

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

Date of Decision: 8th July, 2014

- + Crl. A. 926/2009**
PRABHAT SINGH Appellant
Through: Mr. Sanjeev Singh, Advocate.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.
- + Crl. A.1010/2009**
AJIT SINGH Appellant
Through: Mr. Chander Shekhar, Advocate.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.
- + Crl.A. 422/2010**
SUBHASH CHANDER Appellant
Through: Mr. Rajeev Sirohi, Advocate.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.
- + Crl.A. 452/2010**
JITENDER @ JITU Appellant
Through: Mr. Mohit Mathur and Mr.
Amish Dabas, Advocates.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.

+ **Crl. A. 192/2011**
JAGMINDER @ HAPPY Appellant
Through: Mr. Rajeev Sirohi, Advocate.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.

+ **Crl. A. 230/2014**
SANDEEP AHLAWAT Appellant
Through: Mr. Sunil Kumar, Advocate.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP for the
State.

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CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This judgment will dispose of six connected appeals directed against a common judgment dated 22nd September, 2009 and orders on sentence passed by the learned Additional Sessions Judge (East), Karkardooma Courts, Delhi dated 25th September, 2009 and 7th November, 2013 respectively in Sessions Case No.66/08 arising out

of FIR No.175/01 u/s 120B/364A/343/353/307/34 IPC and u/s 25/27 Arms Act registered with PS New Ashok Nagar whereby the appellants were convicted.

2. The gravamen of the prosecution case is that on 16th June, 2001, Shilpa Gogia (PW12) wife of Amit Gogia (PW10) had gone to her parental house at Vikas Puri and from there she was to attend the Ramayan Path which was to be held in the house of Smt. Lata Vohra, her mother's friend. Amit Gogia left his home at about 10:15 AM on 17.6.2001 in his Santro Car No.DL 4C M 5073 to attend the Bhog ceremony and also to bring back his wife. At about 11 or 11:15 AM, when he reached the crossing at Pankha Road, Najafgarh Road, all of a sudden, a white Zen Car No. HR Z6 M 5199 and a red colour motor cycle came from his back and overtook his car and also hit the car from the back. In the meantime, the traffic light turned green but he was obstructed by the Maruti Zen car. Three persons stepped down from the car and the motor cyclist also came to him. All of them showed a police I-card to him and two of them made him to sit at the back seat of his Santro car by putting revolver/pistol on both side. A third person sat on the driver seat and started driving the car. He was

made to bow down his head and was threatened not to speak or make any alarm otherwise he would be shot. The car was taken to South Extension and Amit Gogia was made to get down on the service road and one boy who had been summoned there, drove away his Santro Car. Amit Gogia was taken to Noida and was kept confined in a room there. On 19.06.2001, he was shifted to the place from where he was recovered. The culprits made ransom calls from the mobile phone of Amit Gogia to his family members.

3. On 20.06.2001, accused Smt. Lata Vohra telephoned Shri Sunil Gogia, father of Amit Gogia that Braham Pradhan was known to her and that he could contact the kidnappers and get his son released. The meeting was fixed in Connaught Place. Braham Pradhan came there in a white Zen car. Accused Smt. Lata Vohra came in another car driven by accused Bijender @ Dhile. After negotiations, the ransom amount was settled at Rs.2 crores. Braham Pradhan told Sunil Gogia that as soon as he made the payment on 22.06.2001 in the afternoon, his son would be released.

4. In the meantime, on 22.06.2001, Inspector Ishwar Singh of the Anti Extortion Cell received a secret information at about 7:00 AM

that the kidnappers would come to the factory of Amit Gogia at B-135, Sector-6, Noida for settling the ransom amount. Police officials laid nakabandi at the above mentioned factory. At about 3:45 PM, a Maruti Zen Car No. DL 4C N 1438 was seen moving around the factory in a suspicious manner. The car was stopped. It was being driven by accused Jitender @ Jitu and accused Ajit Singh was sitting beside him. On being apprehended by the police, they disclosed that they were members of the gang of Braham Pradhan and that Amit Gogia was kept on the First floor of House No.B-49, Gharoli Dairy Farm. The premises were raided at about 4:05 PM. The culprits started firing and an exchange of fire took place between the culprits and the police. Braham Pradhan died in the firing. Subhash Chander, Jagmidner Singh @ Happy, Sandeep Ahlawat and Prabhat Singh were apprehended from there. Pistols and cartridges were recovered from accused Jagmidner, Sandeep Ahlawat and Subhash Chander. Amit Gogia was rescued from there. Accused Sandeep and Jagminder Singh sustained gunshot injuries in the rescue operation. Accused Subhash Chander and Prabhat Singh sustained simple injuries caused by blunt object.

5. On 23rd June, accused Bijender @ Dhile was arrested and a parking ticket of Safdarjung Hospital in respect of the Santro car of the victim-Amit Gogia was recovered from his possession and the car was recovered from the parking of the hospital at the instance of accused Bijender. Lata Vohra was also arrested. Mukesh and Vijaypal @ Kale were absconding. After completing investigation, charge sheet was submitted against accused Jagminder Singh @ Happy, Sandeep Ahlawat, Subhash Chander, Prabhat Singh, Jitender @ Jeetu, Ajeet Singh and Bijender @ Dhile and Lata Vohra. Subsequently accused Mukesh and Vijay Pal @ Kale were also arrested. After investigation, police filed charge sheet under Section 364A/186/353/332/343/506/307/120B/34 IPC and 25/27 of Arms Act.

6. The accused persons abjured their guilt on the ground of false implication and claimed to be tried.

7. During course of trial, prosecution examined as many as 44 witnesses. All the incriminating evidence was put to the accused persons while recording their statement under Section 313 Cr. P.C. in

which they denied all the prosecution evidence and alleged false implication in this case.

8. After meticulously examining the evidence led by the parties, learned trial Court vide impugned judgment dated 22nd September, 2009, convicted accused Jagminder @ Happy, Sandeep Ahlawat, Subhash Chander, Prabhat Singh, Jitender @ Jeetu and Ajeet Singh and acquitted accused Bijender @ Dhile, Smt. Lata Vohra, Vijay Pal @ Kala and Mukesh.

9. Accused Jagminder @ Happy, Sandeep Ahlawat and Subhash Chandra were convicted under Section 120B/364A r/w Section 120B IPC, Section 343 r/w Section 120B IPC and Section 307/353/34 IPC and Section 27 Arms Act, 1959. Accused Jagminder and Subhash were sentenced as under:

- (i) For offence under Section 364A r/w Section 120B they were sentenced to life imprisonment with a fine of Rs.5000/-, in default to undergo SI for 6 months.
- (ii) For offence u/s 343 read with section 120B IPC, they were sentenced to undergo imprisonment for 2 years and a fine of Rs.1000/-, in default to undergo SI for one month.

- (iii) For offence punishable u/s 120B IPC they were sentenced to undergo imprisonment for life with fine in the sum of Rs.5000/-, in default to undergo SI for 6 months.
- (iv) For offence punishable u/s 307 read with section 34 IPC, they were sentenced to imprisonment for 7 years and to pay a fine of Rs.3000/-, in default to undergo SI for 3 months.
- (v) For offence punishable u/s 353 read with section 34 IPC, they were sentenced to undergo imprisonment for 2 years and fine of Rs.1000/-, in default to undergo SI for one month.
- (vi) For offence punishable u/s 27 Arms Act, 1959, they were sentenced to undergo imprisonment for 3 years and fine of Rs.1000/-, in default to undergo SI for one month. All the sentences were to run concurrently. Benefit of Section 428 Cr.P.C. was given to the convicts.

10. Accused Prabhat Singh was convicted u/s 120B/364A r/w Section 120B IPC, Section 343 r/w Section 120B and Section 307/353/34 IPC and sentenced as under:

- (i) For offence under Section 364A r/w Section 120B, he was sentenced to undergo life imprisonment with a fine of Rs.5000/-, in default to undergo SI for 6 months.

- (ii) For offence u/s 343 read with section 120B IPC, he was sentenced to undergo imprisonment for 2 years with a fine of Rs.1000/-, in default to undergo SI for one month.
 - (iii) For offence punishable u/s 120B IPC, he was sentenced to undergo imprisonment for life with fine of Rs.5000/-, in default to undergo SI for 6 months.
 - (iv) For offence punishable u/s 307 read with section 34 IPC, he was sentenced to imprisonment for 7 years and to pay fine of Rs.3000/-, in default to undergo SI for 3 months.
 - (v) For offence punishable u/s 353 read with section 34 IPC, he was sentenced to undergo imprisonment for 2 years and fine of Rs.1000/-, in default to undergo SI for one month.
- All the sentences were to run concurrently. He was given benefit of Section 428 Cr. P.C.

11. Accused Jitender @ Jeetu and Ajeet Singh were convicted under Section 120B/364A r/w Section 120B and u/s 343 r/w Section 120B IPC and sentenced as under:

- (i) For offence under Section 364A read with section 120B, they were sentenced to undergo life imprisonment with a fine of Rs.5000/-, in default to undergo SI for 6 months.
- (ii) For offence u/s 343 read with section 120B IPC, they were sentenced to undergo imprisonment for 2 years with a fine of Rs.1000/-, in default to undergo SI for one month.

- (iii) For offence punishable u/s 120B IPC, they were sentenced to undergo imprisonment for life with a fine of Rs.5000/-, in default to undergo SI for 6 months. All the sentences were to run concurrently. They were given benefit of Section 428 Cr.P.C.

12. After passing of the order of conviction on 22nd September, 2009, accused Sandeep absconded, therefore, on his re-arrest, order on sentence was passed qua him on 7th November, 2013 and he was sentenced as under:-

- (i) For offence u/s 364A r/w Section 120B IPC, he was sentenced to undergo life imprisonment with a fine of Rs.5000/-, in default to undergo SI for 6 months.
- (ii) For offence u/s 343 read with section 120B IPC, he was sentenced to undergo Rigorous Imprisonment for 2 years with a fine of Rs.1000/-, in default to undergo SI for one month.
- (iii) For offence punishable u/s 120B IPC, he was sentenced to undergo imprisonment for life with fine of Rs.5000/-, in default to undergo SI for 6 months.
- (iv) For offence punishable u/s 307 read with section 34 IPC, he was sentenced to undergo Rigorous Imprisonment for 7 years with a fine of Rs.3000/-, in default to undergo SI for 3 months.

- (v) For offence punishable u/s 353 read with section 34 IPC, he was sentenced to undergo Rigorous Imprisonment for 2 years with a fine of Rs.1000/- in default to undergo SI for one month.
- (vi) For offences punishable u/s 27 Arms Act, 1959, he was sentenced to undergo Rigorous Imprisonment for 3 years with a fine of Rs.1000/-, in default to undergo SI for one month. All the sentences were to run concurrently. He was given benefit of Section 428 Cr.P.C.

13. Feeling aggrieved, separate appeals have been preferred by the appellants.

14. We have heard learned counsels for the appellants and learned Additional Public Prosecutor for the State at great length and have perused the record including Trial Court Record.

15. Mr. Mohit Mathur, the learned counsel argued on behalf of the appellant–Jitender @ Jeetu. It was submitted that as per the case of the prosecution on 22.06.2001, the police officials were present in the area of Sector-6, Noida near factory No.B-135 and at about 3:45 pm one Maruti Zen car bearing number DL 4CN 1438 was found roaming there in suspicious circumstances. The car was stopped and two persons who were in the car were interrogated. They disclosed

their names as Jitender @ Jeetu and Ajit. They were apprehended by the police and disclosed that the kidnapped person Amit Gogia was kept confined at B-49, Gharoli Dairy Farm. It was submitted that the appellant has been convicted only for the charge of conspiracy to commit offences and not for any substantive offence. What amounts therefrom is that there must be meeting of minds between the appellant and some other persons to conspire to commit such offence. In the instant case, there is no material or evidence supporting such allegation. Secondly, mere knowledge of any fact on the part of the appellant is not sufficient to convict him of the charge of criminal conspiracy. Even at the time of recording statement of the accused under Section 313 Cr.PC, no question was put to the appellant that he conspired with other co-accused to commit offences for kidnapping for ransom and wrongful confinement. In the absence of the same, the conviction of the appellant under Sections 120B, 120B read with Section 364A and 120B read with Section 343 is bad in law.

16. It was next highlighted that for convicting the appellant under Section 120B read with Section 364A IPC, the learned trial court ought to have found material proving beyond reasonable doubt that

the appellant entered into a criminal conspiracy with each other; that the ransom was the object for kidnapping/abduction right from the initial stage; subsequently, the appellant must have kidnapped/abducted any person to get the ransom amount and subsequent to the kidnapping/abduction, the demand for ransom was made by the appellant or under his conspiracy. However, in the instant case, there is no material connecting the appellant to the crime committed on 17.06.2001 and at the most, the appellant may only be treated as an accessory to the fact and not the fact itself. Reliance was placed on *Suman Sood v. State of Rajasthan*, (2007) 5 SCC 634. The prosecution has also failed to prove its case beyond reasonable doubt under Section 120B read with Section 343 IPC. Even as per the case of the prosecution, the petitioner never kidnapped PW-10 for wrongfully confining him.

17. It was further submitted that the prosecution has not even proved beyond reasonable doubt that the appellant was in possession of Maruti Zen Car bearing registration number DL4CN 1438, which according to PW4–Anil belonged to one Hari Chand. Hari Chand was not examined by the prosecution and nothing has been brought

on record to show whether the car was in appellant's possession. Therefore, adverse inference under Section 114 of Evidence Act ought to be drawn against the prosecution.

18. It was next urged that no reliance can be placed on the disclosure statement of the appellant [Ex.PW34/Q5], as the same is dated 23.06.2001, i.e., after the incident had taken place on 22.06.2001 and therefore the fact was not discovered pursuant to arrest of the accused and thus not protected under Section 27 of the Evidence Act.

