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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : JULY 09, 2015

DECIDED ON : OCTOBER 08, 2015

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CRL.A.320-321/2005

AMRIK SINGH & ANR. Appellants

Through : Mr.Arun Sharma, Advocate.

VERSUS

THE STATE NCT OF DELHI Respondent

Through : Ms.Fizani Husain, APP.

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CRL.A.323/2005

SHAMSHER SINGH Appellant

Through : Mr.Tushar Sharma, Advocate.

versus

STATE Respondent

Through : Ms.Fizani Husain, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Aggrieved by a judgment dated 16.03.2005 of learned Additional Sessions Judge in Sessions Case No.01/03 arising out of FIR No.656/01 registered at Police Station Jahangirpuri by which the appellants Amrik Singh, Gurmeet Singh and Shamsher Singh were held

guilty for committing offences punishable under Sections 363/365/34 IPC, they have preferred the instant appeals. By an order dated 17.03.2005, they were sentenced to undergo Rigorous Imprisonment for seven years with fine ₹25,000/- each under both the heads. Substantive sentences were to operate concurrently.

2. Briefly stated the prosecution case, as reflected in the charge-sheet, was that on 05.10.2001 Amrik Singh, Gurmeet Singh, Shamsher Singh and Ajeet Singh (Proclaimed Offender) kidnapped the prosecutrix 'X' (assumed name), aged around 15 years, from the lawful guardianship of her mother Rita Mehta from Turner Road, Dehradun, U.P. where she had gone for morning walk. She was brought to Delhi in an ambassador car against her consent. ₹2,00,000/- were demanded as ransom from her mother for her release. 'X' was wrongfully confined firstly at House No.K-100 and thereafter at K-1482-1483, Jahangirpuri, Delhi from 05.10.2001 to 09.10.2001 by the kidnappers in furtherance of common intention with Gurpreet Kaur and Surjeet Kaur (since acquitted). 'X' was criminally intimidated and her modesty was outraged in the house. She was recovered by the police of Police Station Jahangirpuri on 09.10.2001. 'X' was medically examined; her statement under Section 164 Cr.P.C. was record. The accused persons were arrested. 'X's mobile and wrist

watch were recovered. Statement of witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was laid before the Trial Court against Amrik Singh (A-1), Gurpreet Kaur (A-2), Gurmeet Singh (A-3), Surjeet Kaur (A-4), Ajeet Singh (A-5) and Shamsher Singh (A-6) for commission of various offences punishable under Sections 363/364A/343/354/372/506/34 IPC. By an order dated 11.03.2002 A-1 to A-6 were charged under Sections 368/354/506/372 read with Section 511/34 IPC. A-1, A-3, A-5 and A-6 in addition were charged under Section 363/364A/34 IPC. The accused persons pleaded not guilty to the charges and claimed trial. The prosecution examined 18 witnesses to substantiate its case. In 313 Cr.P.C. statement, the accused persons denied their complicity in the crime and pleaded false implication. They examined DW-1 (S.P.Singh) in defence. It is relevant to note that A-5 absconded during trial and by an order dated 25.03.2004, he was declared Proclaimed Offender. After hearing the rival contentions of the parties and on appreciation of the entire evidence, the Trial Court by the impugned judgment acquitted A-2 and A-4 of all the charges. A-1, A-3 and A-6 were acquitted of the charges under Section 364A/368/354/372/34 IPC. They were convicted only under Sections 363/365/34 IPC. It is pertinent to note that State did not challenge their

acquittal. Being aggrieved and dissatisfied, the appellants have preferred the instant appeals.

3. I have heard the learned counsel for the parties and have examined the record minutely. The appellants' conviction is primarily based upon the testimonies of PW-1 (Rita Mehta), 'X's mother and that of the prosecutrix herself (PW-2). Their evidence was, however, not found adequate or sufficient to convict A-2 and A-4. Evidence was also found scanty to convict the appellants for commission of serious offences under Sections 364A/368/354/372 IPC.

