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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 6th May, 2013Date of Decision: 29th May, 2013

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Crl. Appeal No. 855/2012

DHARMENDER @ DHARMU

....Appellant

Through Ms. Prerna, Advocate.

Versus

STATE

...Respondent

Through Mr. Sanjay Lao, APP

+

Crl. Appeal No. 241/2013

SATYAWAN KATHERIA AND ORS.

....Appellant

Through Mr. Ravish Roshan, Mr. Manoj Bansal and
Mr. Yunush Advocates.

Versus

STATE

...Respondent

Through Mr. Sanjay Lao, APP

+

Crl. Appeal No. 394/2013

RANI @ MANJU

....Appellant

Through Ms. Rakhi Dubey, Advocate.

Versus

STATE

...Respondent

Through Mr. Sanjay Lao, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE VED PRAKASH VAISH

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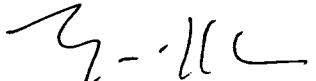
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SANJIV KHANNA, J.

For detailed order see Criminal Appeal No. 1112/2012, *Puran @*

Shankar Vs. State pronounced today.


(SANJIV KHANNA)

JUDGE


29/5/13
(VED PRAKASH VAISH)

JUDGE

MAY 29th, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI
Cri. Appeal No. 1112/2012

Reserved on: 6th May, 2013
 Date of Decision: 20th May, 2013

PURAN @ SHANKAR Appellant
 Through
 Versus

STATE ...Respondent
 Through Mr. Sanjay Lao, APP

Cri. Appeal No. 855/2012

DHARMENDER @ DHARMU Appellant
 Through Ms. Perna, Advocate.

Versus

STATE ...Respondent
 Through Mr. Sanjay Lao, APP

Cri. Appeal No. 241/2013

SATYAWAN KATHERIA AND ORS. Appellant
 Through Mr. Ravish Roshan, Mr. Manoj Bansal and
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Versus

STATE ...Respondent
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Cri. Appeal No. 394/2013

RANI @ MANJU Appellant
 Through Ms. Rakhi Dubey, Advocate.

Versus

STATE ...Respondent
 Through Mr. Sanjay Lao, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE VED PRAKASH VAISH

SANJIV KHANNA, J.

These four appeals by Puran @ Shankar, Dharmender @ Dharmu, Rani @ Manju, Satyawan Katheria and Reshma, arise out of a common judgment dated 3rd April, 2012 by which the appellants have been convicted under Sections 343, 364A, 365 of the Indian Penal Code 1860 (IPC, for short). The appellants have also been convicted under Section 120B IPC. By order of sentence dated 11th April, 2012, they have been sentenced as under:

- (1) **Section 343 IPC** Simple imprisonment for one year and fine of Rs. 2,000/-, and in default of the payment of fine, each appellant will undergo simple imprisonment for two months.
- (2) **Section 364A IPC** Rigorous imprisonment for life and fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for two years.
- (3) **Section 365 IPC** Rigorous imprisonment for five years and fine of Rs.5,000/- and in default of payment of fine, simple imprisonment for a period of one year.

(4) Section 120B IPC Rigorous imprisonment for three years and fine of Rs.3000/- and in default of payment of fine simple imprisonment for a period of six months.

Section 428 of the Code of Criminal Procedure, 1973 is applicable.

2. The prosecution version which has been accepted by the Trial Court is that Chirag @ Chinky aged about 3½ years was kidnapped/abducted for ransom, from the guardianship of his father Pankaj Jain, pursuant to criminal conspiracy hatched by the appellants. He was confined in village Sikanderpur, Distt. Mainpuri, U.P. before he was rescued by the police. There was a threat to Chirag's life, and Pankaj Jain, Chirag @ Chinky's father, were threatened that if ransom was not paid, Chirag would be physically harmed.

3. We record that Mohd. Imran was prosecuted as co-conspirator but he has absconded and has been declared a proclaimed offender. Hari Om was convicted by the same judgment. Subsequently he was declared to be a juvenile on the date of the offence. His conviction and sentence was set aside and his case was transferred for adjudication to the Juvenile Justice Board.