19. It was next submitted that the case of the prosecution is false, inasmuch as, the arrest and personal search memos Ex.PW34/M1 and Ex.PW34/M2 respectively and the disclosure statements Ex.PW34/Q5 are all dated 23.06.2001 while the prosecution witnesses stated that the same were prepared at the spot. Reference was also made to the testimony of PW20—Ct. G. Ganeshan, who took the photographs of the place of incident and has deposed that he received the information at about 12.00 noon. He reached B-49, Gharoli Dairy Farm along with FSL team and started taking photographs at about 3:00 pm. This run contrary to the case of the prosecution which states that the police officials came to know of the

Gharoli Dairy Farm only after the arrest of the appellant at 3:45 pm. Moreover, there is no record to support the version of the police officials that the appellant was apprehended at Noida. The police officials neither took any permission nor intimated any authority in writing about their surveillance raid in Noida. Even the place of arrest of the appellant in the arrest memo has been shown as B-49, Gharoli Dairy Farm, Delhi on 23.06.2001. No site plan of the alleged place of arrest at Noida has been prepared. The prosecution has failed to prove as to from where and whom they got the information of the place of incident in light of the fact that none of the family members had ever informed the police. Six police persons were allegedly present when the appellant Jitender and Ajeet were apprehended at Noida but only three were examined as prosecution witnesses. PW16–Brij Bhushan and PW19–Satbir Singh whose houses were near B-49, Gharoli Dairy Farm where the encounter took place have not supported the case of the prosecution. This creates a serious doubt in the entire prosecution story. Further, as per the prosecution case, the victim was kidnapped on 17.06.2001 and was rescued on 22.06.2001 after the encounter. As per the evidence of PW7–Parmod Kumar, a property dealer and

PW8–Rajeev Sondhi, the house was taken on rent only on 19.06.2001. That being so, it was incumbent upon the prosecution to prove as to where the victim was kept from 17th to 19th June, 2001.

20. It was further submitted that the appellant has examined Sanjay Kishore as a defence witness, who had testified that Jitender @ Jeetu was picked up by the police from his house at Krishna Nagar. However, his testimony was disbelieved by the learned Additional Sessions Judge. The defence witnesses are also entitled to equal respect and treatment as that of the prosecution. In support of this submission, reliance was placed on *Munshi Prasad and Ors. v. State of Bihar*, (2002) 1 SCC 351 and *Dudh Nath Pandey v. State of UP*, (1981) 2 SCC 166.

21. Lastly, it was submitted that medical examination of the appellant was never conducted. No recovery was affected from him and no independent witness was examined, as such, the appellant deserves acquittal. In any case, he has already undergone sentence of approximately eight years.

22. Besides subscribing to the submissions of the learned counsel for the appellant-Jitender @ Jeetu, it was submitted by Sh. Chander

Shekhar, the learned counsel for the appellant–Ajit Singh that he was working as a driver of Jitender @ Jeetu and has absolutely no role to play. The learned counsel relied upon the observations made by the Supreme Court in *State v. Nalini*, (1999) 5 SCC 253, dealing with law pertaining to criminal conspiracy and submitted that there is nothing on record to show that the appellant-Ajit had any knowledge or information about the conspiracy of abduction hatched by Braham Pradhan. The learned counsel for the appellant also referred to Section 142 of the Indian Evidence Act, 1872 for submitting that the Public Prosecutor put various leading questions to the witnesses which does not fall under the category specified in Section 142 of the Act and as such those leading questions are to be ignored.

23. Mr. Sanjeev Singh, Advocate for the appellant-Prabhat Singh submitted that the victim-Amit Gogia has not identified the appellant. No other public witness has made any reference in regard to any role played by the appellant-Prabhat Singh in the entire case. It is not even the case of the prosecution that Prabhat Singh was involved in abduction or planning in any manner whatsoever. The presence of Prabhat Singh at the place of raid/spot has not been proved beyond

doubt. Material contradictions have appeared in the statement of police officers with regard to apprehension of Prabhat Singh on the spot where the alleged encounter took place. Moreover, the arrest memo of the appellant is dated 23.06.2001 whereas as per the case of the prosecution, the appellant was arrested at the spot on 22.06.2001. In pursuance to the questions put to the appellant while recording his statement under Section 313 Cr.P.C., he has stated that he was lifted from the house of his father's sister in Moti Bagh on 22.06.2001 at about 11 am and was questioned about accused Mukesh, who is the son-in-law of his father's sister. Even in the arrest memo of the appellant, the intimation of arrest is shown to have been given to *Bua* of the appellant residing at Moti Bagh. DW7-Amit who is son of *Bua* of the appellant confirmed that appellant was taken away by the police on 22.06.2001 from his residence and since he was examined after seven (7) years of the incident, small discrepancy appeared regarding timings. In view of the multiple contradictions appearing in the evidence of police witnesses, the appellant deserves benefit of doubt.

24. Sh. Rajeev Sirohi, learned counsel for the appellants – Subhash Chander and Jagminder @ Happy submitted that although the incident alleged to have taken place at 4.30 pm, however, PW20– Ct.G. Ganeshan deposed that he received information at about 12 noon and reached the spot at 3 pm., i.e., prior to the incident. Much emphasis was laid on the testimony of Inspector Ishwar Singh for submitting that everywhere he has deposed about Ashok Pahwa and no mention was made of Subhash Pahwa. Moreover, according to him Subhash Pahwa received bullet injuries, but as per MLC, there is no bullet injury on the person of Subhash Pahwa. He also referred to the contradictions appearing in the testimony of the police officers. Moreover, despite the fact that the accused persons were alleged to have been apprehended from the spot on 22.06.2001, the arrest memos were prepared on 23.06.2001.

25. Sh. Sunil Kumar, learned counsel for appellant-Sandeep also reiterated the same submissions as made by the other counsels. It is the submission of all the counsels for the appellants that the police wanted to kill Braham Pradhan, who was a notorious criminal and was shot dead by them. All the accused persons were already in the

custody of the police. In order to cover up their illegal act, the operation was staged and crime branch has concocted this false story.

26. Countering the submissions made by learned counsel for the appellants, Ms. Richa Kapoor, learned Additional Public Prosecutor for the State urged that the learned trial court's finding does not call for any interference. She argued that having regard to the facts proved during the trial, the appellants conviction and sentences were justified and proper. It was submitted that Section 364A of the IPC was brought in the statute book with the intent of tackling the menace of kidnapping or abduction for ransom. She further submitted that the legislative intent has to be gathered from the Statement of Objects and Reasons which led to amending the Act. The offence is an aggravated form of kidnapping or abduction. The conditions of aggravation are that the kidnapping or abduction is accompanied by the administration of a threat of causing death or hurt on the one hand and the underlying purpose of the kidnapping or abduction on the other. The expression "in order to" emphasis that the underlying purpose and intent of kidnapping or abduction is to demand a ransom or to compel the doing of or abstention from doing any act. In order to

illustrate the expression “in order to” reliance was placed on this expression appearing in Section 449, 364 and 368 of the Code and the judgments *Matiullah Sheikh v State of West Bengal*. AIR 1965 SC 132, *State of West Bengal v Mir Mohammad Omar*, 2000 SCC (Cri.) 1516; *Gabbu v. State of M.P.*, (2006) 5 SCC 740; *Badshah v. State of U.P.* JT 2008 (2) 316; *Upendra Nath Ghose v. Emperor*, AIR 1940 Calcutta 561, where the words “in order to” were construed.

27. The learned Additional Public Prosecutor further submitted that there can be no room for doubt from the testimony of PW10 – Amit Gogia that he was abducted against his will. Use of force or threat of bodily injuries were proved by PW10, who mentioned that three persons, while taking him in the car, had held him at gun point and asked him to keep the face down during the car ride. The victim was held against his will and shifted from one place to another. The learned APP further submitted that the kidnappers’ object was to obtain ransom which was proved through the testimony of PW10– Amit Gogia, PW9–Sunil Kumar Gogia and PW6-Pawan Taneja, who specifically mentioned about the demand of Rs.5 crores as ransom, being made through telephone calls. It was further urged that the

transcriptions of the audio-cassettes regarding ransom Ex.27/T seized by the Investigating Officer also corroborated this.

28. It was further urged that due to threat administered by the abductors, Sunil Kumar Gogia, father of the victim was under fear and, therefore, did not report the matter to the police. However, Inspector Ishwar Singh of Anti Extortion Branch received information that one Braham Pradhan, a criminal, had kidnapped one person and was asking for ransom from the family of the victim. As per the information, the criminals were to collect ransom from family of the victim located at Sector-6, Noida. A team consisting of 15-20 police officers was constituted under the supervision of Inspector Ishwar Singh (PW42) and ACP H.P.S. Cheema (PW29). They reached Sector-6, Noida and apprehended two associates, Jitender and Ajit, of Braham Pradhan's gang. On interrogation, they revealed that the victim was at B-49, Gharoli Dairy Farm, Delhi and led the police party to the said house. The house was raided by the police and exchange of fire took place in which Braham Pradhan was shot dead. The victim Amit Gogia was rescued from there and four accused

persons namely Jagminder, Sandeep, Subhash Chander and Prabhat Singh were apprehended.

29. It was further submitted that one .30 bore pistol with live magazine was recovered. From the room where the encounter took place, four fired cartridges were recovered. From the gallery of the first floor, two used lead and from the room on the first floor, three used lead were recovered. One used lead of bullet was recovered from the door of toilet. Besides that police uniform, fake identity card, mobile phone were also seized from the spot. The chance prints were lifted from Bone China plate and Bisleri bottle. As per the Finger Print Expert Report, the chance prints were identical with that of accused Prabhat, Subhash and Sandeep. From accused Subhash, Jagminder and Sandeep, illegal arms were recovered.

30. It was further submitted that in pursuance of the disclosure statement made by accused Jitender and Ajit Singh, the police party could reach B-49, Gharoli, Dairy Farm, Delhi from where ultimately the victim was rescued. The mere fact that arrest memo is dated 23.06.2001 does not mean that the accused were not in fact arrested or discovery of fact was inadmissible in evidence under Section 27 of

the Evidence Act. For raising this contention, reliance was placed on *Dharam Deo Yadav v. State of U.P.*, (2014) 5 SCC 509. It was submitted that the case was cracked up at the instance of appellants-Jitender and Ajit Singh who were having exclusive knowledge as to where the victim was kept. It was only at their pointing out that the police party could reach the premises in question and could rescue the victim. This recovery/discovery is admissible under Section 27 of the Evidence Act. The car was seized in which they were roaming in suspicious circumstances. As per record, the car was in the name of Hari Chand who had subsequently taken the vehicle on *Superdari*. Although he was cited as a witness, but could not be examined by the prosecution due to his non-availability. The presence of accused Sandeep and Jagminder stands proved from the fact that during the incident they tried to escape and as such sustained gunshot injuries. The chance prints lifted from the spot matched with the prints taken from the appellants-Prabhat, Sandeep and Subhash. They also sustained injuries as such their presence at the spot stands established beyond reasonable doubt. Moreover, the voice sample of accused Subhash was sought to be taken by moving an application before the

learned Metropolitan Magistrate, but he refused to give his voice sample as such adverse inference has to be drawn against him. The learned Additional Public Prosecutor also referred to the statement of accused persons recorded under Section 313 Cr.P.C. wherein on material aspects they did not chose to give any satisfactory reply but satisfied themselves by replying “*I do not know*”. It was submitted that when incriminating evidence is put to the accused, it is incumbent upon him to offer satisfactory explanation, but in the instant case, the accused persons instead of furnishing any satisfactory explanation, evaded the answers. It was further submitted that although four of the accused persons have been acquitted and although the order of acquittal cannot be set aside since the same has not been challenged by the prosecution, but the co-accused cannot get any benefit from the same. As such, it was submitted that appeals are liable to be dismissed.

31. The basic charge against the appellants is u/s 364A, 120B and 343 IPC. The object of incorporating Section 364A IPC was succinctly dealt with by this Court in *Amar Misra & Ors. v. State* 2011 VIII AD (Delhi) 590 as under:

"1. Section 364-A IPC was inserted in 1993, through an amending Act (Act 42 of 1993). Before introduction of Section 364-A IPC, by Act No.42 of 1993, (applicable w.e.f. 22.5.1993) the only penal provision for punishing the accused for kidnapping or abduction was for murdering or so disposing of the victim or to put the victim in danger of being murdered. Section 364 IPC existed for that purpose; it reads as follows:-

"364. Kidnapping or abducting in order to murder:

"Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

It is apparent from a plain look at the above provision that it was silent as regard those instances where the abductors or kidnappers used to threaten to cause death or hurt for ransom. The Courts in such cases, used to convict the accused under Section 364 with the aid of Section 384 IPC. Parliament, with intent to widen the scope of penal provisions and to punish abductors for the offence of kidnapping "for ransom" introduced Section 364-A. Section 364-A as added by that amendment, originally read as follows:-

"364-A. Kidnapping for ransom, etc. -

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or "any other person" to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

The statement of objects and reasons for the Amendment Act of 1993, reads as follows:

"Statement of Objects and Reasons.-Kidnappings by terrorists for

ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973.

The provision, as originally inserted was considered inadequate, when the offence of kidnapping for ransom in order to compel any foreign State or international inter-governmental organization was committed. To cater to the menace of kidnapping for ransom in order to compel the foreign State or international inter governmental organization, and to further widen the scope of Section the words "any other person" already existing in Section 364-A prior to 1995 was substituted with words "any foreign State, international inter- governmental organization or any other person" by Act No.24 of 1995 in Section 364-A IPC, brought into force w.e.f. 26.5.1995. The provision, after amendment after 1995, reads as follows:

"Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or international intergovernmental organization or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

Thus with effect from 26.05.1995, the offence of kidnapping or abduction did not cover only private individuals but also cases of abduction to

compel private individuals for ransom as well as compel any foreign State, international inter-governmental organization to do or abstain from doing any act or to pay ransom. It is worth mentioning that the amending Act 42 of 1993, also introduced an amendment to Section 39 of the Code of Criminal Procedure, which mandates

“every person aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following provisions of the Indian Penal Code, (45 of 1860), namely-

... (va) section 364-A, that is to say, offence relating to kidnapping for ransom, etc;

....

shall in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to any of the nearest magistrate or indulging police officer of such commission or such intention.”

