appeal was allowed by an order dated 3.8.2011 in Crl.A.831/2009. This Court directed the Trial Court to record the proper statement of Rajesh under Section-313 Cr.P.C. and thereafter proceed to judgment. The Trial Court accordingly complied with the Court's directions and rendered its judgment which has been impugned in this proceeding.

4. Learned counsel urged that in this case, almost all the circumstances held by the Trial Court to be incriminating, do not add up to the appellant's guilt. It was argued that several circumstances were claimed as against the appellant i.e. (1) the robbery of the Zen car apparently used by him at the time of the kidnapping on 22.07.1997; (2) recovery of three cartridges from the spot on 22.7.1997 and its matching with the fire arm used in another offence registered in PS Aminagar Sarai, Meerut, UP (being FIR No.120/96); (3) the allegation that Rajesh had used a SIM card given by PW-1 to

get in touch with others and that even his landline No.2272312 was used to be in touch with other accused who were in possession of the mobile which contained a SIM (i.e. Mobile No.9811058098); (4) the recovery of Sumo car said to have been allegedly driven by Rajesh; (5) the fact that the appellant was acquainted and known to PW-5 since his father used to work as a driver for the latter's uncle; (6) the conduct of Rajesh in trying to persuade PW-5 not to report the incident to the police alleging that he would take care of the problem in his own manner, (said to have been made immediately after the incident i.e. 22.07.1997); and (7) identification by PW-3.

5. Learned counsel urged that the depositions of the material witnesses i.e. PW-1, 3, 5 and 10 clearly show that the prosecution could not effectively or even reasonably link Rajesh with the kidnapping. Laying considerable emphasis on the depositions of PW-3, the kidnapped child, it was argued that this witness gave conflicting statements while deposing in the Court. On the first date of hearing, he allegedly identified all accused (including Rajesh) as being those involved in the incident and those who used to visit him when he was in their captivity. Later, the same day, he, however, claimed that he could not identify with certainty any of the accused. Subsequently, when the learned APP sought to examine him with the leave of the Court, almost a year later, the witness was able to identify Rajesh generally without in any way specifically mentioning him. On the other hand, submitted the counsel, the witness PW-3 had

specifically identified Lilu Singh, Trilok and Brijesh (they had refused to participate in the TIP). These coupled with the findings of this Court in the connected appeal decided earlier, i.e. Crl. Appeal No.439/2002 (decided on 11.12.2006) showed that the witness's testimony as regards the identity of Rajesh was unreliable and could not have been the basis of the conviction.

6. Learned counsel next argued that so far as the other circumstances, i.e., the alleged use of the SIM card and mobile in which it was inserted and the conversations held from that mobile phone with the landline installed in the appellant's premises are concerned, there was no proof of such allegations. Counsel urged that the prosecution made no effort to prove that the landline belonged to Rajesh or even where it was installed. Similarly, all that the prosecution could establish was that the SIM card, (the call details of which were placed on the record by the appropriate agency's witness), belonged to PW-1 Ashok Pant. Here it was highlighted that the PW-1 turned hostile and had resiled from the statement made under Section-161. In these circumstances, the conclusions arrived at by the Trial Court with regard to the Rajesh's role as mastermind or principal conspirator who was behind the entire incident could not be sustained.

7. Counsel urged that so far as the allegations with regard to the post incident conduct of the Rajesh is concerned, the testimony of PW-5 merely showed that his father was known to the family. Other than that the statement made during his deposition that Rajesh had

tried to prevail upon him (PW-5) or other family members to desist from reporting the matter to the police was incredible and unbelievable. In this regard, it was pointed out that nothing to this effect was recorded during investigation. Having regard to the fact that Rajesh was arrested on 9.8.1997, it is worth noticing that PW-5 mentioned this post crime attempt by Rajesh to desist from reporting the matter to the police only on 25.10.1997. This, however, was not mentioned in any of his previous statements recorded during the investigation i.e. on 22.07.1997 or on 8.8.1997. Therefore, this conduct could not be considered incriminating as nothing was proved in this regard.

