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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRIMINAL APPEAL No. 1330/2012

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**Reserved on : 15th April, 2013
Date of Decision: 30th July, 2013**

ALEEM KHAN @ KARAN SINGH

....Appellant

Through Mr. S.P. Mehta and Mr. Suraj Chaudhary,
Advocates.

Versus

STATE GOVT. OF NCT OF DELHI

...Respondent

Through Ms. Richa Kapoor, APP for the State.

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CRIMINAL APPEAL No. 88/2013

KRISHAN SHANKAR BAKDE

....Appellant

Through Mr. S.P. Mehta and Mr. Suraj Chaudhary,
Advocates.

Versus

STATE GOVT. OF NCT OF DELHI

...Respondent

Through Ms. Richa Kapoor, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.:

The present appeal arises out of charge sheet filed in FIR No. 303/2000, Police Station DBG Road, against the two appellants Aleem Khan and Krishna Shankar along with 9 others (excluding 3 who had died). By the impugned judgment dated 25th September, 2012, other accused except Aleem Khan and Krishna Shankar have been acquitted. Aleem Khan has been convicted under Section 120B of the Indian Penal Code (IPC) read with Sections 450/458 and 364A of the same Code. Krishan Shankar has been acquitted for the offence under Section 120B read with Sections 450/458 IPC but has been convicted for offences under Section 120B read with Section 364A IPC. Both of them have been sentenced for life imprisonment and fine of Rs.5,000/- each as punishment under Section 120B read with Section 364A IPC. In default of payment of fine, they have to undergo Simple Imprisonment for three months. For the offence under Section 120B IPC read with Section 450 and 458 IPC, appellant Aleem Khan has been sentenced for Rigorous Imprisonment of 7 years and fine of Rs.2,500/- on each count, in default of which he has to undergo Simple Imprisonment for one month.

2. Before delineating the facts of the present case relating to the two appellants, it may be relevant to take on record the contentions of the appellants Krishan Shankar and Aleem Khan.

CONTENTION ON BEHALF OF KRISHNA SHANKAR

3. Statement of victim M.C. Mahajan, who appeared as PW-1 and identified Krishna Shankar, should be disbelieved for the following reasons:

- (i) PW-1 could not have seen Krishan Shankar as when he was in purported captivity he was made to wear blind goggles. Therefore, he had no occasion to see the appellant.
- (ii) Places of captivity have not been proved and presence of appellant-Krishna Shankar at the place of captivity has not been established.
- (iii) PW-1's deposition on identification of Krishna Shankar is ambiguous and debatable. He did not confirm Krishna Shankar's presence or entry into the house at the time of kidnapping and hence, does not exactly clarify the role of the appellant in the alleged kidnapping.
- (iv) Krishna Shankar did not participate in the alleged demand of ransom. There is no proof regarding the same.

- (v) Statement of PW-1 on involvement of the appellant is uncorroborated and not supported by documentary evidence or ocular evidence of any third person. Krishan Shankar was arrested along with other co-accused in a case in Lucknow and was falsely prosecuted in the present case.

SUBMISSIONS ON BEHALF OF ALEEM KHAN

4. The appellant's counsel contends that the prosecution version that M.C. Mahajan, PW-1 was kidnapped for ransom should be disbelieved. At best, it is a concocted or a planned story in which M.C. Mahajan, PW-1 and his family members were involved. Reasons why the story should be disbelieved are:

- (i) The story is incredible and the statements of PW-1 and their family members on the kidnapping and call for ransoms are self contradictory and unbelievable for the following reasons:

- (a) There is contradiction in the statement of PW-1 M.C. Mahajan, the victim and Kiran Mahajan, PW-3, his wife regarding when PW-3 and her daughter had gone for a walk. Neither the two servants Ravinder and Narain nor

the daughter of the victim, Komal was examined to verify and fortify the present case.

(b) PW-3 had not called the police from her mobile phone but had made a call from flat of a third person Mr. Bhatia, on second floor. There was no reason for PW-3 and her daughter to go to Mr. Bhatia's flat in search of PW-1 and make a call to the police.