2. Section 364-A alludes to "Kidnapping" as well as "Abduction". Section 359 defines Kidnapping. It envisions two types of kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship. Abduction (defined by Section 362) envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the removal of the victim from any place by force (involuntarily) or by deceit (voluntarily, through false promises or representations).

*3. The decision in **Vishwanath Gupta v. State of Uttaranchal** (2007) 11 SCC 633 held that for the prosecution to prove the offence, three facts had to be established. The court held that:*

“8. According to Section 364A, whoever kidnaps or abducts any person and keeps him in detention and

threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

9. The important ingredient of Section 364A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A is complete. There are three stages in this Section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places...."

*In **Suman Sood** (supra), it was held that:*

"57. Before the above section is attracted and a person is convicted, the prosecution must prove the following ingredients;

(1) The accused must have kidnapped, abducted or detained any person;

(2) He must have kept such person under custody or detention; and

(3) Kidnapping, abduction or detention must have been for ransom.

58. The term 'ransom' has not been defined in the Code.

59. As a noun, 'ransom' means "a sum of money demanded or paid for the release of a captive". As a verb, 'ransom' means "to obtain the release of (someone) by paying a ransom", "detain (someone) and demand a ransom for his release". "To hold someone to ransom" means "to hold someone captive and demand payment for his release". (Concise Oxford English Dictionary, 2002; p.1186).

60. Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secrete place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go between to collect the ransom is generally considered guilty of the crime.

61. According to Advanced Law Lexicon, (3rd Edn., p.3932); "Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize. It is also used to signify a sum of money paid for the pardoning of some great offence and or setting the offender who was imprisoned".

62. Stated simply, 'ransom' is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu."

32. Section 364A is a statutory provision which has been introduced by Parliament into the Penal Code specifically in order to combat the menace of kidnapping or abduction for ransom. The offence is an aggravated form of kidnapping or abduction. The conditions of aggravation are that the kidnapping or abduction is accompanied by the administration of a threat of causing death or hurt on the one hand and the underlying purpose of the kidnapping or abduction on the other. The expression "in order to" emphasizes that the underlying purpose and intent of the kidnapping or abduction is to demand a ransom or to compel the doing of or abstention from doing any act.

33. The expression "in order to" has legislative and judicial precedent in penal law. Section 449 of the Penal Code deals with a

situation where a person commits house trespass in order to the committing of any offence punishable with death. In *Matiullah Sheikh (supra)*, the Supreme Court held that an act can be said to be committed “in order to the committing of an offence” even though the offence may not be completed. If a person commits a house trespass with a purpose of committing a theft but has failed to accomplish the purpose, it would be proper to say that he has committed the house trespass in order to the committing of theft. The Supreme Court noted that a higher punishment is enunciated where the act of house trespass is committed in order to the commission of other offences. The Supreme Court held that the expression “in order to” means “with the purpose of” Higher punishment is prescribed where house trespass is committed “in order to” the commission of the other offences. An examination of Sections 449, 450, 451, 454 and 457 shows that the penalty prescribed has been graded according to the nature of the offence “in order to” the commission of which house trespass is committed. It is quite clear that these punishments for house trespass are prescribed quite independent of the question whether the offence “in order to” the commission of which the house trespass was

committed has been actually committed or not. It was further observed that there can be no doubt that the words “in order to” have been used to mean “with the purpose of”. If the purpose in committing the house trespass is the commission of an offence punishable with death, the house trespass becomes punishable under Section 449 of the Indian Penal Code. If the purpose in committing the house trespass is the commission of an offence punishable with imprisonment for life the house trespass is punishable under section 450 of the Indian Penal Code. Similarly, Sections 451, 454 and 457 will apply where the house trespass or lurking house trespass, or lurking house trespass by night or house breaking by night are committed for the purpose of the offence indicated in those sections. Whether or not the purpose was actually accomplished is quite irrelevant in these cases. The fact that the murder was not actually committed will not affect the applicability of Section 449 of the Indian Penal Code.

34. Section 364 of the Penal Code creates an offence where a person is abducted “in order that such a person may be murdered or may be so disposed of as to be put in danger of being murdered”.

Interpreting the words, “in order that” in *Mir Mohammad Omar* (*supra*), the Supreme Court held thus:

“So the important task of the prosecution was to demonstrate that abduction of Mahesh was for murdering him. Even if the murder did not take place, the offence would be complete if the abduction was completed with the said objective. Conversely, if there was no such objective when the abduction was perpetrated, but later the abductors murdered the victim, Section 364 IPC would not be attracted, though in such a case the court may have to consider whether the offence of culpable homicide (amounting to or not amounting to murder) was committed.”

35. In *Gabbu* (*supra*), the Supreme Court interpreted the provisions of Section 366 which deals with kidnapping or abduction of a woman with intent that she may be compelled or knowing it to be likely to be compelled to marry a person against her will or that in order that she may be forced or seduced to illicit intercourse. The Supreme Court held that abduction alone does not bring the accused under the ambit of the penal provision. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

36. In *Badshah* (*supra*), the Supreme Court explained the ingredients of Section 364 of the Penal Code with the following observations:

“Ingredients of the said offence are (1) Kidnapping by the accused must be proved, (2) it must also be proved that he was kidnapped in order : (a) that such person may be murdered; or (b) that such person might be disposed of as to be put in danger of being murdered. The intention for which a person is kidnapped must be gathered from the circumstances attending prior to, at the time of and subsequent to the commission of the offence. A kidnapping per se may not lead to any inference as to for what purpose or with what intent he has been kidnapped.”

37. A Division Bench of the Calcutta High Court in ***Upendra Nath Ghose*** (supra) dealt with a case arising out of a prosecution for an offence under Section 364 – kidnapping or abduction of a person “in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered”. The Court observed as follows:

“To establish an offence punishable under Section 364, Penal Code, it must be proved that the person charged with the offence had the intention at the time of the abduction that the person abducted would be murdered or would be so disposed of as to be put in danger of being murdered.”

38. These judgments, which have been rendered while construing the words “in order to” in the context of penal provisions emphasize that the underlying purpose of the unlawful act must be what is stipulated in the legislative provision. The words “in order to” are used by the legislature to indicate that the unlawful act must be carried out with the intent and object of achieving the purpose which

is stipulated. The legislature seeks to deal with an aggravated form of an existing offence, be it house trespass, kidnapping or abduction, where the unlawful act is carried out in order to achieve a specified object or purpose. The existence of the object or purpose, when the unlawful act is carried out, constitutes the condition of aggravation which incurs a heightened penalty.

39. The provisions of Section 364A came up for consideration before the Supreme Court in *Malleshi v. State of Karnataka*, (2004) 8 SCC 95, the Supreme Court elaborated upon the essential ingredients of Section 364A thus:

“To attract the provisions of Section 364A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom.”

40. The Supreme Court noted that to pay a ransom means “to pay a price or demand for ransom”. The Court noted that while the object of abduction is ransom, it cannot be laid down as the straitjacket formula that the demand for payment has to be made to a person who ultimately pays. A person may be abducted and may be told that in order to secure his release the members of his family would have to pay a certain amount of money. The money may actually belong to

the person abducted. The payment for release is made by a person to whom the demand is made. Merely because the demand could not be conveyed to some other person after it was made to the kidnapped or abducted person as the accused is arrested in the meantime, that does not take away the offence out of the purview of Section 364A. The Supreme Court noted that the true test is:

“What was the object” of the kidnapping or abduction: Ultimately the question to be decided is ‘What was the intention? Was it demand or ransom?’

41. The judgment in Malleshi’s case have been followed and reiterated in *Vinod v. State of Haryana*, (2008) 2 SCC 246, *P.Liaquat Ali Khan v. State of Andhra Pradesh*, (2009) 12 SCC 707 and *Shyam Babu v. State of Haryana*, (2008) 15 SCC 418.

42. The offence under Section 364A is not made out only upon the commission of the unlawful act of kidnapping or abduction. The essential ingredients of the statutory provision, apart from the act of kidnapping or abduction as the case may be, keeping a person in detention thereafter, a threat to cause hurt or a reasonable apprehension of such a consequence or causing death or hurt, in order to compel the payment of ransom or the doing or abstention from doing any act by the government, a foreign state, an inter

governmental body or by any person. The purpose of the unlawful act is to demand ransom or to compel the doing or abstention from doing of a particular act. Kidnapping or the abduction by itself does not lead to an inference of the underlying purpose with which it was carried out. The purpose must exist at the time when the act of kidnapping or abduction takes place. Whether such a purpose existed at that time will have to be deduced from all the attendant circumstances. Events which take place prior to, at the time of and subsequent to the commission of the offence would weigh in the balance. In interpreting Section 364A the Court must be cognizant of the fact that the provision was introduced in order to deal with the serious menace posed by terrorism to the stability of civil society. Hence, while the underlying purpose, which is an ingredient of Section 364A, must demonstrably be found to exist as the foundation of the unlawful act, the Court would not be justified in abridging the parameters of the statutory provision with reference to requirements which have not been imposed by Parliament. Situations involving kidnapping or abduction for ransom are fluid. Demands which are raised by abductors may in the very nature of things evolve as the situation

progresses. The law does not prescribe that the nature of the demand for ransom be precisely spelt out when the kidnapping or abduction is carried out. So long as the unlawful act of kidnapping or abduction is carried out for the propose of making a demand for ransom, the requirement of the section would be met. Moreover, as the Supreme Court noted, it may well happen that after the demand is made known to the victim, but before it is communicated to a third person, the accused may be arrested. That again would not detract from the circumstance that act of kidnapping or abduction was carried out with the object and purpose of demanding ransom. A statutory provision like Section 364A must undoubtedly, like penal legislation, be construed strictly. But while construing a provision such as Section 364A the Court must be careful not to interpret it in a manner which would denude it of its legislative efficacy. More so when the stated object of Parliament was to deal with an aggravated form of an offence, the effect of which is to seriously undermine the stability of civil society.

43. It is the prosecution's obligation to prove all the ingredients, particularly the use of force or threat to do so, to cause death or bodily injury, to the victim, coupled with the demand of ransom.

44. In view of the legal proposition enunciated above, let us advert to the case in hand.

45. PW10 Amit Gogia is the victim. He has deposed that he was running a factory of electronics manufacturing at B-135, Sector – 6 Noida, U.P. for the last 10-12 years. On 16th June, 2001, his wife Shilpa Gogia had gone to her parental house at Vikaspuri and from there she was to attend Ramayan Path which was to be held at the house of Smt. Lata Vohra who was her mother's friend. On 17th June, 2001 at about 10:30/11:00 a.m. he was going in his Santro car bearing No. DL 4CM 5073 to the house of Smt. Lata Vohra to pick his wife Shilpa Gogia where the *Bhog* ceremony with regard to the Ramayan Path was to be held. When he reached the crossing at Pankha Road, Najafgarh at about 11:00 a.m., one Maruti Zen and one motorcycle rider came from his back and overtook his car. Maruti Zen car also hit his car from back. Before he could react, the signal became green. Occupants of the Maruti Zen car stopped him after

coming on the front side. Three persons from the Maruti Zen stepped down and one or two of them got out and showed him the identity card of police. He became perplexed. Before he could react, two of them dragged him on the back seat of his car and put revolver/pistol on both his sides, while the third person sat on the driver's seat of his car and started driving it. He could not see where the motorcycle had gone. Both the persons who caught hold of him on the back seat of the car asked him to bow down his head and thereafter threatened him not to speak or make any alarm otherwise they would shoot him. They drove the car in which he was made to sit for about half an hour and he could not know as to where and which place he was being taken. After about half an hour they changed the vehicle and he was again made to sit on the back seat of the car which had hit his car. When he was shifted to the other car those persons tied a strip (*patti*) on his eyes and thereafter he was taken to an unknown place and was made to sit in a corner of a room for a long period. He heard the voice of 3-4 persons. Whenever he was required to ease himself, he was escorted by two persons. One day one person told him that he was going to be released, as such, he was being taken to some

unknown place, however, he was not released from there and at that place also he was made to sit in a corner of a room and he was constantly being threatened. Later on, one person assured him that he would be definitely released that day. After sometime he heard the voice of police officials who were giving warnings that they had surrounded them from all sides and police further asked them to come out. Thereafter, bullet firing went on for about 2-3 minutes. He heard the voice of hue and cry. The police came and removed the strip tied on his eyes. At that time he was too much perplexed, as such, he could not see any person except police. From there he was taken to Police Headquarters, where press conference was held. On the next day of his release he went to Police Station Dev Nagar and from there he accompanied the police to the place from where he was kidnapped. He pointed out the place of his kidnapping vide pointing out memo Ex.PW10/A. He, however, could not identify any of the persons who kidnapped him. Since the witness did not support the case of the prosecution in all material particulars, he was cross-examined by learned Additional Public Prosecutor. In his cross-examination he denied that occupants of the car took him through

Hari Nagar, Dhaula Kuan Ring Road to South Extension or that thereafter he was taken in a two room set where strip from his eyes was removed. He, however, admitted that the kidnappers in order to release him were demanding huge amount from his family members. He also admitted that on the day of occurrence he was too afraid of the kidnappers. He denied the suggestion that he was not deliberately identifying the accused persons due to fear.