8. So far as the robbery of the vehicle allegedly used in the kidnapping is concerned, counsel urged that Rajesh had been implicated in it and charged for the offence said to have occurred on 4.7.1997 in an FIR recorded in PS Hazrat Nizamuddin. However, concededly, the appellant was acquitted of all the charges since the complainant there failed to identify him. Having regard to all these circumstances, submitted the counsel, the Trial Court fell into error in arriving at its findings and convicting him.

9. Learned APP Ms. Richa Kapoor submitted that the findings of the Trial Court ought not to be interfered with by this Court. It was submitted that the findings in the Appeal decided earlier, i.e., Criminal Appeal No.489/2002 insofar as they led to the acquittal of the Constable Jeet Pal and Sushil Kumar Nagar are pending appeal before

the Supreme Court. It was urged that so far as the appellant Rajesh's role is concerned, his disclosure statement on 9.8.1997 led the police to investigate the role of Dhanvinder Guni which eventually led to the recovery of the child (PW-3) on the same day. This was an important circumstance and amounted to a "fact discovered" as well as proof of knowledge of an event or a fact which was subsequently proved objectively and, therefore, admissible by virtue of Section-27 of the Indian Evidence Act. It was next contended that even though the prosecution could not connect the calls made from the SIM in question, the Trial Court correctly took into account the material placed on record such as the SIM call details and the land line calls made as alleged by the prosecution. These two confirmed the allegations contained in the chargesheet vis-a-vis role played by appellant, which was mentioned by the other accused in their disclosure statements. So far as the identification of Rajesh by PW-3 is concerned, learned APP submitted that the role played by him was not a direct one as he was not party to the kidnapping. However, the witness stated on at least two occasions the witness could identify Rajesh. Learned counsel pointed out in this regard that so far as Rajesh is concerned, there was no cross examination. This was sufficient for the Court to conclude along with other materials that he was indeed party to the crime and one of the conspirators.

10. With regard to the last circumstance, i.e., the post offence conduct of the appellant, learned APP submitted that the testimony of

PW-5 and that of DW-1, if taken together, support the findings. It was emphasized here that PW-5 clearly mentioned that Rajesh had visited the family after kidnapping incident and tried to convince them that the matter ought not to be reported to the police. Even though the witness disclosed this event later, there was no denial of the fact that Rajesh was known to the family and that his father had served PW-5's father's uncle. The prosecution, therefore, was able to show that PW-5 had in fact been approached by Rajesh with the offer of trying to get the matter resolved without the intervention of the police. Further, PW-5 could not have been said to have had any ill will or motive against the appellant to have deposed falsely. Counsel also urged that having regard to the entirety of the circumstances, it is quite likely that the witness did not report the matter to the police perhaps not giving it much importance.

11. Learned APP emphasized that the mere circumstance that some accused were acquitted cannot weigh with this Court particularly since that part of the findings are under appeal. Counsel urged that so far as the role of the other accused are concerned, both the Trial Court as well as this Court held that they were proved to be guilty for the offence. Therefore, Rajesh cannot claim any relief on that ground.

12. It is evident from the above narrative that the role attributed to Rajesh by the prosecution was that of a facilitator and one who masterminded the offence. According to the prosecution, he was in the know of the inner workings of the family (of PW-3&5) and, therefore,

able to provide information to the other accused actually involved in the kidnapping. The prosecution alleged that the child could be recovered after the arrest of Rajesh and that the entire case was solved after that development. In this regard, the prosecution had relied upon disclosure statement made by Rajesh. It was submitted in this regard that the disclosure statement by Rajesh Ex.PW-40/B led to the arrest of Jeet Pal and Sushil Kumar Nagar. Eventually, that also led to the arrest of the Dhanvinder Guni and the recovery of the child on 10.08.1997.