KIDNAPPING OF CHIRAG @ CHINKY

4. Pankaj Jain, father of Chirag has deposed as PW-1. He has averred that on 20th March, 2007 at about 7.30 PM, his son Chirag was weeping. therefore, he sent him with his employee Akash (PW-8) to market. Akash (PW-8) was given Rs.10/- to get toffees for Chirag. Akash returned within ten minutes and told him that on the way an unknown person came and asked him to purchase pani puri for Rs 10/-, as this was ordered by PW-1 for a person sitting with him. On this Akash had handed over Chirag to the said person in order to purchase the pani puri and get back. Akash returned and was questioned. Since child had not returned home, PW1 went to market to search for Chirag but he could not be located. Neither was the unknown person who had approached Akash traceable. PW1 called the police control room and the police reached within 10 minutes. Local police also came at the residence of PW1. The same day, at about 9.00 P.M., PW-1 received a telephone call that Chirag had been taken out of Delhi and Rs.70,00,000/- should be paid as ransom for his release. The said call was received on PW-1's mobile no. 9213285013, when he was at the police station. Police noted down the said number from which the call was received. The caller had stated that he would make another

telephone call on the next day. The complaint made by PW1 was marked as Ex. PW1/A. He was informed that the ransom call was made from a number located at Bhopura, Ghaziabad. Another call from the abductor was received on the next day. PW1 was asked to arrange money and the caller informed him that he would again call him on the following day. PW1 has deposed about several calls made by the abductor, the threats and the money demanded for releasing Chirag. PW-1 was asked whether he had arranged for the money upon which PW1 had replied that he was making necessary arrangements. Abductor informed him that he had come to know of the police report lodged by PW1 and as such he had chopped off both thumbs of Chirag. Abductor further stated that his son had been taken to the forests of Madhya Pradesh and the money should be paid by Friday of that week. When PW-1 expressed his inability to pay the amount, he was threatened that if he was unable to arrange the money, he should forget about his son. Thereafter, abductor demanded Rs.15,00,000/- as ransom in the denomination of Rs.1000/- each. Abductor gave him an option that if Rs.15,00,000/- was paid Chirag would be returned in eight hours and if Rs 70,00,000/- was paid Chirag would be returned immediately. PW-1 was further asked to arrange for a vehicle as he

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would be required to travel for about 1000 kms. An old lady was supposedly to meet PW-1 on the way, with a Rs 10 note and a specific currency number which was told to PW-1. The ransom money was to be paid to this lady who, the abductors said, was not connected with the case. The abductor called him at bus stand or tonga stand of Kanpur city on the Friday of that week. Entire information was relayed to the police by PW-1. On 24th March, 2007, at about 6.30 AM, Chirag was brought to his house by the police. PW1's brother-in-law Sushil Jain (PW-2) had gone with the police for recovery of his son. PW1 had made a complaint with SHO, P.S. Krishna Nagar requesting that his another number 9212751277 should be put under surveillance. On 21st /22nd March, 2007 PW-1's employee Dharmender and his wife Rani were arrested by the police. PW-1 identified Dharmender and Rani in the court.

5. In PW-1's cross-examination, he has averred that he was not taken to Tihar Jail for identification. The abductor had made calls on his mobile phone around 8-10 times. These calls were from different numbers and no specific number was given by the abductor. In further cross examination PW1 has averred that when he went to the Police Station, Krishna Nagar for the first time, Akash (PW-8) accompanied him but he could not recollect whether Akash's statement was

recorded. At the time of abduction, Dharmender was present in the factory. Dharmender had worked for him for two and a half months prior to the date of the incident. After the abduction, his employees were summoned by the police. He had seen Rani @ Manju in the Police Station on the day Chinky was recovered. Rani too had worked with PW-1 prior to the occurrence. It is highlighted that PW1 in cross-examination has averred to the effect that the appellant Dharmender was arrested on 21st/22nd March, 2007 i.e. before Chirag was rescued and produced before him at 6.00 AM/7.00 AM of 24th March, 2007. This aspect will be discussed below.

6. Akash PW-8, servant to PW-1, has supported the testimony of PW1. PW-8 has deposed that he was working as a servant on 20th March, 2007. At about 4.30 PM, he had taken Chirag in his lap to the market to purchase eatables. Here, it should be pointed out that PW-8 has not been able to correctly recollect the timing of the incidence. The incidence actually occurred at 7.30 P.M. and not 4.30 P.M., as has been correctly deposed by PW-1 Pankaj Jain, and recorded in the FIR (Ex. PW-12/A). There one person wearing spectacles came to him and told him that PW-8 had been directed by PW1 to fetch panipuri. The said person took Chirag with him. PW-8 delivered panipuri on returning to the

house. PW1 told PW-8 that he had not asked for any panpuri and questioned him about Chirag. PW-8 narrated the incident and gave description of the person who was wearing red trousers and a T-shirt. PW-8 has deposed that the skin colour of that person was shallow and he could identify the said person, if shown to him. In the cross-examination PW-8 has stated that he had accompanied PW1 to the police station.