46. PW9 Sunil Kumar Gogia is the father of the victim-Amit Gogia. He has also deposed that on 17th June, 2001 at about 10:30 a.m. his son Amit Gogia had gone to attend Ramayan Path which was held in the house of Smt. Lata Vohra who was a friend of mother-in-law of Amit Gogia. One day prior, Smt. Shilpa Gogia, wife of Sh. Amit Gogia had gone to her parents house and from there she was to attend the Ramayan Path in the house of Lata Vohra. Amit Gogia had gone to take his wife Shilpa Gogia after attending Ramayan Path and taking lunch from the house of Lata Vohra. On that day Amit Gogia did not reach his in-law's house or at the house of Lata Vohra till 12:30 noon, as such, his daughter-in-law Shilpa Gogia telephoned him from Lata Vohra's house and inquired about Amit Gogia.

Thereafter, he gave a telephone call on the mobile phone of Amit Gogia, which was received by some other person who informed him that his son has been kidnapped for money and he should not inform the police. He further told him that he would tell him the amount required by him later. Due to fear he did not inform the police. At about 3:30 p.m. on that very day, he again received a telephone call demanding a ransom of Rs. 5 crores to release his son Amit Gogia, but he expressed his inability to give such a huge amount of money. He continued giving telephone calls on the mobile phone of Amit Gogia. The ransom call used to come either at his mobile No. 9810009327 or on the mobile number 9810069300 of Amit's maternal uncle. He had recorded the voice of the persons who had given him telephone calls on audio cassettes. On 22nd June, 2001 in the evening he received a telephone call from Police Headquarters informing that his son has been rescued. He along with his 2-3 relatives went to the police Head Quarters at about 7:30 p.m. and brought Amit with him. On 23rd June, 2001 he went along with Amit Gogia to Police Station Dev Nagar where Amit pointed out the place from where he was kidnapped at Pankha Road. He also handed over

two audio cassettes Ex.P-1 and P-2 to the police in which he had recorded the voice of the person who had given him telephone call for demanding ransom and the said cassettes were seized vide memo Ex.PW9/A. Since this witness also did not support the case of prosecution in all material particulars he was cross-examined by learned Additional Public Prosecutor wherein he admitted that he was threatened that his son would be killed in case he would inform the police about his kidnapping. He also admitted that he had stated to the police that on 20th June, 2001 Smt. Lata Vohra had given a telephone call to him informing that Braham Pradhan was well known to her and Braham Pradhan can get his son released after contacting the kidnappers. However, he could not say if the meeting was fixed at Connaught Place or that he had gone to Connaught Place where Braham Pradhan along with his son Bijender @ Dhila and Lata Vohra came and Lata Vohra got the amount settled for Rs.2 crores or that Braham Pradhan told him that on 22nd June, 2001 after noon time he had to pay the fixed amount and then he will get his son released. He admitted that he was constantly in contact with the kidnappers. He also admitted that on the next day in the evening his son Amit Gogia

was released from the clutches of the kidnappers by Crime Branch Police, R.K. Puram staff from B-49, Gharoli, Dairy Farm.

47. PW6 Pawan Taneja is the maternal uncle of Amit Gogia. He has also deposed regarding kidnapping of Amit Gogia and that after his kidnapping the kidnappers started demanding ransom amount on his phone as well as on the phone of his brother-in-law Sunil Gogia from 17th June, 2001. Ultimately, on 22nd June, 2001 Amit Gogia was rescued by the police.

48. PW12 Shilpa Gogia is the wife of Amit Gogia. She has also deposed that on 16th June, 2001 she had gone to her parental house to live with her mother. One week prior to the occurrence, Lata Vohra had invited her to attend Ramayan Path which was scheduled to be held on 16th June, 2001. On 16th June, 2001 she along with her mother had gone to the house of Lata Vohra to attend the Ramayan Path and thereafter returned back to her parental house. Her husband made a telephone call to her in the morning of 17th June, 2001 that he was coming to take her to the matrimonial home. At that time he also told her that he was on the way. When her husband did not come even after about two hours she made a call at her matrimonial home

and then she was informed by her in-laws that he had already left the house. She also made telephone call on the mobile phone of her husband but there was no response. Later on, in the evening she came to know that her husband has been kidnapped. As this witness also did not support the case of prosecution, she was cross examined by learned Additional Public Prosecutor and in the cross-examination she admitted that on 17th June, 2001 at about 11 o'clock Amit made a telephone call to her and informed that he was on the way and was likely to reach at Vikaspuri within 10 to 15 minutes and despite her waiting he did not reach there. She admitted that she came to know that her husband Amit was kidnapped by notorious criminals and they were demanding a handsome amount to release him.

49. None of these witnesses have been cross-examined by any of the appellants. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by the Supreme Court in ***Laxmibai (Dead) thr. L.Rs. and Anr. v. Bhagwanthuva (Dead) thr. L.Rs. and Ors.***, AIR 2013 SC 1204 observing as under:

"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given

an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

50. The defence did not put any question to any of these witnesses regarding abduction of Amit Gogia, keeping him in custody or threat to cause death or hurt or purpose of detention was to demand ransom, as such, their testimony goes unchallenged and unrebutted. That being so, prosecution succeeded in establishing that:

- (i) Amit Gogia was abducted;
- (ii) He was kept under custody/detention;
- (iii) There was a threat to cause death or hurt and reasonable apprehension of such a consequence;
- (iv) The purpose of the unlawful act was to demand ransom of Rs. 5 crores which was subsequently reduced to Rs.2

crores. As such, essential ingredient of Section 364A IPC were duly proved. Merely because appellants were arrested before payment of ransom amount does not take away the offence out of the purview of Section 364A IPC.

51. The crucial question for consideration is - Who kidnapped the victim? Where was he detained and who made the ransom call for releasing Amit Gogia?

52. As per the prosecution case, the entire plan could be divided in four parts

(1) On 17th June, 2001 when Amit Gogia was going in his car three persons in a Maruti Zen and one motorcycle rider came and got his car stopped. They showed him an identity card of police and thereafter two of them dragged him on the back seat of the car and put revolver on both his sides while the third person sat on the driver seat of the car and started driving it. Thereafter, he was taken from one place to another.

(2) Inspector Ishwar Singh had information that Braham

Pradhan had abducted a person and ransom calls are being made. On 22nd June, 2001 on receipt of information that Braham Pradhan and his associates were coming to the factory of the victim located in Sector-6, Noida for collecting ransom, a team of police officers reached Sector 6, Noida, U.P. One maruti Zen car was found roaming in suspicious circumstances. Accused Jitender @ Jeetu was driving that vehicle and accused Ajit Singh was sitting by his side. They were stopped and on interrogation they revealed that Amit Gogia was detained in premises No. B-49, Gharoli, Dairy Farm. In pursuance to that information they took the police party to B-49 Gharoli, Dairy Farm.

- (3) Raid was conducted at B-49 Gharoli, Dairy Farm and during the encounter, Braham Pradhan was shot dead. Accused Jagminder, Sandeep, Prabhat and Subhash Pawa were apprehended and the victim was rescued.
- (4) On 23rd June, 2001 accused Bijender @ Dhila and Lata Vohra were arrested and from the parking of Safderjung

Hospital, the Santro car of the victim-Amit Gogia was recovered at the instance of accused Bijender.

53. To establish its case prosecution has examined seven witnesses of the Anti-Extortion Cell, Crime Branch, R.K. Puram, New Delhi. Out of these seven witnesses PW-42 Inspector Ishwar Singh is the main witness, as it was he who had received information about kidnapping of Amit Gogia by Braham Pradhan. He deposed that for the last one or two days he had information that Braham Pradhan had abducted a person and ransom calls were being made by him. On 22.06.2001 during morning hours, he received an information that Braham Pradhan and his associates may come to the factory of the victim located in Sector-6, Noida for collection of ransom amount. He informed his senior officers regarding this information. One team comprising of 15-20 police officers were prepared, under the supervision of Ishwar Singh ACP and HPS Cheema ACP. They all boarded six private vehicles and left for the spot at 11 a.m., after getting arms and ammunition issued. They reached Sector-6, Noida, U.P. He alongwith SI Suresh Kumar, Ct. Dalbir and Ct. Chander Vijay were deputed near B-135, Sector-6, Noida, U.P. They were

keeping an eye at the factory of the victim. At about 3:30 or 4 p.m. one Zen Maruti Car bearing registration No. DL-3C-1348 was found roaming there in suspicious circumstances. Accused Jitender Singh @ Jitu was driving the vehicle and accused Ajit was sitting by his side in that car. The car was stopped and both the accused persons were overpowered. Both the accused were taken in police custody and interrogated. They disclosed that Amit Gogia was detained in premises No. B-49, Gharoli Dairy Farm and they could point out that premises. He passed on this information to other members of the team on wireless set. It was decided that they will meet at Kondli turn. All the members of the police party reached at Kondli turn alongwith both the accused. Accused Jitender Singh @ Jitu was made to sit in a vehicle with tinted glasses and was taken towards premises No.B-49, Gharoli Dairy Farm. He pointed out the house and then he was brought back at kondli turn. Thereafter the police party were divided into two groups, one was to reach the premises at B-49, Gharoli Dairy Farm and the other was to cordon that house. ACP Ishwar Singh, ACP HPS Cheema, Inspector Rajinder Bakshi, Inspector K.P. Singh, SI Arvind Kumar, HC Jasbir Singh, ASI Abdul

Kadir, Ct. Ajeet and he were to reach at the premises where victim Amit Gogia was detained and other police officers were to cordon the house in question. They boarded their vehicles and reached near B-49, Gharoli Dairy Farm. They climbed the stairs and found an iron gate located on the first floor premises, bolted from inside. He pulled the door and it opened. The opening of the door made some noise and firing started from inside. He administered warning to the occupants of the premises, detailing that they were the officers of the Crime Branch of Delhi Police and had reached there to rescue Amit Gogia and asked the offenders to surrender but despite it, the firing continued. He fired in the gallery of the house in retaliation. He alongwith Inspector Rajinder Bakshi entered into the gallery of the house while firing from their respective service weapons. Inspector Rajinder Bakshi and he tried to push the door of the front room and he pushed the door of the side room. When he and Inspector Bakshi pushed the door, at that juncture two shots were fired from inside which hit the upper portion of the door. At that time ACP HPS Cheema and HC Jasbir went inside the room for his help. ASI Abdul Kadir also reached there. Braham Pradhan who was injured at that

time was overpowered. One .30 bore pistol was lying by his side. Accused Ashok Pahwa was overpowered by ACP HPS Cheema and one .30 bore pistol was recovered from his possession. Brahm Pradhan and Ashok Pahwa were injured at that time. In the meanwhile he was told by Inspector Rajinder Bakshi that in another room two offenders were injured in the police firing and victim Amit Gogia was successfully rescued.

54. Police Control Room was informed. PCR van reached there and all the four injured persons were sent to hospital. The weapons and cartridges recovered from the spot were seized. Rukka Ex.PW42/C was prepared by him and same was sent to police station for registration of the case.

55. Other witnesses of the Anti-Extortion Cell, Crime Branch i.e. PW14 SI Abdul Qadir, PW-15 SI Suresh Kumar, PW-29 ACP HPS Cheema, PW-31 Inspector Rajinder Bakshi, PW-32 Inspector Ishwar Singh and PW-43 Inspector Arvind Kumar deposed almost on the similar lines as deposed by PW-42 Inspector Ishwar Singh.

56. Further investigation was carried out by PW-34 Inspector Virender Kumar who reached the spot after the rescue operation of

victim Amit Gogia was completed and all the accused persons were apprehended. At the spot Inspector Ishwar Singh, ACP Cheema, ACP Ishwar Singh and other police officials met him. Injured had already been shifted to Hospital. Crime Team officers also reached the spot. He seized weapons of eight police officials which were used to nab the culprits, prepared site plan at the instance of Inspector Ishwar Singh, lifted blood samples, earth control, seized bullet pieces lying at different places. Three plates of bone china and a bisleri bottle lying at the spot was seized. Besides that, he also seized a mobile phone, Sim Card, charger, and police uniform. One Maruti Zen car bearing No. DL-4CN-1438 and one motorcycle No. DL 5 SA 6316 found at the spot were also taken into possession. He arrested accused Jagminder Singh @ Happy, Subhash, Jitender Singh and Ajit. After the arrest of accused Bijender by ASI Naresh Kumar, on the basis of his disclosure statement, Santro Car No. DL 4CN 5073 belonging to victim Amit Gogia was recovered from the parking of Safdarjung Hospital. On the directions of ballistic expert, the door of the toilet where bullet pieces were found inserted, was cut and taken into possession. Father of the victim Sh. Sunil Gogia produced two

cassettes which were taken into possession and its transcription was prepared. On 16.8.01 he moved an application to get the voice test of the accused persons done but accused Subhash Pahwa refused for his voice test. On 13.9.01 he obtained sanction of the DCP for prosecution of accused for the offences punishable u/s 25 of the Arms Act as provided by section 39 of the Arms Act. The complaint as contemplated u/s 195 Cr.P.C. was filed by DCP, Crime and Railways Sh. Mukand Upadhyay. Data of mobile phones used by accused Subhash Pahwa, Jagminder, Sandeep etc. were collected from Airtel Company. Data of mobile used by Sunil Gogia was also collected from Airtel Company and it revealed that accused persons were in constant touch with the phone used by Sunil Gogia from 18.6.01 to 22.6.01.

57. It is the submission of learned counsels for the accused persons that the police wanted to kill Braham Pradhan who was a notorious criminal and was shot dead by them, however, the operation was staged. All the accused were already in the custody of the police and to cover up their illegal act of killing Braham Pradhan, Crime Branch has concocted this false story. This submission was rightly not

believed by the learned Trial Court keeping in view the circumstantial evidence brought on record by the prosecution to prove genuineness of the rescue operation.