(c) Call details Exhibit PW-6/A of mobile No. 9810358394 belonging to PW-1 do not support the prosecution version. One call was made to this number of PW-1 at 9.43 P.M. from 9810358395 but the conversation was only 26 seconds long. Thus, PW-1 was busy on the phone line at about 9.43 P.M. Therefore, the incident of kidnapping did not take place within 15 minutes after PW-3 and her daughter had gone for a walk. Second call at 10.15 P.M. is an outgoing call for 70 seconds to phone No. 58411533 which was the landline number installed at PW-1's residence. This, appellant's counsel contends, suggests that PW-1 had not been kidnapped and was generally talking on the telephone. PW-1 was using his telephone and was not kidnapped and the telephone was

not taken by the kidnappers. The telephone call at 10.45 P.M. was for 33 seconds and it is not possible to accept that PW-3, her daughter and the police would have spoken to PW-1 on his number in such a short time.

The two appellants have also submitted that Section 364A is not attracted in the present case.

5. At the outset, we note that we are not required to examine the prosecution case against the co-accused, who have been acquitted, as the State has not preferred any appeal against the acquittal or even against acquittal of the appellant Krishna Shankar for the charge under Sections 450/458 IPC. We have to only consider whether the conviction and sentences of the two appellants by the trial court should be maintained and upheld.

6. We reject the contention and the plea of the appellants that the story of kidnapping of M.C. Mahajan, PW-1 is make believe or was a plan hatched by PW-1 and his family members. The contention itself, as the facts narrated below would show, is far-fetched and farcical. PW-1 has deposed that on 23rd November, 2000 his wife Kiran Mahajan (PW-3) and his daughter Komal had gone for a walk, after dinner, and he was alone in the house as his servants had also left. He had asked his wife to lock the door from outside as he wanted to

go to sleep. After about 15 minutes, someone knocked at the door and, on peeping through the glass, he saw three-four persons standing outside. They were banging and kicking the door. They managed to break open the door and come inside. PW-1 recognised appellant-Aleem Khan as the person who had entered his house with a pistol in his hand. 4-5 others persons also rushed into the house. All of them were with pistols but the said persons, PW-1 has deposed, were not present in the court. Appellant Aleem Khan, thereupon, made a call from his mobile to inform someone that PW-1 had been captured. After about ten minutes, two more persons came and asked him to hand over the keys of his car. His hands were tied and he was made to wear dark goggles after which he could not see anything. His mouth was tapped with plaster, he was made to sit between the front and the rear seat and two persons sat on both his sides. Appellant Aleem Khan had accompanied them. He was shifted to another car after five minutes but he could not identify the said location as he was wearing blind goggles. He was again made to sit between the gap of the front and the rear seat and the car was driven for about 30/45 minutes. Thereupon, he was taken to a room on the ground floor of a house, his hands were untied, goggles and plaster were removed. 7-8 persons were present in the room but the said persons were not the accused persons. Appellant Aleem Khan, however, was present there. One person made a call to PW-1's daughter's on her mobile from a mobile phone. He was made to speak to his

daughter, wife and the police and tell them that he would return within two days. The two persons, who had come later to his house, told him that they wanted Rs.2 crores. PW-1 expressed his inability to pay but these persons insisted that they had confirmed information about PW-1's financial status and capacity. PW-1 was again made to wear blind goggles and the two persons left stating that they would come again, on the next day. He was confined in the said room for four days and was beaten up. He, however, has stated that the accused, who were present in the court, were not the persons who had beaten him. Two persons continuously came to the room and, in the evening of the fourth day, he was specifically informed that he was to be shifted from there in the morning because the informer had been identified. Next day a doctor came with the said two persons and sedated him, by giving an injection, upon which he became unconscious. He knew that the person who had come was a doctor as he was being addressed as such. He regained consciousness in the evening and found himself in another house where the appellants Aleem Khan and Krishna Shankar were present. Both of them were asked to keep a watch on him. He was kept in that house for two days and made to wear blind goggles. After two days, the doctor again gave him an injection and he became unconscious. When he regained consciousness, he was in another house in some village. He heard voices of 7-8 persons though he could not see them as he was made to wear blind goggles. At night he was beaten with iron rods but