13. Now, a look at the Ex.PW-40/B would show that there is no mention of the Dhanvinder Guni at all. Therefore, the prosecution cannot rely on this document because all that it points to is the involvement of Jeet Pal and Sushil Kumar Nagar who were subsequently arrested. Jeet Pal's statement Ex.PW-39/A similarly does not mention Dhanvinder Guni as someone who could lead to the rescue and recovery of the boy. Likewise, the disclosure/confessional statement of Sushil Kumar Nagar marked 'Y' before the Trial Court does not also point to Dhanvinder Guni's involvement. These reasons prompted this Court to disbelieve the prosecution and allow the appeal of Sushil Kumar Nagar and Jeet Pal in the following manner: -

“25. As per the prosecution case appellant Jeet Pal was arrested pursuant to the disclosure statement of appellant Sushil Kumar Nagar on 09-08-97 and then Jeet Pal had allegedly made a disclosure statement and got recovered the kidnapped child. PW-39 Inspector

Rajender Bhatia has deposed that he had recorded the disclosure statement of accused Jeet Pal Ex. PW-39/A in which the accused had disclosed that he had kidnapped Tarun Puri and kept him at the place of accused Dhanvinder Guni and also that he could get recovered that child. However, a perusal of Ex. PW-39/A shows that there is not even a passing reference in it to accused Dhanvinder Guni of the kidnapped child having been kept at the house of Dhanvinder Guni. In cross-examination PW-39 admitted also that there was no such mention in the said disclosure statement of Jeet Pal. The investigating officer had also deposed that when pursuant to his disclosure statement Jeet Pal took the police party to the house of Dhanvinder Guni in Moti Rampur village, Meerut the kidnapped child was not found there although Dhanvinder Guni was found and he was arrested. He further deposed that when he interrogated accused Dhanvinder Guni he made a disclosure statement, which was not reduced into writing, to the effect that the kidnapped child was with Karamvir Singh at Bahadurgarh, Meerut. Thereafter the police party along with accused Jeet Pal and Dhanvinder Guni went to Bahadurgarh and from there the kidnapped child was recovered. The investigating officer then stated in his cross-examination that Dhanvinder Guni had led to the Gher of Karamvir in village Bahadurgarh and at that time Karamvir was not present. Thereafter he changed his statement and claimed that both Dhanvinder Guni and Jeet Pal had led the police party to the house of Karamvir. From this statement of the investigating officer it becomes doubtful whether the kidnapped child was recovered at the instance of accused Jeet Pal. Just because Jeet Pal was also in the party which had gone to Bahadurgarh after the arrest of Dhanvinder Guni it cannot be said that he

only had led the police party to the house of Karamvir. In any case, in view of the statement of the investigating officer himself that it was accused Dhanvinder Guni who had volunteered to get the child recovered from the house of Karamvir it can be said that the kidnapped child was recovered at the instance of Dhanvinder Guni and so benefit of doubt does accrue to Jeet Pal. Admittedly there is no other incriminating piece of evidence against Jeet Pal. Although at the time of his arrest one Tata Sumo was also taken into custody and he is alleged to have got recovered one Zen car but those two vehicles have not been got connected through any evidence with the incident of kidnapping. No witness says that the said recovered Zen car was the same car in which the kidnapped child had been taken away from Golf Links. As far as the kidnapped child's evidence is concerned although he has deposed that all the accused persons used to meet him at the house where he was kept but merely on the basis of that omnibus statement which is not corroborated at all the involvement of this appellant cannot be sustained. In the facts and circumstances of this case we have felt the necessity of corroboration to the testimony of the child witness which is available regarding appellants Brijesh, Trilok Singh, Leelu Singh, Dhanvinder Guni and Virender Singh.”