7. The factum about kidnapping is further corroborated by PW-2 Sushil Jain, maternal uncle of the victim, in his deposition which we have elaborated upon, below. The said facts are corroborated by the contemporaneous entries in the police records. In the present case, DD entry 48B dated 20th March, 2007 marked Ex. PW15/A was proved by HC Pratap Singh (PW15). On the basis of the said DD entry which was recorded at 8.35 PM, FIR No. 129/07, P.S. Krishna Nagar was recorded at 10.00 PM. The FIR records the time of occurrence as 7.30 PM on 20th March, 2007 and the FIR (Ex. PW-12/A) itself was recorded at 9.45 PM. The FIR mentions that a ransom call was received from the abductor at 9.00 PM.

8. Learned counsel for the appellants submitted that it is possible that Akash PW8 was involved and his deposition that he handed over

the child to a stranger who had given him Rs.10/- for purchasing papri/pani puri is unbelievable. PW-8's deposition was recorded on 25th March, 2009 and mentions his age as about 16 years. Thus, at the time of occurrence he would have been about 14 years of age. He was a small boy who may not have understood and realized responsibility and consequences. It is on record that PW-1 had many persons working there and the person who approached PW-8 had taken PW-1's name. PW-8, it seems, had been duped into giving the child. The abductor took full advantage. PW8's testimony reveals that he was a simple boy who did not visualize or see through the plan. He believed the person who had approached him because he took the name of Pankaj Jain, his employer and being obedient and gentle accepted. Chirag was abducted. On being questioned by Pankaj Jain, he realized that somebody had abducted/kidnapped the child Chirag.

Leads and the Arrest of Appellant Imran

9. Sushil Jain (PW-2) has stated that on 20th March, 2007 PW1, who is his brother-in-law, had informed him that his son Chinky had been kidnapped/abducted. PW-2 went to P.S. Krishna Nagar with PW1 to lodge report. On 21st March, 2007, he went to Itawah with the police team headed by Insp. Anil Sharma (PW-18). The said team consisted of

six police officers who, on reaching Itawah, checked 6 to 8 STD booths. From one STD booth near bus stand Itawah, Imran was overpowered while he was talking to PW1 in Delhi. Imran was interrogated and he confessed that Chirag was in village Sikanderpur. We shall refer to PW-2's testimony regarding recovery of the child from the particular house, subsequently.

10. Inspector Rajender Gautam (PW21) was posted at P.S. Krishna Nagar as Inspector (Investigation) on 20th March, 2007, and was entrusted with this case. He recorded the complaint Ex. PW1/A pursuant to which FIR was registered. He also interrogated Akash (PW8). Thereafter, PW-21 constituted six member police team and sent them to different locations. Sketch of the suspect was drawn. PW21 has deposed that he had moved an application before the mobile operator/service provider for keeping the phone of the complainant under surveillance. On this basis they came to know that the kidnappers had made calls from Itawah. Accordingly he sent a team headed by Inspector Anil Sharma to Itawah. On 24th March, 2007, Insp. Anil Sharma informed that they had rescued the child Chirag and arrested Imran, Purnan, Hari Om (who has been declared juvenile), Satyawar and Reshma. On perusal of telephone data

records, it was ascertained that appellant Dharmender and his wife Rani were involved and both of them were arrested vide memo nos. Ex. PW11/B and PW11/C on 24th March, 2007, from Gandhi Nagar, New Delhi. We shall refer to the statement of PW21 once again subsequently, when we examine and refer to voice samples and telephone records.

11. Insp. Anil Sharma PW18 has stated that on 21st March, 2007, he was posted as Addl. SHO, P.S. Krishna Nagar. During investigation they came to know that ransom call was made from Itawah and he along with S.I. J.K. Singh, HC Vijay Shankar proceeded to Itawah with Sunil Jain (PW-2) in a private vehicle. They reached Itawah on 22nd March, 2007 at about noon time. There they received a call from Investigating Officer that the kidnappers had made a call for ransom from Itawah from telephone no. 05688-251271. On verification, they came to know that the said telephone was installed in a PCO booth "Kamlesh Telecom", near old bus stand, Itawah. There they spoke to a girl aged about 12-13 years who informed them that a boy aged 27-28 years had come and made the said call and paid Rs.40/-, though the call charges were much less. The boy was in a hurry. Thereafter, on 23rd March, 2007, at about 7.45 PM, he again received another call from Delhi that

the caller/kidnapper was making a call from telephone number 05688-251072. This number belonged to "Hello Telecom" on Railway Road, Itawah. The said PCO booth was being operated by Aizaz Ahmed. PW18 had already verified from the said PCO as kidnappers had used the same PCO number on 21st March, 2007 to make a call. At 7.45 PM when the call was received, by chance the police team headed by PW18 was near the said spot i.e. "Hello Telecom" Booth. They immediately went to the said booth and were informed that the caller had just left. Aizaz Ahmed identified the caller from his back. The team apprehended him and on enquiry, the boy disclosed his name as Imran. From Imran two PCO booth slips of Hello Telecom and that one of Kamlesh Telecom Itawah Ex. PW13/X, PW13/Y and PW13/Z were recovered. Imran was arrested vide arrest memo Ex. PW13/A. Imran made a disclosure statement Ex. PW13/C. Thereupon the police team proceeded to village Sikanderpur, Distt. Mainpuri, U.P., where they also took local police assistance from P.S. Civil Lines, Mainpuri.