4. The alleged incident of kidnapping occurred on 05.10.2001 when 'X' had gone alone for a morning walk at around 6/6.15 a.m. at Turner Road, Dehradun (U.P.). She was carrying a mobile and was wearing a wrist watch that time. PW-1 (Rita Mehta) in her examination-in-chief stated that on that day she lived along with her daughter 'X' and a son at 47, Turner Road, Dehradun. 'X' had gone for a morning walk at around 6/6.15 a.m. alone as she was not feeling well. When she did not return as usual, she searched her at various places but was unable to trace her. On 06.10.2001 during noon hours, she received a telephone call from 7126336 on her mobile from A-1 and he demanded ₹2,00,000/- as ransom for her release. PW-2 ('X') corroborated her version on this aspect and

testified in the Court about her kidnapping on 05.10.2001 when she had gone alone for a morning walk. She elaborated that hardly she had covered a short distance from her house when an Ambassador car of white colour came and stopped by her side. An individual (identified as A-5) came out of the car, gagged her mouth and made her to sit in the car. Besides A-5, she also identified A-1, A-3 and A-6 to be the individuals present in the said car. She was threatened at the point of knife and prevented to raise alarm. The culprits consumed liquor in the moving vehicle and finally brought her to House No.K-100, Jahangirpuri. On the way to Delhi, she was molested by the assailants. Her wrist watch and mobile were taken by them. She further deposed that she was forced to disclose her mother's mobile number i.e. 983725863 on which they made ransom calls for her release.

5. Both the prosecutrix and her mother were categorical and certain that kidnapping incident took place at Turner Road, Dehradun (U.P.). Appellants' case from the very inception was that they have been falsely implicated at the complainant's behest and she was well acquainted with them and had taken a loan of ₹1,00,000/- from A-1. When she declined to return the loan amount, the appellants were roped in. In the lengthy cross-examination, repeatedly the prosecutrix and her

mother were questioned about their definite address at Dehradun. They (the appellants) categorically asserted that 'X' and her mother-complainant never lived at Dehradun and no kidnapping as such took place in the manner alleged by them there. Apparently, the prosecution was under legal obligation to prove beyond reasonable doubt that 'X' was kidnapped on 05.10.2001 from 'Turner Road, Dehradun' where she and her mother used to live.

6. On scanning the entire record, it reveals that the prosecution has miserably failed to establish that on the relevant date, 'X' and her mother lived at Dehradun or that 'X' was kidnapped from 'Turner Road', as alleged. Conflicting and inconsistent versions have been given by the prosecution witnesses about their place of residence at Dehradun. In her statement which formed the basis of the FIR (Ex.PW-5/A), the complainant disclosed her residence at House No.47, Turner Road, Dehradun with phone number 9837123784. At the time of disposal of the bail application moved by the appellants during investigation, it was specifically claimed by them that the complainant never lived at the said address. Vide order dated 06.03.2002 the Investigating Officer was directed to verify the complainant's address. PW-17 (SI Attar Singh), the Investigating Officer, in his examination-in-chief itself admitted that on

15.01.2001 he had gone to Dehradun to verify the complainant's address at House No.47, Turner Road, Dehradun but it could not be done as it was 'untraceable'. He further deposed that it came to his knowledge that she was residing at House No.52/01, Lane No.5, Turner Road, Dehradun. When specifically asked as to if any notice was issued to the complainant under Section 160 Cr.P.C. to furnish her correct address, his reply was that she was not 'traceable'. He further disclosed that even at 52/01, Lane No.5, Turner Road, 'X' and her mother were not available. He further admitted that summons issued to procure their attendance were never served to 'X' and her mother at 47, Turner Road, Dehradun. Efforts were made to serve the summons at 52/01, Lane No.5, Turner Road also but in vain.

In her Court statement recorded on 06.06.2002, the complainant disclosed her residential address as House No.1047, Turner Road, Police Station Rajpur Road, Dehradun. When she re-appeared for examination on 01.11.2002, she claimed herself to be a resident of Son Star Heritage, near Radha Swami Satsang Mandir, Delhi. In the cross-examination, she claimed that her residence at Dehradun was there for the last 10/11 years. She had changed two houses during her whole stay at Dehradun. She, however, did not furnish the address of her rented

accommodation in which she had resided for about six years before. She was unable to disclose the name of her landlord. She further disclosed that accommodation presently in her occupation was arranged through a property dealer Mr.Mahajan at Jakhal, Dehradun and she was paying ₹2,000/- p.m. as rent. She, however, did not have any rent receipt or ration card. In the further cross-examination, she disclosed that her residential address at Dehradun was at 73/32, Arya Nagar, Dehradun. She admitted that this address was not disclosed by her previously and it was occupied by her mother-in-law. She was unable to give details of the individuals residing at 1047, Turner Road. Though she claimed to be in possession of ration card at 1047, Turner Road and opted to produce it but it was never done. She did not offer any explanation for not producing the ration-card despite informing the Court that she would produce it. Again in the cross-examination, the prosecutrix disclosed that they were residing at H.No.83, Krishankunj Chungi, Dehradun. Needless to say, the prosecutrix and her mother have not given the correct address where they used to live at Dehradun. No rent receipt, ration card, voter I-card, electricity or telephone bills etc. or any other document has been produced on record to show their residence for any particular duration at Dehradun. Contrary to that, during address verification, the I.O. recorded statement of the owner