This Court is of the opinion that the same logic and reasoning applies in the present case, and the confessional or disclosure statement allegedly made by Rajesh is inadmissible.

14. So far as the identification of Rajesh is concerned, this Court notices that PW-3 initially deposed on 20.5.1999. During the course

of his deposition, he generally identified all individuals sent up as accused in the trial as those who used to meet him when he was in their captivity. He later stated that:

“After I was brought to Delhi I went along with my mother and police to some place which I do not remember for purpose of identifying the accused persons. I identified some of the accused persons but I do not remember the names of the accused persons as identified by me. Accused Trilok present in the court has been identified by the witness who was driving the car when he was taken away from my house. After looking at the other accused persons the witness has stated that he had forgotten the faces of the persons who were involved in the incident”

The record further reveals that at that stage, learned APP sought liberty to cross-examine PW-3, however, cross-examination, though permitted, was deferred. Recording of PW-3's testimony was further taken up much later on 27.5.2000. At this stage, the Court put certain questions specifically. Here again, the witness PW-3 identified three accused specifically i.e. Lilu Singh, Trilok and Brijesh as those who had kidnapped him. Thereafter, what was put to the witness and recorded is material and is extracted below: -

“Q. Can you identify the persons who used to visit the house where you were kept?

A. All the accused persons present in the court used to visit from time to time that place.

Q. Can you identify the persons in whose house you were kept?

A. Yes. The witness has pointed out to accused Dhanwinder is the person in whose house he was kept.

Q. Which are the accused persons which you have identified at the police station on 24 Aug. and 19 Sept 1997?

A. The Witness had pointed out towards accused Leelu, Brijesh and Arvind being the persons who were identified by him at the police station."

15. On this aspect, we notice that in the previous judgment, i.e., in *Sushil Kumar Nagar's* case, the Court refused to premise its findings on the testimony of PW-3 stating that there was no evidence against the two concerned accused who were acquitted, i.e., Jeet Pal and Sushil Kumar Nagar, on the ground that the testimony of PW-3 was bald and uncorroborated to identify them. We are of the opinion that same reasoning would apply in the case of Rajesh. The Trial Court in our opinion could not have, after the judgment of this Court on identical facts, concluded that the appellant had been identified by PW-3. We, therefore, are of the opinion that on this aspect, the Trial Court fell into error. We may also add here that no specific role was added to the appellant by the child in the course of his deposition. Premising the conviction on such slender evidence would be unacceptable.

16. As far as circumstances with regard to the recovery of the vehicle is concerned, we are of the opinion that the mere fact that Rajesh was accused in some other case, for committing the offence punishable under Section-392, IPC (and other allied provisions), would be of no assistance particularly since he was acquitted. It is not denied that the complainant in that case could not identify Rajesh. The learned APP submitted that this Court ought to take cognizance of the fact that complainant was granted the vehicle on filing *superdarinama*. This Court is of the opinion that such circumstance (at least for the purpose of this case) is inadmissible and cannot be read as incriminating. We are also conscious of the fact that Rajesh's acquittal in the FIR with regard to the theft and robbery reported in PS Hazrat Nizamuddin has become final. Furthermore, the concerned vehicle's registration number was not revealed in the FIR reported by PW-5. Having regard to these facts, this Court holds that the prosecution was unable to prove this circumstance against Rajesh.

17. So far as proof of the telephonic conversation between Rajesh and the other accused is concerned, the prosecution had alleged that PW-1 had provided the SIM Card to Rajesh. That mobile No.9811058098 was allegedly used by some of the accused to get in touch with Rajesh. The corresponding landline number, alleged by the prosecution, to be used by Rajesh was No.511671. The deposition of PW-39 would show that the relevant call details were said to have been seized by him in respect of mobile no.9811058098;

they were marked as Ex.PW-2/1 to Ex.PW-2/11. The ownership of this SIM Card or mobile was as that of PW-1, through Ex.PW-1/A. The call details, however, connecting the SIM with the telephone No.511671 have not been proved. On the other hand, the evidence on record in the form of testimony of PW-22 would reveal that landline in question i.e. No. 511671 was installed in the name of Narender Prakash Tyagi, c/o Satish Jain, Prem Puri, Railway Road, Meerut.