58. Site plan Ex.PW2/A was prepared by PW2 SI Mahesh Kumar, Draftsman, Crime Branch showing various bullet marks on wall and doors of the premises which goes to prove that heavy exchange of fire took place between the accused persons and the police party.

59. At the time of conducting raid, police officials were armed with weapon. According to PW34, eight weapons of the police officials were seized. Out of eight police officials ACP HPS Cheema, ACP Ishwar Singh and Inspector Ishwar Singh were carrying service pistol of 9 mm. All the other five police officials who participated in the raid were having revolvers of .38 bore. After the rescue operation, weapons were recovered from Braham Pradhan and other accused persons. Vide recovery memos Ex.PW14/C, PW14/D, Ex.PW31/C, Ex.PW31/D, Ex.PW42/B, PW42/A, PW31/E, .30 bore pistol with two live cartridges lying near Braham Pradhan, .30 bore pistol from accused Subhash Pahwa, 9mm pistol from accused Sandeep, .30 bore pistol from accused Jagminder, 10 fired cartridges from left hand side

of the room, 3 fired cartridges from the gallery of the first floor, 4 fired cartridges from the front room were seized respectively.

60. During the course of investigation, all these weapons were sent to Forensic Science Laboratory. The same were examined by Sh. K.C. Varshney, Sr. Scientific Officer (Ballistic) who gave his report Ex. PW25/A which proves that service weapon of the police officials and weapons recovered from the possession of the accused Jagminder, Subhash and Sandeep were used. It was also reported that the recovered fired cartridges were fired through seized pistols.

61. PW19 Satbir Singh is the resident of B-52/53, Gharoli Dairy Farm. He has deposed that on 22nd June, 2001 at about 4:15 PM, he heard the noise of firing and went near House No. B-49, Gharoli Dairy Farm and came to know that one person was released by the police from the custody of miscreants. He is an independent witness and supports the prosecution version to the extent that police party actually conducted raid at house No.B-49, Gharoli Dairy Farm and an exchange of fire took place between the police and the miscreants and one person also got released.

62. PW10 Amit Gogia was rescued by the police party from B-49,

Gharoli Dairy Farm. Although, this witness has neither identified the persons who kidnapped him from Pankha Road nor the persons who kept him captive at B-49, Gharoli Dairy Farm and, as such, was declared hostile by the prosecution but in his cross-examination, he has deposed that at about 2:00-3:00 PM, he heard the voice of police officials who had given the warnings that they had surrounded them from all sides and they should come out. Thereafter bullet firing continued for 2-3 minutes. He also heard some hue and cry. Thereafter police officials came and removed the cloth tied on his eyes. As such, he has supported the prosecution version that raid was conducted by the police officials and exchange of fire took place at the premises from where ultimately he was rescued.

63. The fact that Amit Gogia was detained and rescued from B-49, Gharoli Dairy Farm is also established from the fact that his finger prints were also taken and as per report Ex.P-A2 of Director, Finger Print Bureau, chance prints marked as Q2 and Q3 (on Bisleri bottle and Chinese clay plate-I) were inter-se identical and further identical with right middle finger marked as S2, chance print marked as Q4 (on Chinese clay plate-II) is identical with right Index finger marked as

S3 and chance prints marked as Q5 and Q6 are inter-se identical and further identical with right thumb marked as S4 on the finger impression slip of Amit Gogia (inmate).

64. It also stands proved from the testimony of the police officials that police uniforms, identity cards, mobile phones were also recovered from the spot. Under the circumstances, factum of kidnapping, recovery of the victim and demand of ransom stand fully established from the evidence led by the prosecution.

65. It was submitted by learned counsel for the accused that following material contradictions have appeared in the statement of the police officials regarding the manner in which rescue operation was conducted at House No. B-49, Gharoli, Dairy Farm, which raises serious doubt regarding the authenticity of the version of incident as deposed by them:

- (i) PW42 Inspector Ishwar Singh has deposed that while entering into the premises he asked the offenders to surrender but they fired upon him. He along with PW31 Inspector Rajinder Bakshi entered the gallery of the house while firing from their respective service weapons.

He and Inspector Bakshi pushed the door and at that time two shots were fired from inside. PW29 ACP HPS Cheema, HC Jasbir and PW14 ASI Abdul Kadir also reached there. Braham Pradhan was overpowered and was injured. Accused Subhash Pahwa was overpowered by ACP HPS Cheema and one .30 bore pistol was recovered from his possession. He was informed by PW31 that in other room two offenders were injured in police firing and Amit Gogia was successfully rescued. This witness did not depose about the presence of accused Prabhat or his apprehension.

- (ii) However, PW31 Inspector Rajinder Bakshi deposed that PW42 Inspector Ishwar Singh pushed the door and the bolt got broken and accused Jagminder started firing from inside the house. PW29 and PW42 entered the left side room returning the fire. He along with PW42 Inspector Ishwar Singh, ASI Braham Prakash, HC Satish and PW43 SI Arvind Kumar entered the front room from the gallery by breaking the door. Accused Jagminder

and Prabhat were having weapons in their hands and were firing at the police party. They also returned the fire and apprehended accused Jagminder, Prabhat and Sandeep. According to PW31, PW42 Inspector Ishwar Singh simultaneously entered both the rooms which is quite impossible. According to PW42, he and PW31 pushed the door whereas according to PW31 it was only PW42 who pushed the door.

- (iii) PW14 ASI Abdul Kadir and PW15 ASI Suresh Kumar who were members of the raiding party have not disclosed anything about the manner in which raid was conducted.
- (iv) PW29 ACP Cheema has deposed that as soon as they entered the premises they found themselves in a gallery. There was one room at one side and other room on front of it. As soon as they took their positions fire was opened at them from front room. Inspector Ishwar Singh administered warning informing the occupants of the house that they are from Crime Branch. Fire also came

from room. PW32 Inspector Ishwar Singh and PW31 Inspector Rajender Bakshi pushed the door of the front room with great force. He, PW42 Inspector K.P. Singh, and PW14 entered the side room. He overpowered accused Subhash Pahwa. Accused Braham Pradhan tried to snatch revolver from possession of HC Jasbir and at that juncture exchange of fire took place and Braham Pradhan sustained injuries. The testimony of PW42 Inspector Ishwar Singh and other police officials who raided the premises is silent to the effect that Braham Pradhan tried to snatch revolver from possession of HC Jasbir and sustained injuries in exchange of fire in that juncture.

- (v) Reference was also made to some contradictions appearing in the statement of PW32 ACP Ishwar Singh and PW42 Inspector Ishwar Singh regarding the details of the raid conducted by the police team. As per PW32, when they entered the gallery accused Jagminder fired a shot at PW42 from the pistol kept in his right hand

whereas PW42 has nowhere stated if any fire was aimed at him by accused Jagminder. He has only stated that shots were fired during the incident.

66. The prosecution evidence no doubt suffers from inconsistencies here and discrepancies there, but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies, etc., go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. That is a salutary method of appreciation of evidence in criminal cases.

67. Hon'ble Supreme Court in ***Gangabhavani v. Rayapati Venkat Reddy and Ors.*** 2013(11) SCALE 132 held:

"9. In ***State of U.P. v. Naresh***, (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held:

In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However,

minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

*A similar view has been reiterated by this Court in **Tehsildar Singh and Anr. v. State of U.P.** AIR 1959 SC 1012; **Pudhu Raja and Anr. v. State**, Rep. by Inspector of Police JT 2012 (9) SC 252; and **Lal Bahadur v. State (NCT of Delhi)** (2013) 4 SCC 557.”*

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.”

68. In **Kurai and Anr. v. State of Rajasthan**, (2012) 10 SCC 433, it was observed as under:

“This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution

and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancy. Such discrepancies may even in law render credential to the depositions.”

69. Jagmohan Reddy, J. speaking for Hon’ble Supreme Court in ***Sohrab v. State of Madhya Pradesh***, 1972 CrL.L.J 1302 at p.1305: AIR 1972 SC 2020 at p.2024 observed:

“Hon’ble Supreme Court has held that “falsus in uno falsus in omnibus” is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered.”

70. Substantially similar view was taken by Hon’ble Apex Court in ***Krishna Mochi & Ors. vs. State of Bihar***, (2002) 6 SCC 81 wherein it was observed as under:

“If a whole body of the testimony is to be rejected because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a

matter of law that it must be disregarded in all respect as well. The evidence has to be satisfied with care. One hardly comes across a witness, whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery or embellishments. An attempt has to be made to separate the grain from the chaff."

71. The principle that can be culled out from the aforesaid decisions are that minor discrepancies and inconsistencies cannot be given undue importance. The Court has to see whether inconsistencies go to the root of the matter and affect the truthfulness of the witnesses, while keeping in view that discrepancies are inevitable in the statement of witnesses who speak them after long lapse of time.

72. Although, it is true that certain discrepancies have appeared in the testimony of the police officials, but it is to be kept in mind that the premises in question where the raid was conducted was a very small house on the first floor. About eight police officials had raided the premises and the entire operation must have lasted for few minutes only. That being so, it is not possible for the police official who is a member of the team to tell with precision as to what role was played by which of the police officials or the offenders. Moreover, the witnesses have come to depose after a lapse of about 4-5 years of

the incident and as such it is not expected from them to give minute details of the raid. The minor contradictions cannot be given undue importance. Regarding apprehension of the accused persons, the testimony of these witnesses are consistent to the effect that accused Subhash Pahwa and Braham Pradhan were in one room while accused Jagminder, Sandeep and Prabhat were in other room. As regards gunning down of Braham Pradhan and apprehension of accused Jagminder, Subhash Pahwa, Sandeep and Prabhat, testimony of the police officials are consistent and corroborate each other. Although PW42 has given the name of accused Subhash Pahwa as Ashok Pahwa but same is insignificant as he correctly identified accused Subhash Pahwa during his deposition in Court.

73. Now, coming to the role played by each of the accused, we shall be taking up their case on individual basis.

Jitender @ Jeetu and Ajit Singh

74. Both these accused persons are similarly placed as far as the case of the prosecution against them is concerned. As per PW-42 Inspector Ishwar Singh he along with PW-15 SI Suresh Kumar and other two police officials were deputed near B-135, Sector-6, Noida,

U.P., where Braham Pradhan and his associates were expected to come for collection of ransom amount. At about 3.30 or 4:00 p.m. one Zen Maruti Car having Registration No. DL-3C-1348 was found roaming there in suspicious circumstances. Accused Jitender Singh @ Jeetu was driving the vehicle. He was made to stop the car and was over powered. Accused Ajeet was sitting in the car by his side. They were taken in police custody and interrogated. They disclosed that Amit Gogia was detained in premises No. B-49, Gharoli Dairy Farm and pointed out that premises.

75. PW-15 SI Suresh Kumar corroborated the testimony of PW42 Inspector Ishwar Singh that he was along with inspector Ishwar Singh and other police official was present in the area of Sector 6, Noida nearby Factory No. B-135. At about 3:45 PM, one Maruti Zen white colour bearing No. DL 4CN 1438 was found roaming in suspected position. On stopping the car, Jitender Singh @ Jeetu and Ajit Singh were found in the car and they disclosed that the kidnapped person Amit Gogia was kept confined at B-49, Gharoli on first floor of the house. Ajit was kept in his custody in Maruti Zen while Jitender was taken to B-49, Gharoli. Statements of both these witnesses are

consistent except minor variation in the car number mentioned by them. Both has been cross-examined by the accused persons but nothing has come on record either to discredit these witnesses or to create doubt about their movement at that relevant time in Sector -6, Noida near factory premises No. B-135.

76. The defence taken by accused Jitender during his statement u/s 313 Cr.P.C. is that he was lifted from his house on 22.6.01 and taken to Crime Branch Office and was framed in this case. Almost similar is the defence taken by accused Ajeet Singh stating that he was lifted from the premises No. K-106, Krishna Park, Tilak Nagar and was framed in this case. In defence evidence both these accused has examined DW 5 Sh. Sanjay Kishore Sharma. This witness has deposed that Jitender is his neighbourer and accused Ajeet is his driver. He used to go to his office at K-106, Krishna Park Extension, Tilak Nagar at 9.30 AM daily. On 22.6.01 at about 10 AM, he noticed that two police officials in uniform and four in civil dress came and both these accused persons were taken by them. On asking accused Jitender told him that he was being taken for interrogation. Accused persons were taken in two Maruti Zens and next day he

came to know through newspaper about the kidnapping case. During cross-examination DW-5 has stated that he did not lodge any complaint to any authority concerning lifting of the accused persons by the police in his presence.

77. It is the submission of learned counsel for the appellant that before going to Noida, no prior permission was obtained nor any intimation was sent to any authority in writing about their surveillance raid in Noida. On the other hand, learned Additional Public Prosecutor appearing for the State has placed reliance on Section 48 of the Code of Criminal Procedure, 1973 for submitting that the police officers are authorised to arrest a person involved in commission of crime and, as such, by virtue of Section 48 of the Code of Criminal Procedure, 1973 they could pursue any such person into any place in India.

78. The submission of learned Additional Public Prosecutor has force, inasmuch as, Section 48 of the Code of Criminal Procedure, 1973 reads as under:-

“48. Pursuit of offenders into other jurisdictions.

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.”

79. This Section empowers a police officer to arrest any person whom he is authorised to arrest in any place in India. Moreover, Section 166 of the Code lays down the procedure to be followed by an officer in charge of a police station where search is to be made outside the limits of the police station concerned.

80. This Section so far is material for the present purpose is reproduced as under:-

“166. When officer in charge of police station may require another to issue search warrant. - (1) An officer in charge of a police station or a police officer not being below the rank of sub- inspector making an investigation may require an officer in charge of another police station, whether in the same or a different district, to cause a search to be made in any place, in any case in which, the former officer might cause such search to be made, within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub- section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub- section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and

shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.”