of the house (Meenakshi Semwal) on 20.10.2001 who stated that house No.47, Lane No.6, was in the name of B.R.Semwal and at no stage Rita Mehta (PW-1) or 'X' (PW-2) lived there. DD No.16B dated 10.03.2002 recorded at Police Station Jahangirpuri by Investigating Officer which is on judicial record (Page No.1861) is based upon the statements of Shekhar Chand Dhiyani (Page 1863), Krishan Kumar Mahajan (Page 1865), Certificate by B.R.Semwal (Page 1867) and statement of Preetam Singh (Page 1869). It records that the complainant had stayed in the portion of the house belonging to Shekhar Chand Dhyani along with her daughter and two sons only for fifteen days at House No.52/1, Lane No.5, Turner Road and it was subsequently abandoned by them. Krishan Kumar Mahajan disclosed in his statement (Page 1865) that House No.247, Dun Vihar belonging to Preetam Singh was arranged by him. Preetam Singh in his statement (Page 1869) disclosed that the complainant along with her two sons and a daughter had lived there for fifteen days in October, 2001. Obviously, the complainant had no permanent address at Dehradun and the prosecution miserably failed to establish that she was residing at Turner Road at a specific address from where the prosecutrix had left for morning walk, as alleged.

7. Another glaring feature of the case is that throughout the prosecutrix and her mother claimed that 'X' was a student of Savitri Devi Public School, Dehradun. PW-1 in her cross-examination informed that after studying upto 10th Standard in the said school 'X' had passed out in the year 2000. She had studied from 1st Standard to 10th standard continuously there. Similar is the claim of PW-2 (X). She went to the extent of stating that her school was located at Majra, Dehradun and Smt.Sunita Mittal was its Principal. In the further cross-examination, she disclosed that name of her school was P.T.College Dehradun. The prosecutrix or her mother did not produce any document, whatsoever, to show if 'X' studied in the said school at Dehradun any time. It appears that 'X' and her mother were taken by surprise and they never expected to face these questions. Admitted position is that on 09.10.2001 PW-1, the complainant, had handed over 'X's School Leaving Certificate (Ex.PW-16/A) to the police. It is so admitted by PW-17 (SI Attar Singh), the Investigating Officer. In the cross-examination he admitted that the School Leaving Certificate (Ex.PW-16/A) given by the complainant on 09.10.2001 was already in her possession and it was given by her in the Court to him. PW-16 (Hari Shankar), Lab Assistant, Govt. Girls Sr.Sec.School, New Friends Colony brought the summoned record and

deposed that as per School Leaving Certificate (Ex.PW-16/A), 'X's date of birth recorded therein was 05.01.1986. On perusal of School Leaving Certificate (Ex.PW-16/A), it reveals that 'X' was a student of VIIth class in 'C' Section in the said school. Ex.PW-16/DA is an application moved by 'X' to the concerned Principal to issue Transfer Certificate. In the said application too, she claimed herself to be a student of 7(C) in the said school as on 29.10.1999. It falsifies the claim of the prosecutrix and her mother that 'X' was a regular student from 1st standard to 10th standard at Dehradun. This material inconsistency has remained unexplained.

8. Exact date of birth of the prosecutrix has not surfaced on record. In the FIR (Ex.PW-5/A) age of the prosecutrix was disclosed as 14 years. It was emphasized that her date of birth was 5th January, 1986 so recorded in the School Leaving Certificate (Ex.PW-16/A). Genuineness of this document is suspect as 'X' and her mother claimed that she was a student throughout in a school at Dehradun. No school record from Dehradun showing her date of birth recorded therein has emerged. PW-10 (Chokey Lal), Sub Registrar, MCD, West Zone, Helath Department, Rajouri Garden, Delhi brought the summoned record and as per his deposition, there was no entry in their records regarding the birth of a 'baby' whose parents' name were Reeta Mehta and Vinod Mehta

respectively. It is relevant to note that the prosecution relied on original Birth Certificate (Page 77 of Trial Court record) where her date of birth was shown as 5th January, 1986. Needless to say, forged and fabricated document to show 'X's age as 5th January 1986 was placed on record. It did not find mention in the record brought by PW-10 (Chokey Lal). There is no other document on record to reflect the exact date of birth of the prosecutrix. The prosecution was unable to establish beyond reasonable doubt if 'X' was 'minor' on the date of occurrence.