12. Almost similar statement has been made by SI J.K. Singh (PW29) and H.C. Vijay Shankar (PW13). PW13 has clarified that they had gone to Itawah Telephone Exchange to get the details of telephone/STD booths. They had got in touch with Aizaz Ahmed and interrogated him

to ascertain identity and physical description of the person who had made the call. He has deposed about their visit to Kamlesh Telecom and then their visit to STD booth of Aizaz Ahmed on 22nd March, 2007 and how they overpowered Imran on 23rd March, 2007 just after he had made a telephone call from the said booth. He identified telephone slips Ex. PW13/X, PW13/Y and PW13/Z, which were taken into possession from Itawah vide seizure memo PW13/D. There is nothing in the cross-examination to dent or cause doubt about the deposition made by PW13 viz. the facts stated above. PW29's statement as noticed above is on identical lines as he has deposed that they had gone to STD booth of Aizaz Ahmed where they were told that the boy who had gone out had made the call. The said boy disclosed his name as Imran on interrogation. Thereafter, they went to P.S. Civil Lines and after taking police assistance they went to village Sikanderpur. Therefore, we find that there is hardly any contradiction of statement of PW13, PW18 and PW29 on core or material aspects relating to arrest of Imran.

13. This position is further fortified by Aizaz Ahmed who appeared as PW9 and has fully corroborated the prosecution version leading to the arrest of Imran. He has deposed that in 2007, Delhi police officers had

come to his booth and overpowered a person who had come there. They had also taken the call bills, which PW9 could not identify because of lapse of time. However, in the cross-examination by the Addl. Public Prosecutor he has accepted that a telephone call was made to Delhi on 23rd March, 2007, and earlier too, on 21st March, 2007, the same person had made a call from his STD booth.

Rescue and Recovery of the victim

14. Next in the chain of facts is the raid leading to arrest of appellants and rescue of Chirag from village Sikanderpur, Distt. Mainpuri, U.P. by the police team which included PW13, PW18 and PW29. Head Constable Vijay Shankar (PW13) has stated that Imran took them to the house of Satyawar in night hours of 23rd March, 2007. Satyawar was questioned and he disclosed that Chirag, confined in another house, was in custody of Hari Om and Reshma. Satyawar then led them to the other house at some distance. Insp. Anil Sharma (PW18) gained entry in that house by scaling the wall. PW-18 then opened the bolt of the door from inside for others to enter. Two persons were sleeping on a cot with a sheet on their legs. The sheet was removed and Chirag was found sleeping between legs of Puran and Hari Om. Reshma who was present there claimed that Chirag was her

child, while Sushil Jain identified the said child as Chirag and they arrested Puran, Hari Om, Satyawar and Reshma vide memos Ex. PW13/E, PW13/F, PW13/G and PW13/H. Thereafter they returned to Delhi on 24th March, 2007.

15. Anil Sharma (PW-18) has averred that at the instance of Imran, they entered in a house in Village Sikenderpur. One lady with a small baby in her lap came before them and disclosed that the baby was hers. Sushil Jain PW2 confirmed that that the said baby was not Chirag. On enquiry, the said lady disclosed that a child was kept in a nearby house. She led them to the said house which was bolted from inside. PW18 climbed and after scaling and jumping the wall entered the house. In the courtyard, he found one cot. On removing the sheet, two persons were found sleeping on it and one boy, aged 3 years, was found sleeping between them. By this time, the police team with Sushil Jain (PW2) entered the house. Sushil Jain (PW2) identified the child as Chirag. The said persons in the house were Puran and Hari Om. He has averred that Satyawar came from the room from where the child was recovered. Aforesaid four persons were arrested vide arrest memos mentioned above.

16. PW-29 SI J.K. Singh has averred that Imran led them to the house of Satyawar. One lady i.e. Reshma came out of the house, who on interrogation disclosed that the kidnapped child was in another house. She took them to the other house. The house was bolted from inside. The Investigating Officer entered the house climbing the wall and opened the door. Two persons namely Puran and Hari Om were found sleeping in the courtyard and the kidnapped child was sleeping between their legs. In the meanwhile, another person namely Satyawar came out from inside the house. The said four persons were arrested.