he could not see the persons who had given him beatings. He remained unconscious for 5-6 days because of the beatings. When he regained consciousness, he found himself in a house where he was taken at the first instance. He could hear voices of 3-4 persons but could not see them. He could not say who those persons were. After about 6-8 days, PW-1 was not sure as he had lost count of days, one person by the name of Sunil Lathani who had died later on in a police encounter, came and his goggles were removed. PW-1 was advised to pay the money and was told that the two persons were known criminals and they would kidnap his daughter too. Sunil Lathani, it was deposed, was boss of the said two persons. In the beatings given to PW-1 his left palm and right toe were fractured. He sustained 16 injuries and lost considerable amount of blood. Since he had suffered great pain during the detention, he was ultimately released on 14th December, 2000 at around 8 P.M. at Khurja. Four persons had accompanied him in a car to Khurja but the said persons were not present in the court. He was given kurta pajama and Rs.300/- in Khurja. He took a bus to Delhi and reached his house in the intervening night of 14/15th December, 2000. On return the SHO and IO came to his house which was under security. The IO recorded his statement and PW-1 handed over the ticket from Khurja to Delhi. On 16th December, 2000, he was sent to LNJP Hospital by the police for medical examination. Police had also played a cassette containing voices of his wife and the two persons with whom she had

spoken. He identified the voices of the two persons. On 4th March, 2001, Special Staff came to his house with appellant Aleem Khan in their custody whom he identified. He identified 3-4 other persons, who were detained. He referred to acquitted co-accused Sanjay Gupta, Arthur and Sarvesh. However, he wrongly identified accused Manish as Arthur and could not identify Sarvesh by name. Subsequently, on 7th March, 2001 he went to house No. 695-696, Double Storey, New Rajinder Nagar and was asked whether he was kept in the said house. PW-1 deposed that he was kept in an old construction and not in a house which was newly constructed but tiles in the bath room of the newly constructed house were old. He recognized the tiles in the said house. The house belonged to one Dushyant Sharma and Sunil Sharma, co-accused, who have been acquitted. PW-1 knew both the Sharmas' as he had previous disputes with Dushyant Sharma over a financial transaction. On 8th March, 2001 he was taken to Sikanderabad by the police and shown house of the doctor. He later came to know that the said house belonged to Pritam Singh Bhati, a co-accused, who again has been acquitted. He was then taken to the village and shown another house but he could not identify the same as, during his kidnapping, he was taken to the village late at night and he had become unconscious thereafter. On 18th March, 2001, he was shown 3 dead bodies in the mortuary and he identified two of them as the persons who, while he was being kidnapped from his house, had come later on and the third body to be of Sunil Lathani. PW-1

was allowed to be cross-examined by the Additional Public Prosecutor on identification of the accused. He admitted participating in the test identification proceedings in Tihar Jail where he had identified appellant Aleem Khan and three-four other persons. But he accepted that he could not say whether appellant Krishna Shankar, present in the court, was the same person who had entered his house with Aleem Khan. But on further cross-examination by the Learned APP, he has accepted that Krishna Shankar had come to his house at the time of kidnapping and had remained with him for keeping a watch wherever he was kept after kidnapping. He has also accepted that his blood had fallen in the clinic of the doctor in the village house and his blood stained clothes were torn and destroyed by the accused. He has accepted that his daughter had a mobile phone (9810008482) and he was taken for treatment to Kolmet Hospital, Pusa Road, Delhi and was treated by Dr. Amar Sarin. Number of his car was DL 6 CG 3347.

7. In the cross-examination by counsel for Aleem Khan, PW-1 has accepted that he originally belonged to Lucknow though he did not have address, residence or business there. His younger brother was residing in Lucknow but PW-1 was not on good terms with him. He had two servants Ravinder and Narain, 15 and 16 years old, who were working in his house at that time but he did not suspect them at any point. PW-1 was employed with DDA and used to leave his house at 9.00 A.M. and return at 8-8.30 P.M. He had been working as

a property dealer since 1990 and was doing liaison work. A case under Section 410/420/468/471/120B IPC was registered against him on a complaint by DDA and he was facing trial in the court of Metropolitan Magistrate. He was on interim bail and had been directed to deposit Rs.12 lacs for grant of permanent bail. He had never appeared as a witness in the court except in the said case. He had visited Lucknow 7-8 months after the registration of the FIR in question with the police but not in between. In Lucknow, appellant Aleem Khan with 6-7 other persons was already in custody of U.P. Police. He accompanied the Delhi Police to Lucknow as his brother was receiving threatening calls. He has accepted as correct that he had come to know that Aleem Khan and others were arrested by U.P. Police and were detained in Lucknow through newspaper and news channels. Before he had accompanied the police to Lucknow, he had seen the accused in Lucknow and he also knew Rakesh Pandey, SSP of Lucknow as the accused persons had threatened his brother Yashpal to put pressure on PW-1 to not depose in the court. His brother Yashpal had made a complaint to Mr. Rakesh Pandey, SSP about the threat and he had met the SSP in the said connection. He denied that Aleem Khan was member of a morcha and SSP Rakesh Pandey was against the said morcha. After some hesitation, PW-1 has accepted that he had gone to the office of Special Staff, Lodhi Colony to identify the accused who had been arrested in Lucknow at the behest of the police. Telephone number 5757315 was installed in his house at the time of the