9. The alleged incident of kidnapping happened at Turner Road, Dehradun on 05.10.2001. Strange enough, the complainant did not lodge any First Information Report at Dehradun. Even after getting ransom calls from Delhi on 6th and 7th October, 2001, she did not inform Dehradun Police. Her conduct is unnatural and unreasonable. She even did not inform any of her relatives about 'X's kidnapping at Dehradun. Even after coming to know that ransom calls were being made from a specific land line number from Delhi, she did not inform the concerned Police Station at Delhi to take preventive steps. Conveniently, she travelled alone by bus from Dehradun to ISBT on 08.10.2001. She even did not take her son elder to 'X' with her. Even after coming to Delhi, she did not take into confidence any of her relatives in Delhi. She opted to lodge the

complaint in a dramatic manner with Police Station Jahangir Puri on 8.10.2001 at night time. Considerable delay in lodging the FIR has remained unexplained.

10. Early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of the version. In the case of *Jail Prakash Singh v.State of Bihar & Anr.* 2012 CRI.L.J.2101 the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant’s version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

11. PW-17 (SI Attar Singh) admitted that at no stage, he verified if the kidnapping had taken place from Turner Road, Dehradun. The concerned Police Station having jurisdiction over that area was never informed or intimated. The prosecutrix and her mother did not take Delhi

police to the said crime spot. Without verifying the information given by the complainant, the police of Police Station Jahangirpuri lost no time to lodge the FIR though no such kidnapping had taken place in the area under their Police Station.

12. The appellants had repeatedly claimed that the complainant was well acquainted with them prior to the incident. She used to live in a rented accommodation belonging to one Surender Rohila on 1st Floor at 371, Gali No.13, Sant Nagar, Burari and A-1 was running dental clinic on the ground floor of the said house. The complainant and 'X' vehemently denied at first instance if they ever lived in the said premises any time. However, truth came out when the complainant in further cross-examination (page 279) admitted that she was a tenant under Mr.Rohila in Burari village. PW-4 (Des Raj), A-1's landlord informed that he was residing in one room on the ground floor at K-99/100, Jahangirpuri along with his family for the last one and a half year. In the cross-examination he elaborated that A-1 was dentist by profession and used to run clinic at Sant Nagar, Burari. He further deposed that he used to visit the said clinic. Complainant used to reside on the first floor portion in Burari whereas A-1 was running his clinic on the ground floor portion. He further stated that he knew the complainant and she had good relations

with A-1. The learned Additional Public Prosecutor did not opt to reexamine him. PW-17 (SI Attar Singh), the Investigating Officer was fair to admit that during investigation on 14.11.2001, he had verified the previous address of Smt.Reeta Mehta, House No.371, Gali No.13, Sant Nagar, Burari and had come to know that she was residing at the said address. The prosecutrix and her mother have not given any justification for denying this fact previously. PW-17 further admitted in the cross-examination (Page 595) that A-1 used to work in a Dental Clinic on the ground floor of property No.371, Gali No.13, Sant Nagar, Burari, Delhi with a Dentist Krishan Kumar.

13. It was appellants' specific defence that they were roped in falsely due to money dispute with the complainant. She vehemently denied if the appellants were known to her before the incident or there was any money transaction with them. The appellants brought on record 'Undertaking' Mark 'X' (Page 747) purportedly bearing signatures of the complainant at point 'A'. By this document, the complainant had allegedly received a friendly loan of ₹ 1 lac from A-1. This document is dated 15.09.2000 executed at Delhi. The complainant affirmatively denied her signatures on Mark 'X' at point 'A'. She was, however,

contradicted by PW-2 ('X') when she admitted in the cross-examination (page 353) that Mark 'X' bore signatures of her mother at point 'A'.