18. One Pradeep Tyagi was also sent for trial in this case as a co-conspirator; it was alleged that he was a party to the conspiracy since he lived in the premises where the telephone was installed. However, he was acquitted. As far as Rajesh is concerned, this Court notices that there is no thread of evidence connecting him with the said telephone which was said to have been used in connection with the mobile no.9811058098. No such document was proved by the prosecution in the course of these proceedings. Having regard to these circumstances, the Trial Court could not have concluded that Rajesh was a conspirator and that he masterminded the entire kidnapping operation and was constantly in touch with the other accused.

19. The other important circumstance which the Trial Court felt compelled to accept was the alleged post offence conduct of Rajesh. The prosecution had alleged through PW-5 that Rajesh sought to influence him and his family not to report the matter to the police and

that he (Rajesh) would take care of the matter and have it resolved. At this stage, we straightaway notice that PW-5 had admittedly recorded statement under Section-161 more than once: on 22.07.1997 (immediately after the kidnapping) and subsequently on 8.8.1997 just before the arrests were made and before the child's rescue. Both statements are silent about this incident, which allegedly occurred immediately after the kidnapping on 22.7.1997. The statement dated 8.8.1997 recorded is, however, not part of the Trial Court's proceedings. But PW-5 mentions it explicitly in the course of his testimony. Just to lend assurance, we look into the police files. There is no reference to this post incident conduct in the statement of 8.8.1997. PW-5, on the other hand, mentions that he told the police about this alleged offer much later on 25.09.1997 when he addressed a letter to the police authorities. We are of the opinion that having regard to the alleged relationship between Rajesh and his family with that of PW-3 & 5's family and the subsequent allegations leveled against Rajesh, the suggestion, if made was too important to escape notice, or to have been omitted by PW-5 in any of the statements recorded before the police. Equally, that he alludes to it much later, almost after three months after the incident on 25.10.1997, raises a serious suspicion about this veracity. As far as the argument made by the prosecution that DW-1 (Rajesh's father) in the course of his deposition had testified that he had severed all relationship with his son, is concerned, this Court is of the opinion that much importance

cannot be attached to this aspect. It was for the prosecution to have established positively that an improper offer which clearly incriminated Rajesh was in fact made almost contemporaneous with the commission of the offence. PW-5's failure to mention this for almost three months is sufficiently fatal as far as proof of this circumstance is concerned. Neither the prosecution, nor the Trial Court could take mileage of the fact that DW-1 was an anguished father who sought to distance himself from Rajesh because of his being implicated in more than one crime.

20. The upshot of the above discussion is, as far as Rajesh's role is concerned, there is no cogent or convincing evidence which could have led the Trial Court to reasonably conclude that he was a party to the conspiracy that led to the kidnapping of the child. This Court also notices at this stage that the ransom note demanding ₹ 5 Crores had been delivered but the prosecution made no serious effort to trace its origin or fix the responsibility of delivery or even the authorship of the note. No handwriting specimen of any of the accused was ever taken to match with the writing on that ransom note. Such being the case, we are of the opinion that the prosecution was unable to prove any facts alleged against the appellant Rajesh which could have incriminated him, for the Court to conclude positively that he was the conspirator along with the other accused. The findings of the Trial Court cannot, therefore, be sustained. They are hereby set aside. In view of the above discussion, the appeal has to succeed. It is

accordingly allowed. We direct that the appellant Rajesh shall be released forthwith, if not required in any other case.

**S. RAVINDRA BHAT
(JUDGE)**

**S.P. GARG
(JUDGE)**

JANUARY 02, 2012
/vks/