incident but was not his current telephone number. When he returned to his house, the police was already present there. After being released, no threats were extended to him and he had not visited Lucknow between 3rd March, 2001 to 14th May, 2001. Appellant Aleem Khan and others took about two minutes to enter his house by forcible opening the door. He has denied that he had concocted the entire story because of financial problems and liabilities and that his wife Kiran Mahajan was also party to the conspiracy to falsely implicate the appellant Aleem Khan. In cross-examination by other appellants' counsel, PW-1 has stated that he was wearing blind goggles till his release and he could not see anyone. It was clarified that he was made to wear blind goggles only in the room and with the blind goggles he could see upwards and not side ways and had remained in captivity for 23-24 days. When the door broke, there was noise but he does not think any of his neighbours heard the noise and he did not raise any alarm at the time of occurrence. He has accepted that he had done liaison work for 50-60 properties and he used to get possession of the properties for his clients. During the period of kidnapping he was only allowed to change his clothes on the last day when he was released. Old clothes were blood stained and were retained by the kidnappers. He identified that the house was in a village because the floor was made of bricks. His toe and palms were plastered but other injuries were not bandaged, only gauge was put on his leg injury. He was advised to rest for six weeks. His statement under Section 164 Cr.P.C.

Exhibit PW-7/J was recorded and on 30th December, 2000 when he had gone to the police station. At that time his foot and wrist were plastered. On 7th March, 2001, he visited the house No. 695-696. He, however, could not identify the house as it had been demolished and only boundary wall was intact. He had gone to the house early in the morning, at about 4 A.M., and the labour present there was sleeping.

8. PW-3, Kiran Mahajan has deposed that she had gone out for a stroll with her daughter on 23rd January, 2002 and her husband M.C. Mahajan was alone at the house, as the servants had already left. She had closed the door from outside as her husband wanted to sleep. She returned at about 10.15 P.M. and found her daughter's car missing. Their residence was on first floor and when they rushed upstairs, they found that the door was broken and the glass was lying scattered. All lights were switched on, though when they had left, M.C. Mahajan had closed the lights. The telephone wires were found to be snapped. She thought that dacoity had been committed and her husband might not be alive. She rushed to the room where PW1's chappals were still lying but he was missing. They ran to the second floor to make enquiry from Mr. Bhatia who showed ignorance about the whole matter. They used telephone of Mr. Bhatia to call PCR and after about 5-7 minutes PCR van arrived. They narrated the entire incidence. By 10.30 P.M. a telephone call was received on mobile phone of her daughter 9810008482. The number from which call was made was displayed

on the mobile phone and was noted by the police. On the phone, her husband spoke to her daughter and told her he was ok and would return soon. Thereafter, she spoke to her husband who told her that he was fine and would return soon. However, from his voice she realized that her husband was perturbed. Then she gave the phone to the police and her husband repeated the same lines. Thereupon, the phone was disconnected. On 3rd December, 2000, a telephone call was again received by her daughter at 2.30 P.M. from an unknown person, who informed that M.C. Mahajan was in their custody and they should deposit Rs.2 crores in the bank accounts. She expressed her inability to pay such a huge amount but the caller informed her that he was giving them time and that they should sell the house. The phone thereafter got disconnected. The investigating officer came and made inquiries. Conversation between her and the unknown caller was recorded on the audio cassette. She affirmed the transcript Exhibit PW-3/B of the conversation, which had her signatures. On 10th December, 2000 another call was received on her daughter's mobile phone from a different caller who inquired whether money had been arranged. She expressed her inability to arrange the huge amount but caller insisted that her husband was a DDA employee and had earned huge money. The conversation lasted for 5 to 7 minutes. The transcript of this conversation was prepared by the police and marked Exhibit PW-3/J, which she had signed. On 10th December, 2000, two-three telephone calls were received and at night she was threatened that her

husband's body would be sent. Conversation was again recorded and transcript was identified by PW-1 as Exhibit PW-3/D. On 14th December, 2000 her husband returned but his physical condition was really bad. He had marks of beating on his arms and legs. His left arm and toe was found to be fractured. The cassette Exhibit PW-1/A, which was used for recording telephone conversations, was seized by the police. Telephone call received on 10th December, 2000 was from a mobile and the number was noted by the police. The cassette Exhibit P-1 was played to PW-3 and she identified her own voice and the voice of the callers. The said conversations were made on 3rd December, 2000 and 10th December, 2000.