14. In her cross-examination (Page 279 and 283), the complainant admitted that on 07.09.2001 and 10.09.2001, telephone calls were exchanged with the accused. She was aware of mobile numbers on which the accused had made telephone calls on 7th and 10th September, 2001. The complainant did not elaborate as to in what connection, she was in touch with the accused on both these dates prior to the incident. This fact also finds mention in the order dated 06.06.2002 (Page 821). Certain documents issued by the Managing Director Escotel Mobile Communication, Meerut, U.P. were filed and on verification it emerged that the complainant used to talk to the accused-Shamsher (A-5) on mobile prior to the incident.

15. In the FIR, the complainant did not reveal the telephone number much less 7126336 from where she had received ransom calls on 6th October, 2001. She merely alleged that on 07.10.2001 when she received a telephone call on her mobile and inquired as to who was the caller, she was informed that it was Ajit Singh from Crime Branch, Delhi and her daughter 'X' was with him. She was directed to arrange ₹ 1 lac and to make a telephone call on 7126336 after reaching at Jahangirpuri,

Delhi and he would tell her the place where the ransom amount was to be delivered. The FIR records the complainant's mobile No. as 9837123784. Admittedly, the mobile in complainant's possession and ownership was never seized during investigation. No Call Details Record (CDRs) pertaining to this mobile were collected. In their deposition, both 'X' and complainant made vital improvements and disclosed about receiving of ransom calls on 6th and 7th October, 2001 from A-1 and A-5. The complainant claimed that from her mobile, she had made repeated calls to the prosecutrix on 5th October, 2001 after she did not return from a morning walk. PW-8 (Dawan Kumar Arya) from Escotel Mobile Communication Ltd. tendered report (Ex.PW-8/A) in evidence. PW-17 (SI Attar Singh) (Page 565) deposed that he had approached hotel Madhuban at Madhubani, Rajpur Road, Dehradun for the verification of call details of complainant's mobile No.9837123784 and had given an application to the concerned authority for this purpose. He was directed to call them on telephone after about 12 days as the particulars were not available that time. After 12-13 days, he again called the concerned authority at Dehradun and they instructed him to contact Escotel, Meerut. On 10.12.2001, he had given an authority letter to Constable Pramod to collect the particulars. The said authority had given 'nil' report of the call

details from 01.10.2001 to 10.10.2001 on the said mobile. Apparently, there were no calls exchanged during this period and it falsifies complainant's claim about receipt of ransom calls on the relevant dates.

16. Telephone No. 7126336 is the one from which the appellants allegedly used to make ransom calls to the complainant on her mobile. PW-3 (Manoj Kumar) disclosed that phone bearing No.7126336, was a PCO connection installed at his shop on the ground floor of House No.K-100, Jahangirpuri, Delhi. He disclosed that A-1 who used to live along with his family on the ground floor portion of the said house as a tenant used to make telephone calls often. The Investigating Agency did not collect any call details record pertaining to this connection. The complainant claimed that after arriving ISBT, Delhi, on 08.10.2001 she had contacted the kidnappers on telephone No.7126336. A-1's wife had talked to her that time and informed that the said telephone was installed at Jahangirpuri and she should approach them at main Bus terminal at Jahangirpuri. PW-3 (Manoj Kumar) did not corroborate her version. He expressed inability to disclose as to when A-1 received telephone call on his PCO. He did not testify if A-1's wife had any telephone call at the relevant time from the complainant at his PCO booth. In the cross-examination, he denied to have disclosed to the police in his statement

that on hearing the call, A-1 along with his wife, brother and other individual had left the house. Adverse inference is to be drawn against the investigating agency for not collecting the call details record pertaining to this telephone connection. PW-2 ('X') gave a contradictory version stating in her examination-in-chief that the accused persons used to converse with her mother on a cordless instrument. She further disclosed that there was a base phone installed in the house and a cordless instrument kept over it was used for making telephone calls to her mother. At the time of alleged recovery of the prosecutrix from the said house, no such cordless telephone or base phone was detected or recovered by the police. The prosecutrix had a mobile phone (Ex.P-2) which was allegedly taken from her by the accused persons during her confinement there. Again, call details of the said mobile seized in this case at the time of alleged recovery of the prosecutrix from the accused persons were not collected and proved.

17. The complainant and the prosecutrix have given evasive and vague answers when specifically inquired about the mobiles in their possession. The complainant was unable to produce the mobile in her possession on the day of incident claiming that it was sold after a few days as she was in urgent need of money. Both the witnesses were unable to

give satisfactory replies as to when and from where the mobiles were purchased or from where SIMs were arranged. The mobile is alleged to have been sold for a sum of ₹1,000/-. It is unthinkable that the accused persons would kidnap the prosecutrix to get ransom from the complainant who had to sell her mobile for a meager sum of ₹1,000/-. No details of its sale were divulged.