17. On the other hand, deposition of PW-2 Sushil Jain on the arrest of Satyawar and Reshma and the role assigned to them is clearly different. He has stated that Imran took them to village Sikanderpur near Mainpuri Town. House of Satyawar was raided. Satyawar and Reshma were present there. He identified both of them in the court. Chirag was not there. However, the appellants Satyawar and Reshma were apprehended. Thereafter, Imran led them to another house in the same village. The said house was bolted from inside. PW21 along with one more person scaled the boundary wall and opened the door from inside. Two boys were sleeping on a cot and Chirag was lying between

their legs. The said persons were Hari Om and Puran. Appellants Satyawan and Reshma were not aware about anything.

18. In the cross-examination by counsel for Hari Om, PW2 has deposed that in the second house except for Hari Om, Puran and Chirag, none else was present i.e. Satyawan was not present there. PW2, in his examination in chief, has categorically, without hesitation, and clearly stated that the appellants Satyawan and Reshma were not aware about anything and it was Imran who had led them to the house from where Chirag was recovered. To this extent, therefore, there is marked contradiction on the involvement of Satyawan and Reshma. PW-2 who is uncle of the victim Chirag has completely exonerated and not implicated them. The police officers PW13, PW18 and PW29 have however implicated both of them. We have noticed the difference in versions of PW13 on one side and PW18 and PW29 on the other side. As per PW13, Satyawan was present in his house and Reshma was present in the house from where Chirag was recovered, whereas PW18 and PW29 have stated that Satyawan was not present in the first house, where he was staying with his wife Reshma, and had come out from the second house where Chirag was recovered. Normally such discrepancies are ignored or treated as non-fatal as they can occur

because of lapse of time and failure to meticulously remember details which is common human error. But in the present case, the said discrepancies are relevant in view of the court testimony of PW2. There is no reason or cause to doubt or debate the deposition of PW2 who had no interest in falsely implicating or protecting the appellants Reshma and Satyawar. Being a relative of the victim who had been a part of the raiding team and had gone to the spot itself i.e. Village Sikanderpur, U.P., he was a witness to the entire episode which resulted in recovery and rescue of Chirag. PW2's statement, therefore, should be accepted. Statement and exoneration of Satyawar and Reshma by PW-2 cannot be reconciled with the testimonies/court statements of police officers PW-13, PW-18 and PW-29. The assertions made by police officers themselves qua Satyawar and Reshma are contradictory and at variance. This enures to the benefit of Satyawar and Reshma. We note that there is no other evidence against Satyawar and Reshma. The appellants Reshma and Satyawar, are thus entitled to benefit of doubt. Their conviction is accordingly set aside. However, involvement of the appellant Puran is confirmed in view of the aforesaid evidence.

Involvement of Dharmender and Rani

19. The next question relates to involvement of Dharmender and Rani and whether they were part of the criminal conspiracy to kidnap Chirag for ransom. Dharmender was an employee of PW-1 Pankaj Jain for about two and a half months before the date of occurrence. Rani had earlier worked for PW1 but at the relevant time was not working for him. It is stated that Rani was wife of Dharmender and two of the other accused Hari Om and Imran were her brothers. Before we dwell and examine involvement of Dharmender and Rani, we would like to deal with the contention raised by learned counsel for the appellant Rani to the effect that there is no evidence and material to show that Rani was wife of Dharmender. It is argued that Rani is older in age and no marriage certificate or wedding photographs have been placed on record to show that they were married to each other. We do not find any merit in the said contention. As per the charge sheet and the charge framed, Rani has been shown as wife of Dharmender. In the statement under Section 313 Cr.P.C., Rani's identity has been described as wife of Dharmender and this was not object to or contested. Rani has in fact accepted in her Section 313 Cr.P.C. statement that Hari Om is her younger brother but claimed that she did not know rest of the accused.

This is *ex facie* wrong as she had worked for PW1, and therefore, also knew Dharmender who was working with him. PW-1 has clearly stated that he knew Rani and had identified her and described her as wife of Dharmender. He was not cross-examined on the said aspect. Initially one or the same counsel had appeared for Dharmender and Rani, before the trial court. PW-1 has deposed that Rani had worked for him prior to the period relating to the incident but on the date of the incident, she was not working for him. On 24th March, 2007, he had come to know that Dharmender and Rani were involved in the case.