9. There is nothing in the testimony of PW-3 to doubt or debate on the version set forth and narrated by her. It was natural for her to go to a neighbour's house, after seeing what had happened, to know whether the neighbour had heard anything. It was late at night in the month of November, when the incident took place. The fact that call was made from Mr. Bhatia's telephone line to the PCR cannot be a ground to reject PW-3's testimony. We have statement of PW-4 Jagmohan Singh who has affirmed that police had come and seized car No. DL 6 CG 3347 on 4th December, 2000. PW-4 was a parking contractor at New Delhi Railway Station where the car was found. The FIR (Ex. PW-22/A) in this case was recorded at Police Station D.B.G. Road on 23rd November, 2000 at about 11.50 P.M. It was recorded under Section 365

Cr.P.C. and required entry was also made in the daily diary register at serial No. 37.

10. PW-7 Nisha Saxena, who was then a Metropolitan Magistrate had conducted the TIP proceedings. Appellant Krishna Shankar was produced but he refused to participate in the TIP even after he was warned. Statement of appellant Krishna Shankar was marked Exhibit PW-7/B and the TIP proceedings of appellant Krishna Shankar and two others were collectively marked Exhibit PW-7/E. PW-7 had also recorded 164 statement of M.C. Mahajan which was marked Exhibit PW-7/J.

11. M.C. Mahajan was examined by Dr. Amar Sareen (PW-11), who has deposed that on 16th February, 2001 he had examined M.C. Mahajan who was brought for examination with alleged history of having been beaten in captivity for 2 to 3 weeks. There were multiple bruises on his back and face, both eyes, hands and lower limbs were swollen. Both his legs had bluish marks and the left foot was infected. X rays of hands and lower limbs was done and fracture on mid shaft right foot, fracture in left ulna lower end and fracture on fifth metatarsal on left foot was found. Prescription prepared by him was marked Exhibit PW-11/A.

12. PW-13, Dr. Prakash Jhanji on 15th March, 2000 at 2.30 P.M. had examined M.C. Mahajan and had noticed the following injuries:

- “1. Multiple bluish black contusion 20×6 present over the top of right shoulder region and front of upper half right arm.
2. Scab separating linear abrasion, 3 cm in length present over front of upper half right arm, 2 cm below and outer to injury no.1.
3. Multiple scab separating abrasions 17×6 cms over outer front of upper and middle arm of right arm intermingling with few bluish black contusions in between.
4. Bluish black contusions 3×2 cms over outer aspect of the right elbow.
5. Multiple scab separating abrasions in area of 7×2 cms over front upper half right forearm.
6. Bluish black contusions 4×2 cms over outer front upper arm right forearm.
7. Bluish black contusion 7×2 cms over inner aspect lower half of the right forearm.
8. Multiple scab separating abrasion 2×1 cms over inner aspect of right wrist region with associated swelling.
9. Swelling 7×7 cms over back of right hand.
10. Multiple bluish black contusions 14×7 cms over front of upper half left arm.
11. Multiple scab separating abrasions 16×7 cms over outer aspect and front of upper and middle half left arm.
12. Multiple bluish black contusions 28×10 cms over front of left forearm.
13. Multiple bluish black contusions 20×10 cms over back of left forearm.
14. Scab separating abrasion 4×1.5 cms present over outer aspect of the (further illegible).
15. Scab separating abrasion (illegible). Half of the left forearm.
16. Swelling over entire area of back of left hand intermixed with multiple bluish black contusion.