81. In the instant case, admittedly, Inspector Ishwar Singh did not give any prior information to Police Station Noida within whose jurisdiction the raid was conducted. Similarly, after apprehension of accused Jitender Singh @ Jitu and Ajeet Singh no information was given to concerned Police Station or any Magistrate at Noida. The question, therefore, to be considered is whether non-compliance of Section 166 Cr.P.C. is fatal to the prosecution case? To our mind, it is not. Similar question arose in ***Narender, Usha, Satish Kumar and Navin v. State***, 2009 Cri LJ 3613 where it was observed by this Court as under:-

“38. The failure to comply with the provisions regulating searches may cast doubt upon bona fides of the officers conducting the searches. However, when once the evidence has been believed, it is obviously no defence to say that the evidence was obtained in an irregular manner. There is no provision in law which makes such evidence inadmissible. However, contraventions of the provisions of the Section only cast duty on the court dealing with the case to examine the matter closely and also to see if the accused has been prejudiced as a result of the deviation from the prescribed procedure. Once the recovery or discovery of a thing is otherwise proved, the manner in which it is made becomes immaterial. Therefore, failure to comply with the provisions of Section 166 Cr.P.C. does not in any manner vitiate the trial or conviction especially when the failure to comply with the said provisions is bona fides and not mala fides.”

82. Reliance was placed on ***Radha Kishan v. State of Uttar***

Pradesh, AIR 1963 SC 822 wherein it was observed as under:-

“(5) We will deal with the last four points first. So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165, Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues....”

83. In view of the same, failure to comply with the provisions, on the part of Investigating Officer cannot vitiate the trial or conviction, especially when, the failure to comply with the said provision cannot be said to be *mala fide*.

84. As regards the next limb of argument that no reliance can be placed on the disclosure statement of the appellant-Jitender @ Jitu Ex.PW34/Q5 as the same is dated 23rd June, 2001 i.e. after the incident has taken place on 22nd June, 2001 and even when the accused was not arrested as the arrest memo is dated 23rd June, 2001. As such, the disclosure statement is not protected under Section 27 of the Evidence Act, 1872. This submission is again bereft of merit, inasmuch as, it is the consistent case of the prosecution that when accused Jitender Singh and Ajit Singh were apprehended in Maruti Zen bearing registration No. DL-4CN-1438 which was found roaming

near B-135, Sector-6 Noida, U.P. in suspicious circumstances, both the accused were taken in police custody and were interrogated. It is a different matter that all the writing work including arrest memo was prepared on 23rd June, 2001, but it does not mean that the accused were not in custody. Similar question arose in ***Dharam Deo Yadav*** (supra). In that case also after the accused was apprehended, he confessed to have committed murder of one D and got recovered her skeleton. Thereafter he was arrested. Similar contention was raised that statement of the accused was inadmissible u/s 27 of the Evidence Act since accused was not in the custody of police. After referring to Section 27 of the Evidence Act, Hon'ble Supreme Court observed as under:

"The expression 'custody' which appears in Section 27 did not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was for all practical purpose, in the custody of the police."

85. Reliance was placed on ***State of A.P. v. Gangula Satya Murthy***, (1997) 1 SCC 272 where it was held that if the accused is within the ken of surveillance of the police during which his moments were restricted then it can be recorded as custodial surveillance. Consequently, so much information given by the accused in

‘custody’, in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not.

86. In view of this legal position, the mere fact that the arrest memo is dated 23rd June, 2001 does not mean that the accused were not in custody when they gave the information and pointed out the premises where the victim was kept. As such, so much of the information given by the accused in custody in consequence of which a fact (the place where the victim was kept in captivity) is discovered is admissible in evidence under Section 27 of the Evidence Act. In fact, it was rightly submitted by learned Additional Public Prosecutor appearing for the State that the entire case was cracked at the instance of both these accused who were having exclusive knowledge as to where the victim was kept. It was only on their pointing out that the victim could be rescued, after the rescue operation.

87. As regards the submission that the prosecution has not proved beyond reasonable doubt that the appellant was in possession of Maruti Zen car bearing No. DL-4CN-1438 which as per the testimony of PW4 Anil belonged to Hari Chand who has not been examined by the prosecution, and therefore, adverse inference has to be drawn

under Section 114 of the Evidence Act, same again is devoid of merit, inasmuch as, the record reveals that after the seizure of this car, it was Hari Chand who had taken the vehicle on superdari. He was cited as a prosecution witness, but could not be examined due to his non-availability. Therefore, no adverse inference is required to be drawn against the prosecution on that account. Moreover, all the prosecution witnesses have deposed that both, Jitender @ Jeetu and Ajit Singh were found in this Maruti Zen car and despite cross-examination nothing could be elicited to discredit their testimony. It was for the accused persons to explain as to how they came in possession of this car which they have failed to explain.

88. The submission that six police officers were allegedly present when appellant Jitender and Ajit were apprehended at Noida, but only two were examined as prosecution witness, deserves out-right rejection as the appellant himself has relied upon *Munshi Prasad* (supra) where a plea was taken that except the interested witnesses none else from the nearby residential areas were examined. Repelling the submission it was held by Hon'ble Supreme Court that it is the quality of the evidence and not the quantity, which is required. The

crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record - if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in number of witnesses cannot be termed to be a requirement for the case. It is the totality of the evidence, which matters and if the same creates a confidence of acceptability of such an evidence, question of rejection on being ascribed as interested witness would not be justifiable.

89. In *Namdeo v. State of Maharashtra*, (2007) 14 SCC 150 Hon'ble Apex Court re-iterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. As such, the mere fact that out of six police officials only two were examined as prosecution witness is not sufficient to discard

their testimony which otherwise inspires confidence.

90. It is further the submission of both the appellants that there is no material or evidence supporting the allegations that they were part of criminal conspiracy. Mere knowledge of any fact on the part of appellant is not sufficient to convict the appellant for charge of criminal conspiracy. Learned counsel for Ajit Singh placed reliance on the observations made by Hon'ble Supreme Court of India in Nalini's case on the issue of conspiracy while counsel for Jitender @ Jitu placed reliance on *Suman Sood* (supra) *Baldev Singh v. State of Punjab*, (2009) 6 SCC 564, *Philips Fadrick D'Souza and Ravinder @ Balu Pandurang Kambra v. State of Maharashtra and Inspector of Police*, 2009 Cr.LJ 89.

91. Chapter 5-A of Penal Code speaks about criminal conspiracy. Section 120A defines criminal conspiracy as under:

"120-A. Definition of criminal conspiracy- When two or more persons agree to do, or cause to be done-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.--It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

92. Section 120-B speaks about punishment of criminal conspiracy which is as under:

*“120-B. **Punishment of criminal conspiracy.**—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

93. The above mentioned sections were introduced by the amendment of 1913. It is important to notice the Objects and Reasons of the said amendment to understand that the underlying purpose of introducing Section 120A was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means, punishable.

The Statement of Objects and Reasons are as follows:

“The sections of the Indian Penal Code which deal directly with the subject of conspiracy are those contained in Chapter V and Section 121A of the Code. Under the latter provision, it is an offence to conspire to commit any of the offences punishable by Section 121 of the Indian Penal Code or to conspire to deprive the King of sovereignty of British India or any part thereof or to overawe by means of criminal force or show of criminal force the Government of India or any Local Government and to constitute a conspiracy under this Section. It is not necessary that any act or illegal omission should take place in pursuance thereof. Under Section 107, abetment includes engaging with one or more person or persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that

thing. In other words, except in respect of the offences particularized in Section 121A conspiracy per se is not an offence under the Indian Penal Code.

On the other hand, by the common law of England, if two or more persons agree together to do anything contrary to law, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons, who so agree, commit the offence of conspiracy. In other words, conspiracy in England may be defined as an agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means, and the parties to such a conspiracy are liable to indictment.

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Experience has shown that dangerous conspiracies have entered into India which have for their object aims other than the commission of the offences specified in Section 121A of the Indian Penal Code and that the existing law is inadequate to deal with modern conditions. The present Bill is designed to assimilate the provisions of the Indian Penal Code to those of the English law with the additional safeguard that in the case of a conspiracy other than a conspiracy to commit an offence some overt act is necessary to bring the conspiracy within the purview of the criminal law. The Bill makes criminal conspiracy a substantive offence, and when such a conspiracy is to commit an offence punishable with death, or rigorous imprisonment for a term of two years or upwards, and no express provision is made in the Code, provides a punishment of the same nature as that which might be awarded for the abetment of such an offence. In all other cases of criminal conspiracy the punishment contemplated is imprisonment of either description for a term not exceeding six months or with fine, or with both."

94. Prior to the amendment of the Code and the introduction of Sections 120A and 120B, the doctrine of agency was applicable to ascertain the liability of the conspirators, however, conspiracy in itself was not an offence (except for certain offences). The amendment made conspiracy a substantive offence and rendered the mere agreement to commit an offence punishable. Prior to the amendment,

unless an overt act took place in furtherance of the conspiracy it was not indictable (it would become indictable by virtue of being abetment).

95. The proposition that the mere agreement constitutes the offence has been accepted by Hon'ble Supreme Court in several judgments. Reference may be made to *Major E.G. Barsay v. State of Bombay*, (1962) 2 SCR 195 wherein the Court held that the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. It is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. The Court in *Barsay* (supra) has held as under:

"31... Section 120-A of the Indian Penal Code defines "criminal conspiracy" and under that definition.

'When two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.'

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is

prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.”

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131. Each conspirator can be attributed each other’s actions in a conspiracy. Theory of agency applies and this rule existed even prior to the amendment of the Penal Code in India. This is reflected in the rule of evidence Under Section 10 of the Evidence Act. Conspiracy is punishable independent of its fruition. The principle of agency as a rule of liability and not merely a rule of evidence has been accepted both by the Privy Council as well as by this Court. The following judgments are relevant for this proposition:

131.1. Babulal Choukhani v. King Emperor, AIR 1938 PC 130, where the Privy Council held that:

“.....if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators) these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it.”

131.2. State of A.P. v. Kandimalla Subbaiah, AIR 1961 SC 1241, where this Court opined that where a number of offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences, if the alleged offences flow out of the conspiracy, the appropriate form of charge would be a specific charge in respect of each of those offences along with the charge of conspiracy.

131.3. State of H.P. v. Krishan Lal Pardhan, (1987) 2 SCC 17 where it was held that:

“8..... The offence of criminal conspiracy consists of meeting of minds of two or more persons for agreeing to do or causing to be done an illegal act or an act by illegal means, and the performance of an act in terms

thereof. If pursuant to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.”

131.4. In Nalini (supra), this Court explained that conspiracy results in a joint responsibility and everything said written or done in furtherance of the common purpose is deemed to have been done by each of them. The Court held:

“583. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

(1) Under Section 120-A Indian Penal Code offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

(2) Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

(3) Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

(4) Conspirators may for example, be enrolled in a chain- A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the

person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the center does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

(5) When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

(6) It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

(7) A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders.

(8) As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

(9) It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. and this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

(10) A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. and one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

96. After referring to various earlier decisions rendered by the Court, Hon'ble Apex Court in ***Yakub Abdul Razak Memon v. State of Maharashtra***, (2013) 13 SCC 1 held as follows:

"150. The law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. In order to achieve the ultimate object, parties may adopt many means. Such means may constitute different offences by themselves, but so long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. For an offence of conspiracy, it is not necessary for the prosecution to prove that conspirators expressly agreed to do an illegal act, the agreement may be proved by necessary implication. It is also not necessary that each member of the conspiracy should know all the details of the conspiracy. Conspiracy is a continuing offence. Thus, if any act or omission which constitutes an offence is done in India or outside its territory, the conspirators continue to be the parties to the conspiracy. The conspiracy may be a general one and a smaller one which may develop in successive stages. It is an unlawful agreement and not its accomplishment, which is the gist/essence of the crime of conspiracy. In order to determine whether the conspiracy was hatched, the court is required to view the entire agreement and to find out as in fact what the conspirators intended to do."

97. What can be culled out from the aforesaid legal enunciation is that it is not necessary that all the conspirators should participate from the inception to the end of a conspiracy. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. It is also not necessary that all the conspirators should agree to the

common purpose and at the same time. They may join with other conspirators at any time before the intended objective, and all are equally responsible. What part each conspirator has to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. As such, the statement that mere knowledge on the part of the appellant is not sufficient to convict them for charge of criminal conspiracy does not hold good in the facts and circumstances of the case. *Suman Sood* (supra) does not help any of the appellant, inasmuch as, in that case the abductee was kept by the main accused in his house and the appellant was the wife of the main accused who was keeping watch over the abductee and used to provide him food, etc. In the above peculiar circumstances of the case it was observed that there was no material to show her conspiracy with others to kidnap for ransom. As such, both the charges under Section 364A read with Section 120B IPC was dropped against her, but her sentence recorded by the Trial Court and upheld by the High Court for offence punishable under Section 365/120B, 343/120B and 346/120B IPC was confirmed.

98. In the instant case, from the statements of PW-9 Sunil Kumar

Gogia, father of Amit Gogia and PW-10 Amit Gogia himself, it is clear that there was demand of huge ransom amount for release of Amit Gogia. As per the prosecution case, PW-42 Inspector Ishwar Singh was having a secret information that a ransom amount will be paid to Braham Pradhan at factory of victim i.e. B-135, Sector-6, Noida. As already discussed PW-42 Inspector Ishwar Singh, PW-15 SI Suresh Kumar, both officers of Anti-Extortion Cell, Crime Branch along with other two police officials had taken position near B-135, Sector-6, Noida. Both these accused were found roaming in Zen Maruti Car No. DL-4CN-1438 in suspicious circumstances. From there they were apprehended, interrogated and they led the police party to the premises No. B-49, Gharoli Dairy Farm from where the victim Amit Gogia was rescued after the rescue operation.