20. PW6 HC Maya had stated that she joined the investigation on 24th March, 2007 along with Insp. Rajender Gautam (PW-21) and the appellant Rani was arrested. On her personal search, apart from other things, mobile phone was recovered. She proved the arrest memo Ex. PW6/A and search memo Ex. PW6/B. Search memo PW6/B mentions mobile telephone number as 9210817093. Recovery of the said mobile telephone at the time of personal search of Rani was affirmed by Lalitesh Gautam (PW14) and HC Virender Tyagi (PW11).

21. Virender Tyagi (PW-11) has testified that on 24th March, 2007, he was posted in Police Station Krishna Nagar and had joined investigation on that day. On the said date they had gone to the house of

Dharmender in West Kanti Nagar and IO Insp. Rajender Gautam (PW-21) had interrogated him along with Imran, his brother-in-law. Thus, Imran was brother or related to Rani. In the meanwhile, his wife Rani was brought by Lady Constable Maya (PW6) and they were arrested. From personal search of appellant Rani vide search memo Ex. PW-6/B, a mobile phone was recovered. In his cross-examination, it was not suggested to PW11 that Rani was not wife of Dharmender or was not married to him. On the other hand, suggestion given was that the appellants Dharmender and Rani were already confined in the police station beforehand.

22. M.N. Vijayan, Nodal Officer, Tata Tele Services Ltd. (PW10) had proved on record the subscriber form of mobile number 9210817093 allotted to Harish Chand, Ex. PW10/A. He proved on record call details of the said telephone as Ex. PW10/B. PW10 also proved the certified copies of the call records of telephone number 9213285013 (Ex. PW10/C-1 to PW10/C-4), registered in the name of Pawan Kumar. Here it is pertinent to mention that though according to PW-10 the number 9213285013 was in name of one Pawan Kumar but the number was in fact being used by PW-1 Pankaj Jain. In the Court statement PW-1 has averred that the number belonged to him and ransom calls were

received on this number, even when he was sitting in the Police Station. He has averred that there was another mobile phone with number 9212751277 but that phone, he later clarified, was being used by his wife. The FIR (Ex. PW-12/A) mentions that the ransom calls were received by PW-1 on the said number. Therefore, we have no doubt in accepting that this number was in fact being used by PW-1.

23. It was submitted before us that the telephone number 9210817093 was not procured and registered in the name of Dharmender, therefore, the call records do not prove or establish the prosecution version. It was further argued that the recovery of mobile phone from Rani should be doubted and not accepted. There is no merit in the said contentions. Harish Chand appeared as PW4 and has testified that one Ram Niwas used to reside in his property as a tenant. Dharmender is younger son of Ram Niwas. He recognized Dharmender in the court and testified that he (Dharmender) was married to a lady elder to him in age. Dharmender had asked him (PW4) to give him ID proof so that he could purchase a mobile phone. PW4 had given photocopy of his ration card or electricity bill/election card, but had not signed any documents. We also record that PW4 was not cross-examined on the aspect that Dharmender was married to a lady elder

to him in age. Dharmender, in his statement under Section 313 Cr.P.C., has accepted that he was a tenant of Harish Chand prior to the incident and had taken identity/residence proof of Harish Chand for telephone connection. He however denied that he knew co-appellants Reshma, Satyawar, Purnan, Imran or Hari Om. He did not say that Rani was not known to him. In view of the aforesaid position we should accept the prosecution evidence that Tata telephone number 9210817093 was procured and was being used by Dharmender. The telephone instrument with the said number was found and recovered from Rani, wife of Dharmender. The call details and the transcripts of the conversations have been discussed below.

24. The call records of telephone number 9210817093 were proved by M.N. Vijayan (PW10) and have been marked as Ex. PW10/B. As already noted above telephone No. 9213285013 belonged to PW1 Pawan Jain and call records of the said number have been marked as Ex. PW10/C-1 to C-4. A careful perusal of the said exhibits would reveal that calls were received from Itawah (STD Code 05688) from telephone numbers 251271 and 251072. This is further deposed to by PW1 and PW-9 Aizaz Ahmed, the owner of the telephone booth with number 251072. Call from telephone no. 05688-251072 to telephone

number of PW1 i.e. 9213285013 was made on 21st March, 2007 at 18.23 Hrs and lasted for about 339 seconds. Call from telephone No. 05688-251271 to telephone of PW1 i.e. 9213285013 was made on 22nd March, 2007 at 15.29 Hrs and the same lasted for about 352 seconds. The important call after which Imran was arrested is duly reflected in the call record of PW1 telephone number 9213285013 (Ex. PW 10/C3). The call was made from telephone number of PCO booth of PW9 i.e. 05688-251072 on 23rd March, 2007 at 19.41 Hrs. The said telephone call also matches and gets corroborated with the telephone slips Ex. PW13/Y and PW13/X which were seized from Imran when he was taken into custody.