17. Partially healed V shape wound present over front of proximal phalanx of left middle finger with both margins showing bluish black contusions more prominently seen on the upper margin.
18. Scab separating abrasion 7×4 cms over back of upper half left side chest.
19. Multiple scab separating abrasion 11×5 cms over back of upper half right side chest.
20. Multiple criss cross pattern bluish black contusions in area of 30×17 cms over back of lower half of the chest regions.
21. Scab separating abrasion 2×1 cms present over the back of left upper half of abdomen lying below injury no.20.
22. Multiple scab separating abrasion 4×2 cms present over the outer aspect of the left lower half of the left abdomen.
23. Bluish black contusion 15×6 cms present over the middle half of right leg.
24. Scab separating abrasion 3×1 cms present over the front of upper half right leg.
25. Scab separating abrasion 1.5×1.5 over front of middle half right leg inner to injury no.23.
26. Swelling in area 10×10 cms over upper surface of the right foot region.
27. Bluish black contusion 10×2 cms over outer front of middle half of left leg.
28. Scab separating abrasion 2×0.5 cms over front of upper half left leg.
29. Partially healed wound 1.5 cms in length over front of upper half left leg almost horizontally placed with edges joined together and margins showing bluish black contusions.
30. Swelling in areas over toes of left foot upper and lower surface.

31. Multiple scab separating linear abrasion 4 Scab separating abrasion 1.5×1.52 cms over, upper inner half of left buttock region.

32. Scab separating abrasion 2×1 cms over outer aspect upper half left thigh lying 12 cms below and outer to left groin fold.

33. Multiple bluish black contusion 4×2 cms over back of right thigh upper half lying 20 cms above right knee fold back side.”

There was a region in his left wrist and both feet with progressive increase in size of swelling in feet in the last few days. He had advised x-ray. However, he could not give final opinion as x rays were not available and thereafter had left the hospital. PW-15, Dr. D.S. Rawat had taken blood sample of K.C. Mahajan on 9th April, 2001 and affirmed that his blood group was B+ as stated in his opinion Exhibit PW-15/A.

13. Regarding the phone call records PW-6 Captain Rakesh Bakshi, Senior Security Manager, Bharti Cellular Ltd had appeared and proved call details of phone number 9810008482 and 9810358394, which belonged to Komal Mahajan and M.C. Mahajan, respectively. Call records (Ex. PW-6/A) of MC Mahajan’s number 9810358394 show an outgoing call to 9810008482, i.e. his daughter Komal’s number, at around 10.45 P.M. on 23rd November, 2000 for 33 seconds, the same is also reflected in the phone call records of Komal Mahajan (Ex. PW-6/B) which shows an incoming call from PW-1’s number at 22.40 P.M for 34 seconds. PW-35 Inspector Lalit Mohan, who was posted as Sub-Inspector in Special Cell, Lodhi has averred that he got collected CDR of these two

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mobile numbers. The location of the last call on mobile no. 9810358394 was 311 (2) i.e. Old Rajender Nagar. Thus M.C. Mahajan was clearly not calling from his house and had already been kidnapped by then, as has been stated by him and PW-3. PW-35 Insp. Lalit Mohan has also stated that 971506851268 and 97150676819 were Dubai numbers. Calls from these numbers and from other unregistered numbers (which were reflected as “null”) were made to Komal Mahajan’s number 9810008482 on numerous occasions. PW-3 Kiran Mahajan has specifically deposed about call received on 3rd December, 2000 at 2.39 P.M. which was for 215 seconds. She has further averred that few calls were also received on 10th December, 2000 from the aforesaid Dubai numbers at 12.08 (for 9 seconds) and 12.14 (318 seconds). Subsequently, at 17.41 from PW-3 Komal Mahajan’s number 9810008482 a call was made to 971506851268 which lasted for 186 seconds. In essence, this fortifies the prosecution case that calls were being made by the kidnappers. The transcripts of three calls (Ex. PW-3/B, 3/D & 3/C) which were recorded by the police and have been proven by PW-3 Kiran Mahajan. We shall refer to the details of the transcripts when we deal with application of Section 364A in the present case.

14. The contention of the appellants that victim PW-1 was at his residence at 10.15 when outgoing call from his telephone number 9810358394 was made to telephone number 58411533 for 70 seconds is incorrect. At that time, cell phone number 9810358394 was connected through cell tower number 204(2).

The said tower as per Ex.PW-6/F was located at New Rajinder Nagar and, therefore, it is established that at that time PW-1 was not at home. Earlier at 9.43, PW-1 had received a call when probably he was at his residence and telephone was connected with cell tower number 212, which was located at Masjid Moth (NDMC) as per Ex.PW-6/A. There is no evidence or material to show that telephone number 58411533 was installed at the residence of PW1 and PW3. In fact there is no evidence where telephone number 58411533 was located.