99. As regards the submission that at the time of recording of statement of accused under Section 313 Cr.P.C. not a single question was put to the appellant that he conspired with other co-accused to commit offence of kidnapping for ransom and unlawful confinement, therefore, in the absence of the same the conviction of the appellant is bad in law, again is without substance.

100. So far as Section 313 of the Code of Criminal Procedure is concerned, undoubtedly, the attention of the Accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. A three-Judge Bench of the Supreme Court in *Wasim Khan v. The State of Uttar Pradesh*, AIR 1956 SC 400 and *Bhoor Singh and Anr. v. State of Punjab*, AIR 1974 SC 1256 held that every error or omission in compliance of the provisions of Section 342 of the old Code of Criminal Procedure does not necessarily vitiate trial. The Accused must show that some prejudice has been caused or was likely to have been caused to him.

101. In *Asraf Ali v. State of Assam*, (2008) 16 SCC 328, a similar view has been reiterated by the Supreme Court observing that all material circumstances appearing in the evidence against the Accused are required to be put to him specifically and failure to do so amounts to serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

102. In *Shivaji Sahebrao Bobade and Anr. v. State of Maharashtra*, AIR 1973 SC 2622, a three-Judge Bench of the

Supreme Court held that "basic fairness of a criminal trial may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed." However, where such an omission has occurred it does not *ipso facto* vitiate the proceedings and prejudice occasioned **by such defect, must be established by the Accused.**

103. In *Paramjeet Singh @ Pamma v. State of Uttarakhand*, AIR 2011 SC 200, after considering large number of cases on the issue, the Supreme Court held as under:

*"Thus, it is evident from the above that the provisions of Section 313 Code of Criminal Procedure make it obligatory for the court to question the Accused on the evidence and circumstances against him so as to offer the Accused an opportunity to explain the same. **But, it would not be enough for the Accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice.** In other words, in the event of an inadvertent omission on the part of the court to question the Accused on any incriminating circumstance cannot ipso facto vitiate the trial **unless it is shown that some material prejudice was caused to the Accused by the omission of the court.**"*

This view was reiterated in *Gian Chand and Others v. State of Haryana* 2013 UOI VIII AD (SC) 92.

104. In the instant case the issue relating to non-compliance of the provisions of Section 313 Cr.P.C. has not been raised before the Trial Court, and it is raised for the first time before this Court. Learned

Counsel for the appellants could not point out what prejudice has been caused to them if the fact of “conspiracy” has not been put to them which even otherwise was to be deduced from the evidence led by the prosecution.

105. Learned counsel for Ajit Singh laid emphasis on Section 142 of the Indian Evidence Act for submitting that prosecution witness, namely, PW5 to PW13, PW16 and PW20 did not support the prosecution case in examination-in-chief, as such, learned Prosecutor sought leave of the Court to put question to the said witnesses and put leading question with a view to put forth the prosecution case. Leading question does not fall under the category specified in the Section and as such the permission granted to the learned Additional Public Prosecutor to ask leading question is an illegality which is not curable. Reliance was placed on *Varkey Joseph v. State of Karela*, AIR 1993 SC 1892.

106. Chapter X of the Indian Evidence Act, 1872 deals with examination of witness. The relevant sections are Sections 137, 138, 141, 142, 145 and 154 which reads as under:-

*“137. Examination-in-chief.—The examination of a witness by the party who calls him shall be called his examination-in-chief.
Cross-examination.—The examination of a witness by the adverse*

party shall be called his cross-examination.

Re-examination.—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

141. Leading questions.—Any question suggesting the answer which the person putting it wishes or expects to receive, is called a leading question.

142. When they must not be asked.—Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

154. Question by party to his own witness:

(1) The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such

witness."

107. A bare reading of the aforesaid sections goes to show that Section 138 lays down the manner of examining a particular witness and creates three distinct rights, viz., examination-in-chief, cross-examination and re-examination. Section 141 defines leading questions. By virtue of Section 142 of the Act leading questions are not permitted to be asked in examination-in-chief or in re-examination, if objected to by the adverse party, except by the permission of a Court.

108. Section 145 of the Evidence Act enables the examiner to use any former statement of the witness but it cautions that if it is intended to contradict the witness, the examiner is to comply with the formality prescribed therein. Section 162 of the Code also permits the examiner to use the previous statement of the witness recorded under Section 161 of the Code for the limited purpose i.e. to contradict the witness. Section 154 of the Act permits the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

109. Adverting to the case at hand, a perusal of the record reveals that

the witnesses referred to by learned counsel for the appellant-Ajit Singh did not support the case of prosecution on certain aspect of the matter, therefore, after taking permission from the Court they were cross-examined by learned Additional Public Prosecutor for the State in order to confront them with their earlier statement recorded under Section 161 Cr.P.C. While doing so it cannot be said that prosecutor was putting any leading question to the witness which was barred by Section 142 of the Evidence Act. *Varkey Joseph* (supra) relied upon by learned counsel for the appellant does not help him in any manner, inasmuch as, in that case various leading questions were put to the witnesses while recording their examination-in-chief itself without treating any of the witness hostile. After referring to Sections 141, 142, 143, 145 of the Evidence Act, it was observed by Hon'ble Supreme Court that leading question is one which indicates to the witnesses the real or supposed fact which the prosecutor expects and desires to have confirmed by the answer. The attention of the witness cannot be directed in Chief examination to the subject of the enquiry/trial. The Court may permit leading question to draw the attention of the witness which cannot otherwise be called to the

matter under enquiry, trial or investigation. The prosecutor is not allowed to frame his questions in such a manner that the witness by answering merely "yes" or "no" will give the evidence which the prosecutor wishes to elicit. Sections 145 and 154 of the Evidence Act is intended to provide for cases to contradict the previous statement of the witnesses called by the prosecution. These Sections provide the right to cross-examine the witness by the adverse party even by leading questions. In that case in the examination-in-chief itself the Prosecutor had put leading question to the witness which was impermissible in law. Things are entirely different in the instant case as after the witnesses did not support the prosecution case in regard to some of the facts then after taking permission of the Court they were cross-examined by learned Public Prosecutor and in cross-examination their attention was drawn to certain part of the statements made by them in their earlier statement under Section 161 Cr.P.C. which was permissible in law.

110. Coming to next limb of the argument that PW16 Brij Bhushan and PW19 Satbir Singh, whose houses were near B-49, Gharoli, Dairy Farm where the encounter took place have not supported the

case of prosecution and have denied that on 22nd June, 2001 they heard the noise of firing, as such, a serious doubt is created in the prosecution story. It is worthwhile to note that it is common experience that public persons are generally reluctant to join police proceedings. There is generally apathy and indifference on the part of public to join such proceedings. This position of law was reiterated in ***Aslam & Ors. Vs. State***, 2010 III AD (Delhi) 133 where it was observed by this Court that reluctance of the citizens to join police proceedings is well known and needs to be recognized. It cannot be disregarded that public does not want to get dragged in police and criminal cases and wants to avoid them because of long drawn trials and unnecessary harassment.

111. Hon'ble Supreme Court in ***Krishna Mochi vs. State of Bihar***, (2002) 6 SCC 81 in this regard observed:

"It is matter of common experience that in recent times there has been sharp decline of ethical values in public life even in developed countries much less developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be credible by courts for manifold reasons. One of the reasons may be that they do not have courage to depose against an accused because of threats to their life, more so when the offenders are habitual criminals or high-ups in the Government or close to powers, which may be political, economic or other powers including muscle power. A witness may not stand the test of cross-examination which may sometimes be because he is a bucolic person and is not able to

understand the question put to him by the skilful cross-examiner and at times under the stress of cross-examination, certain answers are snatched from him. When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored. These days it is not difficult to gain over a witness by money power or giving him any other allurence or giving out threats to his life and/or property at the instance of persons, in/or close to powers and muscle men or their associates. Such instances are also not uncommon where a witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent."

112. Apathy and indifference is reflective from the fact that although both these witnesses are living in the neighbourhood of house No. B-49, Gharoli Dairy Farm, yet both of them chose not to support the case of prosecution. However, so far PW19 Satbir Singh is concerned, at least, he admitted that police came to house No. B-49, Gharoli Dairy Farm and he came to know that one person was released by the police from the custody of miscreants.

113. Learned counsel for accused relied upon *Munshi Prasad* (supra) and *Dudh Nath Pandey v. State of Uttar Pradesh* (1981) 2 SCC 166 for submitting that defence witnesses are entitled to equal treatment as that of the prosecution witnesses. As regards this legal proposition is concerned, there is no dispute, however, DW5 Sanjay Kishore admitted in his cross-examination that he did not lodge any complaint to any authority concerning lifting of accused persons by the police in

his presence. None of the accused persons have alleged any animosity against any of the police officials for which reason they would be lifted from their houses and then falsely implicated in this case. On the other hand, presence of accused around B-135, Sector-6 Noida, U.P. in suspicious circumstances, their disclosure and pointing out of No. B-49, Gharoli Dairy Farm from where victim Amit Gogia was recovered after exchange of fire between the accused persons is sufficient evidence to establish that both these accused were part and parcel of the criminal conspiracy under which accused Amit Gogia was kidnapped for ransom and was held captive at No. B-49, Gharoli Dairy Farm. Since father of the victim Sh. Sunil Gogia was expected to give ransom money to the accused persons, as such, both these accused were found roaming around B-135, Sector-6 Noida, U.P. Under the circumstances, it was rightly observed by learned Trial Court that prosecution had established beyond reasonable doubt that both these accused were under criminal conspiracy with other accused persons in kidnapping Amit Gogia on 17th June, 2001 and held him captive at No. B-49, Gharoli Dairy Farm.

JAGMINDER @ Happy

114. As regards the role assigned to this appellant, PW14–ASI Abdul Kadir has deposed that this accused was apprehended from the spot. PW29–ACP HPS Cheema deposed that this accused along with Subhash and Prabhat was apprehended from the other room. PW31 – Inspector Rajinder Bakshi deposed that this appellant was having weapon in his hand and was firing on the police party. They also returned firing and apprehended this appellant along with Prabhat and Sandeep. One loaded pistol of .30 bore and a live cartridge of the same bore was recovered from him. He identified the pistol Ex.P2 and cartridge Ex.P3 recovered from this accused. PW32–ACP Ishwar Singh also deposed that when they entered the gallery, this accused opened fire on Inspector Ishwar Singh. He tried to run and was overpowered with one .30 bore pistol. ACP Ishwar Singh deposed that this accused along with Sandeep was trying to escape through another door by jumping from the balcony. Inspector Ishwar Singh fired three shots to immobilize them. He as well as SI Arvind Kumar also fired one shot each from their service weapons. This accused was overpowered with one .30 bore pistol with one live cartridge. PW43–

Inspector Arvind Kumar also corroborated these witnesses by deposing that accused was having arm in his hand. One pistol was recovered from him. Since the accused sustained injuries while he was trying to escape by jumping from the balcony as such he was taken to GTB Hospital, Shahdara, Delhi where his MLC Ex.PA was prepared which also proves that he had sustained gun shot injuries. The factum of sustaining injuries and preparation of his MLC at GTB Hospital is not even disputed by the appellant.

115. All the prosecution witnesses were cross examined at length by the accused. However, except for minor contradictions, nothing material could be elicited to discredit their testimonies. The presence of the accused at B-49, Gharoli Dairy Farm, Delhi where the raid was conducted by the police officers and the victim was rescued stands proved.

116. The stand taken by accused Jagminder @Happy was that he was doing a job of sale and purchase of old cars in Delhi since 1997. He left the job in the year 1999. During this period, he came in touch with Subhash Pahwa who was in the same trade. In the year 2000, he purchased Tata Shera vehicle. In June, 2001, he came to Delhi to sell

that car. On 21st June, 2001, he had gone to workshop of Sh. Pahwa to get the vehicle repaired. Some persons came, who were later on found to be police officials, and started beating Subhash Pahwa. He intervened and started defending Subhash Pahwa. He along with Subhash was lifted from there and detained in a house somewhere. On 22nd June, 2001, they were taken to Mayur Vihar Phase III and thereafter he as well as Subhash Pahwa were arrested in this case.

117. He has examined DW3 Dr. Sanjay Kumar Bansal who has deposed that on 19th or 20th June, 2001, he was getting the AC of his car repaired at Kailash Workshop, near Baresarai in front of Central School where some altercation took place between two police officials and accused Subhash and Jagminder. The police officials took Subhash and Jagminder in police gypsy. DW4 Satnam Singh has deposed to the same effect as DW3.

118. The incident in question has taken place on 22.06.2001. However, as per the defence taken by the accused he was taken by the police officials on 21.06.2001 and DW3–Dr. Sanjay Kumar Bansal has give the date of alleged incident as 19/20.06.2001. As such there is a contradiction regarding date of alleged incident in the statement

of accused recorded under section 313 Cr.PC and the statement of DW3. On the other hand there is clinching evidence regarding the presence of the accused at B-49, Gharoli Dairy Farm, Delhi from where he was apprehended and was found in possession of a pistol. He sustained gunshot injuries in the encounter for which he was medically examined. Instead of giving any explanation as to how he sustained injuries, his case was one of denial simplicitor in his statement recorded u/s 313 Cr. P.C. As such, it was rightly observed by the learned trial court that the prosecution had succeeded in establishing beyond reasonable doubt that this accused had entered into a criminal conspiracy with other co-accused and in pursuance thereof kidnapped Amit Gogia for ransom on 17.06.2001 and held him captive at B-49, Gharoli Dairy Farm, Delhi from where he was rescued by the police on 22.06.2001. It was also established that he was found in possession of illicit arm Ex.PW31/D which was used by him against the police party which had come there to get the victim Amit Gogia rescued in discharge of their duties. It was also proved that the accused armed with illicit weapons fired at the police party with the intention or knowledge that the firing may prove fatal for any

of the police official. As such, the prosecution has succeeded in establishing the guilt of this accused. The finding does not call for any interference.