25. The call record details Ex. PW10/B relating to telephone No. 9210817093 of the appellant Dharmender which was recovered from Rani, further shows that a telephone call was made from telephone No. 05688-251271 on 22nd March, 2007 at 15.26 Hrs for about 125 seconds i.e. just before call from the same telephone to PW1 on telephone No. 9213285013. This is confirmed by the STD slip seized from Imran, Ex. PW13/Y. The call details of telephone No. 9210817093 reveals that other calls were also made to the said number from Itawah during the

period 22nd March, 2007 to 23rd March, 2007 including one call on 21st March, 2007 at 11.41 Hrs.

26. The prosecution had moved an application before Dr. Archana Sinha, Metropolitan Magistrate for taking voice samples of Imran and Rani to be taken by FSL, Lodhi Road for comparison with the taped conversation. The application was allowed and the permission was granted vide order dated 20th April, 2007, as recorded on the application itself. The application is a part of judicial record i.e. the trial court record. Thereupon their voice samples were taken, as per Ex. PW1/D and sealed with the seal of RPG. The said seizure memo has been proved by Inspector Rajender Gautam, PW-21, Constable Jaibir Singh, PW27 who had witnessed the seizure memo and SI Vinay Yadav PW26. PW26 has deposed that mobile number of the complainant PW1 was intercepted by their Cell on the request of the Investigating Officer and conversations on the telephone No. 9210817093, being used by Rani, was also intercepted. CD of the said conversation was prepared and sealed with the seal of RPG. This was done on 4th May, 2007. The transcript of the telephone conversations have been proved by D.K. Tanwar (PW-19) and have been marked as Ex. PW19/DA. D.K. Tanwar (PW-19) was working as Sr. Scientific Officer, Gr.I (Physics),

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CFSL, CBI, New Delhi and had received two sealed parcels marked Q1 and S1. The parcel Q1 when opened had recorded conversations purportedly between Imran and Rani. The parcel S1 contained two audio cassettes which contained voice recordings of Rani and Imran. After scientifically examining the voice quality of the questioned and specimen voice recordings, PW19 vide report Ex. PW19/A opined that the specimen voices of Imran and Rani matched with the questioned conversations. The conversation between the appellant Imran and Rani have been examined. During the conversation, Rani has consistently asked for money, saying that she was penniless. Imran had informed that he was in Itawah and would be departing for Kanpur. We note here that Kanpur was the place where PW-1 was asked to come with ransom money. There is also discussion about Hari Om and whether he should be further involved or not. Rani and Imran have constantly referred to each other as brother and sister and Rani was requested not to give his number to anyone otherwise "all five may face the music".

27. Learned counsel for the appellants Rani and Dharmender have drawn our attention to the transcript PW19/DA and submitted that they do not reflect or establish any conspiracy. The contention is meritless, as on reading of the transcript, it is apparent that Rani was

clearly conscious of the abduction and kidnapping and demand for ransom. Conspiracy under Section 120B IPC requires an agreement between co-conspirators. It is a separate offence which can be proved if the prosecution is able to establish an agreement between two or more persons to do or cause to be done an illegal act or some act which may not be illegal but is performed by illegal means. Agreements of such nature are normally not reduced into writing and prosecution evidence/case invariably relies upon inferences drawn from the conduct of the parties, conversations between them etc. Inference as to existence of conspiracy from circumstances can be drawn when such circumstances are incapable of any other explanation. On examining and scrutinizing of the evidence in the present case we are of the opinion that the charge of the conspiracy under Section 120B and active involvement of Dharmender and Rani with others stands proved beyond doubt. There were telephonic conversations between Rani and Imran.

28. We briefly note here that it transpires that Rani was close to Imran, even if we presume that she was not Imran's sister. Rani, it is accepted, is sister of Hari Om. The appellants Imran, Puran and Hari Om could not have got details and particulars about PW1 Pankaj Jain, his

place of residence, his economic condition, his telephone number, the fact that he had a child Chirag etc. without help from a person who was an insider and fully aware of these details. Persons living in Itawah could not have carried out the said kidnapping and abduction for ransom in Delhi without logistical details, support and particulars. A child aged 3½ years could not have furnished and given any such particulars like phone numbers.