15. Thus, we have ample proof, in view of PW-1 M.C. Mahajan's statement which reflects how he was made a victim by the gang of kidnappers, medical evidence (MLC Ex. PW-13/A & 15/A) which delineates numerous injuries he suffered in the hands of the kidnappers, and phone records between the kidnappers and PW-1's family members which corroborate that ransom calls were being made by the kidnappers to PW-1's family.

16. Regarding arrest and subsequent recoveries from the two appellants, PW-35 Inspector Lalit Mohan has deposed that on 14th February, 2001 investigation of the present case was transferred to Special Cell and it was learnt that seven accused persons, including Aleem Khan and Krishan Shankar Bakde, the appellants herein were arrested in Aliganj Police Station, Lucknow. On 17th February, 2001 PW-35 moved an application for production warrant in the Court of CMM and this was listed before the Special Court of Gangster Act, Crl.A. 1330/2012 & 88/2013

Lucknow for arrest of the accused persons. On 20th February, 2001, PW-35 collected photocopies of FIR No. 20/2001 of PS Aliganj and case diaries collectively marked PW-35/A. On 1st March, 2001 seven persons were produced in the Court of CMM in muffled face and were subsequently interrogated. After interrogation, all seven were arrested and later, their TIP was conducted but Krishan Shankar refused to participate in TIP. His deposition regarding the phone calls and transcripts has already been dealt with above. There is nothing in the expatiated cross-examination which contradicts the deposition-in-chief of PW-35. He has denied that PW-1 M.C. Mahajan had seen the appellant Aleem Khan before the TIP. The information regarding involvement of the accused persons was received on 16th February, 2001 while the case was assigned to PW-35 on 14th February, 2001. He has accepted that there were no directions by the court of CMM to get the accused arrested but he had arrested them with the approval of DCP. He has accepted that no such approval has been placed on record. He has denied that false signatures were taken from Aleem Khan or that the disclosures statements were false.

17. The next question is regarding involvement of the appellants Aleem Khan and Krishan Shankar Bakde. PW-1, in his testimony, has clearly identified Aleem Khan to be the person who had initially kidnapped him by entering his house with a pistol, along with 4/5 persons. PW-1 has averred that, when at PW-1's house, Aleem Khan had made a call informing someone that PW-1 has

been kidnapped. Then Aleem Khan had purportedly taken PW-1 to the car and was later seen by PW-1 in the house he was first taken to. PW-1 has also mentioned that Aleem Khan was there to keep a watch on him with Krishan Shankar, at one of the houses where he was subsequently held as a captive. During the time Aleem Khan forcefully gained entry in PW-1's house, PW-1 would have seen him at close length. PW-1 has also deposed that when he was taken to the first house, his blind goggles were taken off and he saw Aleem Khan. Clearly, PW-1 got several opportunities to see Aleem Khan on more than one occasion. The appellant's contention that PW-1 recognized Aleem Khan only because he had seen him on television cannot hold ground. Aleem Khan was there with PW-1 for a considerable period during the kidnapping, as PW-1 has averred of his presence at various instances. Aleem Khan was also identified in the TIP (Ex. PW-30/B) conducted on 2nd March, 2001 by Chandra Bose (PW-30). The application itself was moved on 1st March, 2001 (Ex. PW-30-A). PW-30 was cross-examined at length but he has stated that he did not think Aleem Khan was shown to PW-1 before the TIP and due process was followed at the time of the TIP. During the cross-examination by Aleem Khan's counsel, PW-1 has also averred that he had not gone to Lucknow for seven-eight months, after the case was registered. When he went to Lucknow with the police, Aleem Khan was already in police custody with 6-7 other people since Jan/Feb 2001. He has not specifically averred that he had seen Aleem Khan on television, but

that he was made aware of the fact that they were detained in Lucknow through newspapers/news channel and had seen photographs of some of those persons on T.V. In view of this, we are not inclined to disbelieve identification of Aleem Khan by PW-1.

18. The contention that PW-1's servants had not been brought on record and made to testify shakes the prosecution case is baseless. PW-1 has deposed that his servants had left the house at the time of the incident. The servants Ravinder and Narain were not there at the time of incident. We fail to see, how their deposition regarding when PW-3 and Komal Mahajan went for a walk, at what time they returned and at what time kidnapping was done, could be helpful because at best it would be a mere hearsay. Similarly, the fact that Komal Mahajan was not made a witness does not dent the prosecution case. It was PW-3 Kiran Mahajan who was in touch with the kidnappers, even when phone calls were being made to Komal Mahajan's phone. This becomes clear from the transcripts too. It is understandable that in a case of such nature, probably PW-1 and PW-3 would not have liked to put Komal Mahajan in the witness box. PW-1 has also stated on record that his brother had received threats and, thus, there was a certain danger involved in becoming a witness to the present case. PW1 and PW3 being parents probably wanted to shield their daughter.