Sandeep Ahlawat:

119. As per the case of prosecution, as deposed by PW31, this accused was apprehended along with co-accused Jagminder and Prabhat. The pistol and cartridge Ex.P4 and Ex.PW5/1 to PW5/2 were recovered from this accused. PW32–ACP Ishwar Singh, PW42 Inspector Ishwar Singh, PW43–Inspector Arvind Kumar have also deposed regarding the apprehension of this accused from the spot and recovery of pistol and cartridge from his possession. It has also come in evidence that this accused along with accused Jagminder had tried to escape from the balcony of the other room. As such, in order to immobilize him, the police officials fired a shot at his leg and he sustained injuries. He was also taken to GTB Hospital where his MLC Ex.A1 was prepared which proves that he had sustained gunshot injuries. Further, during the course of investigation Inspector Virender Kumar seized three bone China plates and one Bisleri bottle lying at the spot vide seizure memo Ex.PW34/G. The chance prints

were taken from the same. The finger prints of the accused were also taken and the same were sent for comparison. As per the report Ex.P-A2, the chance prints Ex. Q10 to Q12 on Chinese clay plate was found to be identical with the print of this accused.

120. In his statement recorded under Section 313 Cr.P.C., accused pleaded that on 22nd June, 2001, at about 10:00 or 11:00 AM, two policemen came to his house in civil dress on a bullet motorcycle. He was taken by them to PS, New Ashok Nagar where they inquired about Braham Pradhan from him. However, he replied in negative. His signatures were obtained on blank papers. Thereafter he was falsely implicated in this case. He had also examined DW6—Satyabhan Singh who has deposed that it was 6th or 7th month of 2001. He was sitting at the house of accused Sandeep at village Bindapur, Uttam Nagar, two persons came and took Sandeep with them on motorcycle on the ground that they had to make some inquiry from him and they were taking him to PP Uttam Nagar. After some time, he and his brother went to PP Uttam Nagar where they came to know that no police officer from PP Uttam Nagar had come to take Sandeep for interrogation. On the following day, telephonic

information was received in the neighbourhood of Sandeep from Dev Nagar Crime Branch that Sandeep was detained there. He went to the Crime Branch, Delhi where he found Sandeep detained there. Firstly, it may be mentioned that this witness has not given any specific date in his deposition as to when, according to him, the accused was taken by the police officials. Moreover, no explanation has been given by him as to why no complaint was made by him with Police Station Uttam Nagar if accused was illegally taken away by the police officials. Additionally, it can also be held that once the prosecution had succeeded in establishing the presence of accused in the premises in question, his sustaining bullet injuries in the course of escaping from the balcony and his finger prints appearing on bone china plates seized from the spot, the accused had to establish how he sustained bullet injuries and how his finger prints appeared on bone china plates seized from the spot as these facts were within his special knowledge and therefore, the case falls within the ambit of the provisions of Section 106 of the Evidence Act, 1872.

121. *State of West Bengal v. Mir Mohammad Omar and Ors.etc.,* AIR 2000 SC 2988, the Supreme Court held that if the fact is

specifically in the knowledge of any person, then the burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of Accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the Accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the Accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. **Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the Accused.**

122. In view of the above, it was for the accused to explain as to how and where he sustained injuries as appeared in his MLC and how his finger prints have appeared on bone China plates seized from the spot which he has failed to explain. In fact, when the incriminating fact of sustaining bullet injury was put to him in his statement u/s 313

Cr. P.C., he replied “It is incorrect”, however, during the course of trial he did not dispute his MLC Ex.A1 which reflected that accused sustained gunshot injuries. Under these circumstances, the plea taken by the accused does not appeal to reason. On the other hand, he has not alleged any animosity, ill-will or grudge against any of the police officials for which reason he would be taken from his house and then falsely implicated in this case.

123. The learned trial court rightly observed that the prosecution had succeeded in establishing beyond reasonable doubt that in pursuance of the criminal conspiracy hatched by him with other co-accused, he kidnapped Amit Gogia for ransom on 17.06.2001 and held him captive at B-49, Gharoli Dairy Farm, Delhi from where he was rescued by the police on 22.06.2001. He was also found in possession of illicit arm Ex.PW31/C which was used by him against the police party who had come to get the victim rescued in discharge of their duties. The accused fired on the police party knowing fully-well that his act may prove fatal to any of the police officers. As such, his guilt was rightly held to be proved.

Subhash Pahwa:

124. An important role was played by this accused in the criminal conspiracy hatched amongst the accused persons to kidnap Amit Gogia for ransom. Premise No. B-49, Gharoli Dairy Farm, Delhi belonged to PW8 – Rajiv Sondhi. He had asked PW7 Parmod Kumar who was working as a property dealer to give his house on rent. PW7 Pramod Kumar has deposed that on 17.06.2001 Mukesh and Subhash came to him for taking accommodation on rent. He had shown them one Janta Flat in D-1 Pocket, Gharoli, but the same was rejected by them. Again on 19.06.2001 they came to his office and he showed them two room flat in Gharoli Dairy Farm. The landlord Rajiv Sondhi was also called and after discussions, the rent was settled between the parties at Rs.2500 per month and security amount was agreed to a sum of Rs.5,000/-. On the same day, the key of the rented accommodation was handed over to them. Although Mukesh and Subhash were told that unless all the formalities are completed, the keys of the flat could not be handed over to them, but they were in a hurry and wanted to clean the flat first before shifting in the flat. As such, the key was handed over to them, but they were asked not to

bring the household articles. Both the persons were asked to complete the formalities on 20.06.2001, 21.06.2001, 22.06.2001 and ultimately a rent agreement was got prepared on 22.06.2001 during noon time. PW8 – Rajiv Sondhi, owner of B-49, Gharoli Dairy Farm has also deposed to the same effect and he also identified the accused Subhash to be the person who had taken the premises on rent. It is pertinent to note that his testimony of giving the premises on rent to Subhash has not been challenged as he was not subjected to any cross examination.

125. PW14– ASI Abdul Kadir, PW29 – ACP H.P.S. Cheema, PW32 – ACP Ishwar Singh, PW34 Inspector Virender Kuamr have deposed that this accused was overpowered from B-49, Gharoli Dairy Farm, Delhi when rescue operation was conducted by the police officials. PW34 – Inspector Virender Kumar has further deposed that he produced this accused before the Court for the purpose of taking his voice sample, but he declined the same. It has further come in evidence that this accused was overpowered and one .30 bore pistol was recovered from his possession. Moreover, chance prints were lifted from car bearing No. DL 4C N 5073 Santro belonging to Amit Gogia which was recovered from the parking of Safdarjung hospital

chance print Q2 (on car) was found identical with left thumb mark on the finger impression slip of this accused. All these witnesses were subjected to cross examination by the accused. However, except for minor contradictions, nothing could be elicited to discredit their testimonies.

126. In his statement recorded under Section 313 Cr.PC he has taken a plea that he was having his office in Safdarjung Development Area, where he used to deal in sale purchase of old cars. His workshop was in village Baresarai. Inspector Ishwar Singh used to send his vehicle for repair at his workshop but never paid repair charges. On 20th June, 2001, Maruti Zen of Inspector Ishwar Singh came to his workshop for repair of AC. He repaired the same and its bill came to Rs.9000/-. When the constable came for delivery of the vehicle, he demanded repair charges from him. He abused him and took away the vehicle. During evening hours, Inspector Ishwar Singh came to his shop and started abusing him as to why he demanded money for repair of the vehicle. He narrated these facts before Inspector Rajinder Bakshi and also told that he would lodge a complaint against Inspector Ishwar Singh. On 21st June, 2001, Inspector Ishwar Singh

gave a telephonic call and asked him to reach Crime Branch Cell, R.K. Puram. However, he did not comply with these directions. At about 3:00 PM, when he was going to his workshop from his office, two constables met him at the red light of village Jiya Sarai and told him that he was called by Inspector Ishwar Singh. He told them that he was getting late as he had to go to his workshop to deliver the car to one of the customer. In the meantime, Inspector Ishwar Singh came and enquired as to why he did not reach the office of Crime Branch, R.K. Puram. He was assaulted by the constable. Jagminder @ Happy was sitting at his workshop at that time and questioned them as to why they were assaulting him. Thereupon, Jagminder was also assaulted. An altercation took place between Jagminder and constables. He as well as Jagminder were taken in police gypsy to R.K. Puram, thereafter, they were taken to PS New Ashok Nagar where they were beaten. One constable assaulted him with a helmet on his head. Thereafter, he was taken to hospital. After medical examination, he was brought back to police station and was framed in this case. He has also examined DW3 Dr. Sanjay Kumar Bansal as well as DW4 – Satnam Singh who have deposed that this accused

along with Jagminder was taken by the police officials from his workshop.

127. According to this accused, on account of demanding the repair charges of AC of Maruti Zen car of Inspector Ishwar Singh, he was taken by the police officials and thereafter was framed in this case. However, the only suggestion given to Inspector Ishwar Singh was that he was lifted from his workshop at Gia Sarai, New Delhi. The other part of the statement as set up in his statement recorded under Section 313 Cr.PC and by DW3 and DW4 was not suggested to the witness during his cross examination and as such he had no opportunity to explain the allegations made against him by this accused. Under the circumstances, the defence taken by the accused seems to be an afterthought. On the other hand, as discussed above, clinching evidence was led by the prosecution to show that it was this accused who along with Mukesh had taken the premises bearing number B-49, Gharoli Dairy Farm, Delhi on rent from Rajeev Sondhi where after kidnapping Amit Gogia was kept and from this premises only he was rescued by the police on 22.06.2001. His finger prints tallied with the chance print taken from the car belonging to victim.

He was also found in possession of illicit arm Ex.PW14/D which was used by him against the police party who had come to get the victim rescued and the fire was opened by him with the knowledge that the same may prove fatal for any of the police officials. As such, guilt of the accused was established.

Prabhat:

128. It is the case of the prosecution that this accused was apprehended along with his co-accused during rescue operation. In his statement recorded under Section 313 Cr.PC, this accused has alleged that he was lifted from the house of his father's sister (bua) located at Moti Bagh on 22nd June, 2001 at about 11:00 AM and was enquired about Mukesh who is son-in-law of his father's sister (bua). He was taken away by the police and was framed in this case. He has examined DW Amit who has deposed that on 22nd June, 2001, accused Prabhat had come to his house at about 8:00 PM, two persons came in civil dress and enquired about Prabhat. They took him with them by saying that they had come from special staff, Dev Nagar Delhi. On the following day, he came to know that Prabhat was implicated in this case. At the outset, it may be mentioned that no

reliance can be placed on the testimony of DW1 Amit inasmuch as according to him accused Prabhat was his cousin. If the accused was taken by the police officials without any rhyme or reason from his house, why did he not lodge any complaint regarding the same. Moreover, according to this accused, he was lifted from the house of his father's sister at about 11 am whereas according to this witness the accused was lifted from his house by the police officials at 8 pm. On the other hand, ample evidence has come on record to prove apprehension of the appellant Prabhat from B-49, Gharoli Dairy Farm, Delhi. Except for certain minor contradictions, PW31, PW32, PW42, PW43 and PW29 all have deposed regarding apprehension of accused Prabhat from the spot. Moreover, this accused has sustained minor injuries for which he was taken to the hospital where his MLC Ex.PW38/B was prepared. He was brought to the hospital by HC Ram Niwas with alleged history of "apprehended by the police after rescue operation". On examination, three injuries were found on the person of this accused. The accused has not offered any explanation as to how he sustained the injuries. Moreover, ASI Chetram lifted the chance prints from Bisleri bottle and three Chinese clay plates. The finger prints of this accused was also taken and the same were sent to Finger Print Bureau. As per the report

Ex.P-A2, the chance prints Marked Q1 (Bisleri Bottle) and Q7 (Chinese clay plates) were found identical with left thumb and right thumb mark on the finger impression slip of Prabhat Singh. This also proves presence of the accused at the spot.

129. Much emphasis was laid by the learned counsel for the accused for submitting that Amit Gogia has not identified this accused. He was cross examined by the prosecution and a specific suggestion was given by the prosecutor that this accused used to bring and serve food to the victim to which he denied. Relying upon **Suman Sood** (supra), it was submitted that the appellant cannot be held guilty of offence under Section 120B read with Section 364A of the Indian Penal Code. The accused cannot take benefit from **Suman Sood's** case (supra) inasmuch as, as discussed above, in that case, Suman Sood was the wife of the main conspirator who had kept the abductee at his house where Suman Sood was providing him food etc and kept a watch over his activities. Under those circumstances, it was observed that she was not part of conspiracy to abduct him for ransom, but for other offences, she was convicted. Things are entirely different in the instant case inasmuch as it is not the case of the accused that he was

unaware about the conspiracy or was present in the house only for providing food etc to the victim. He cannot draw any benefit from a suggestion given by the prosecution to the victim. On the other hand, his presence at the spot stands established in view of the circumstances narrated above. The finding of learned Trial Court regarding his involvement in the crime cannot be faulted with.

130. In view of the above, the appeals do not present special features warranting any interference by this Court. The appeals are devoid of any merit and are, accordingly, dismissed.

131. Copy of this judgment be sent to the Superintendent, Jail for information of the appellants. Trial Court Record be sent back along with copy of the judgment.

132. Appellant Jagminder @ Happy has absconded, as such, State is directed to take necessary steps to get him arrested for serving the remainder of the sentence.

(SUNITA GUPTA)
JUDGE

(KAILASH GAMBHIR)
JUDGE

JULY 08, 2014

rs/rd