29. At this stage, we must deal with another contention raised on behalf of the appellants Dharmender and Rani. It was highlighted that PW1 Pankaj Jain has deposed that on 21st or 22nd March, 2007, Dharmender an employee of PW1 was arrested. It was submitted that if Dharmender was already arrested, then conversations between Imran and Rani on 22nd or 23rd March, 2007 are fabricated and unbelievable. PW1, in his deposition, was not clear and categorical on the date. He has mentioned both 21st and 22nd March, 2007. He has also further stated that after he came to know about kidnapping and abduction of Chirag, he had informed the police and their investigation started. He had received several telephone calls from the kidnappers. His employees were suspected. In his cross-examination, PW1 has stated that at the relevant time Dharmender was present in the factory

and the entire lot of employees were summoned to the Police Station next day. They were called to the Police Station on the day of the incident also. The employees were made to sit outside the Police Station till the child was recovered. It is apparent that in this context, PW1 has stated that Dharmender was in police custody since 21st or 22nd March, 2007. He has clarified in the cross-examination on 7th January, 2008 that he was not aware whether Dharmender and Rani were allowed to leave the Police Station or not. He has further stated that after his son Chirag was recovered on 24th March, 2007, he came to know that Dharmender and Rani were involved. The arrest memo of Dharmender and Rani Ex. PW6/A and PW11/B records their arrest on 24th March, 2007.

30. Learned Counsel for the appellants have submitted that offence under Section 364A IPC is not made out. Reliance was placed on decision of this Court in ***Surender Kumar @ Raja Vs. State***, Criminal Appeal No.738/2003 decided on 6th January, 2010 and it was highlighted that essential ingredient of Section 364A IPC is threat to cause death or hurt to the victim or conduct which gave rise to a reasonable apprehension that the kidnapped person would be hurt or killed. It was further submitted that a criminal conspiracy was not

made out and reliance was placed upon decisions of the Supreme Court in ***P.K. Narayanan Vs. State of Kerala***, (1995) 1 SCC 142 and ***Sanjiv Kumar Vs. State of H.P.***, (1999) 2 SCC 288.

31. Section 364A IPC mandates threat to cause hurt or death to the kidnapped or abducted person. Conduct which gives rise to a reasonable apprehension that such person may be put to death or hurt will also bring the offence of kidnapping or abduction for ransom within the four corners of Section 364A IPC.

32. In the present case, there were threats that the kidnapped child Chirag would be harmed. In fact, PW-1 has deposed that he was informed on telephone that thumbs of his child had been chopped. It would be relevant here to refer to ***Shyam Babu & Others Vs. State of Haryana***, 2008 (14) Scale 310 wherein Section 364A IPC was interpreted and it was held that the wording itself suggests that when kidnapping is done with the threat to cause death, hurt etc. to the kidnapped person, the offence is complete. In the present case, the child Chirag was kidnapped and taken out of Delhi to a remote village in Sikandrabad. Ransom was repeatedly demanded on telephone by extending threats that harm would be caused or harm had been caused

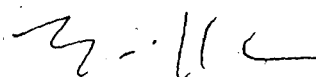
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to the child. Undoubtedly, offence under Section 364-A has been committed.

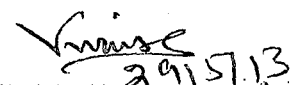
33. Similar view has been taken by the Supreme Court in ***Malleshi Vs. State of Karnataka***, 2004 (5) SCC 95. Reference can also be made to ***Suman Sood Vs. State of Rajasthan***, 2007 (5) SCC 634. In the said decision the Supreme Court also examined Section 120-B IPC and meaning of the term "conspiracy" and observed that conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence for the same. Decisions in ***Sanjiv Kumar*** (supra) and ***P.K. Narayanan*** (supra) also deal with the concept/term conspiracy. In ***P.K. Narayanan*** it has been observed that preparation or motive themselves do not constitute conspiracy and Court should be careful and not accept the charge of conspiracy on mere suspicion, surmises or inference unsupported by cogent or sufficient evidence. We have referred to the clear-cut cogent and reliable evidence before recording our finding that appellants Dharmender and Rani were part of the conspiracy hatched by Puran and others. The kidnapping of Chirag in Delhi was not possible without the appellants Dharmender and Rani being part of the conspiracy. The telephone conversations are cogent and sufficient evidence which implicates and confirms their involvement.

34. In view of the aforesaid discussion, we allow the appeals filed by Satyawar and Reshma and they are acquitted. However, we do not find any merit in the appeals preferred by Dharmender, Rani and Purn. Their appeals are dismissed. We also maintain the order of sentence passed against the said appellants. Satyawar and Reshma will be released forthwith unless required to be ⁴detained in any other case in accordance with law.

35. The appeals are disposed of accordingly.



(SANJIV KHANNA)
JUDGE


(VED PRAKASH VAISH)
JUDGE

MAY 29th, 2013
kkb