19. Regarding Krishan Shankar, PW-1 has not only mentioned his name but also clearly attributed that Krishan was made to keep watch over him with the

appellant Aleem Khan. In the cross-examination by the Learned APP, PW-1 had averred that he did not remember if Krishan was present at the time when appellant Aleem Khan gained entry in his house but this does not mean he had exonerated Krishna, as the appellant's counsel would like us to believe. He has later on categorically averred that it was correct that accused Krishan Shanker had come at the time of kidnapping and had remained with him for keeping a watch wherever he was kept after kidnapping. It seems PW-1's initial answer was only with respect to whether Krishan Shankar had entered his house with Aleem Khan. Some deviation in a case of this nature by the victim i.e. PW1 is natural and human. The appellant's counsel contends that PW-1 could not have seen Krishan Shankar since, by his own admission, he was made to wear blind goggles throughout. However, PW-1 has explained, in his statement, that he was not completely blindfolded and he could have seen upwards. He has also stated that at times his goggles were taken off. PW-1 has been honest in his deposition regarding what had exactly happened, the manner in which he was shifted and they moved from one place to another and what he remembered of the places and people who were involved in the crime. (PW-7) Nisha Saxena was to conduct the TIP of Krishan Shankar and application for the same was made on 3rd March, 2001. The TIP was fixed to be held on 5th March, 2001 but could not be conducted as the appellant Krishan Shankar refused to participate. Statement of Krishan Shankar has been recorded in Ex. PW-7/B wherein he has

stated that he did not want to take part in the proposed TIP as he had been shown to the witness while he was being brought from the Court. The appellant cannot take the benefit of non- participation in TIP. An adverse inference would be made/drawn against the appellant Krishan Shankar. We believe that statement of PW-1 is credible and establishes that the two appellants were involved in the present case.

20. The last question before us is on the application of Section 364A. To prove an offence under Section 364A of the IPC, the following ingredients have to be satisfied:-

- (i) The accused must have kidnapped, abducted or detained any person
- (ii) He must have kept such person in custody or detention
- (iii) He must have threaten to cause or reasonable apprehension to cause death or injury.
- (iv) Abduction or kidnapping or detention must have been for ransom or doing an act.

(see *Malleshi v. State of Karnataka*, (2004) 8 SCC 95 and *Vishwanath Gupta v State of Uttaranchal* 2007 (11) SCC 633).

21. It is the obligation of the prosecution to prove the ingredients particularly threat to cause or reasonable apprehension to cause death or injury to the victim

coupled with demand of ransom or to do or not to do an act (see *Anil v Administration of Daman & Diu* 2006 (13) SCC 36). In the present case, the prosecution has been able to establish the said ingredients. PW-1 and PW-3's statement leaves us with no doubt regarding the fact that this is a case of kidnapping for ransom. This is also apparent from the transcripts which again get verified and corroborate PW-3's statement. These present us with clear and cogent proof that the present case was of kidnapping for ransom and both the appellants were involved in the same. The offence u/s 364A started with abduction and continued till he was released. In between there were phone calls made for payment of ransom, as deposed to by PW-3. The factum that ransom was the reason behind the kidnapping is also stated by PW-1 in his testimony. Injuries suffered and inflicted on PW1 also speak for themselves. Section 120-B has in fact been rightly invoked. Conviction of the two appellants by invoking Section 120-B is correct and as per law. PW-1 had identified the gang leader as Sunil Lathani and two others who were the master minds behind the kidnapping but they have been killed.

22. In light of the aforesaid reasoning, we find no merit in these appeals and the same are dismissed. We clarify that nothing in this judgment should be read as expression of opinion on involvement or non-involvement of other accused who have been acquitted. We have not examined merits of the reasoning acquitting the said accused.

23. The conviction and sentence of the appellant Aleem Khan under Section 450/458/364A IPC read with Section 120-B and of appellant Krishan Shankar under Section 120-B read with Section 364A IPC is maintained and upheld. Appeals are disposed of.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

July 30th, 2013
VKR