18. The story invented by the complainant about 'X' kidnapping does not inspire confidence at all. The ambassador vehicle in which 'X' was allegedly kidnapped on 5th October, 2001 could not be recovered. The prosecutrix who has given minute details of the case was unable to disclose its registration number. Crime weapon i.e. knife allegedly used to scare the prosecutrix by the kidnappers was never recovered. 'X's nude photographs allegedly taken by the kidnappers after disrobing her were never recovered.

19. After her recovery, the prosecutrix was promptly medically examined vide MLC (Ex.PW-6/A) proved by Dr.Lalmani. As per MLC, no external fresh injuries were found on her body. It ruled out physical torture to her in captivity. 'X' declined to submit for gynae examination. An endorsement at portion (Ex.PW-6/B) was made in this regard. Document showing the ownership of the Wrist watch recovered in this

case were not collected from the prosecutrix or her mother. They failed to disclose as to when and from where the Wrist watch was purchased.

20. In her 164 Cr.P.C. statement the prosecutrix admittedly did not implicate A-6 and no role was assigned to him. PW-17 (SI Attar Singh) admitted in the cross-examination (Page 619) that as per investigation carried out by him, role and participation of A-6 surfaced only after 8th October, 2001 and he had no knowledge of kidnapping and ransom demand prior to it. He was not even named by the prosecutrix at the time her statement was recorded by him. Contrary to that in her Court statement, the prosecutrix identified A-6 to be one of the kidnappers.

21. It is the prosecution case that after arriving Jahangirpuri, the complainant made telephone call from an STD booth located outside the Police Station after lodging report (Ex.PW-5/A) to the kidnappers and asked them to bring her daughter 'X' and collect the money at Lucky Juice Shop at Jahangirpuri. The Investigating Officer did not examine the STD booth owner to establish if any telephone call was made by the complainant to A-5 and if so at what number? The said conversation was not heard by the police officials present at the spot to trap the kidnappers. None from the Lucky Juice shop was joined at any stage of investigation.

22. It is unbelievable that just after having conversation with the complainant, A-1 and his wife (since acquitted) would arrive at the spot to collect money. They were allegedly followed by A-3 and A-5 on a scooter. They were not armed with any weapon. The complainant did not disclose the scooter number used to arrive at the spot by A-3 and A-5. PW-9 (Arvind Rawat) from Transport Authority proved that the scooter DL-6S-K-0933 was registered in the name of A-6. The appellants were the resident of definite and specific houses. They had not concealed their true identity. Even the scooter number which was seized in the case was found correct. The appellants had no previous criminal antecedents and lived with their families in a residential locality. It is unbelievable that the appellants who were not ardent criminals would dare to call the victim's mother near their residence to collect the ransom amount. There was no necessity for all of them to gather at the spot to collect the ransom. Apprehension of the accused persons at the spot in the manner alleged by the prosecution is highly suspect. At about 11.00 p.m. media people also arrived at the police station and took interviews from all of them including the complainant and her daughter 'X'. The complainant admitted in the cross-examination that 'X' informed them in detail about the names of the

assailants and their role in her kidnapping. The interview continued for about 30-40 minutes.

23. The prosecutrix remained in the family of the appellants for number of days. During this period she was allegedly shifted during day time from H.No.K-100 Jahangirpuri to H.No.K-1482-83. At no stage from the time of her kidnapping till her recovery, the prosecutrix raised alarm. Admittedly, the vehicle had crossed several traffic lights and Police Posts from Dehradun to Delhi but at no stage the complainant raised hue and cry. She has made vital improvements in her deposition and was duly confronted in the cross-examination.

24. The Trial Court did not appreciate the facts extracted in the searching cross-examination from the prosecutrix and her mother. The Trial Court was unable to ascertain as to what particular motive actuated the appellants to kidnap the prosecutrix as ransom demand allegedly made by them for her release was not accepted. Mere recovery of the prosecutrix from the residence of one of the appellants i.e. H.No.1482-83, Jahangirpuri, Delhi is not sufficient to establish the appellants' guilt particularly when it has come on record that the 'X's mother was acquainted with them prior to the incident and there were money transactions. Possibility of the prosecutrix visiting the residence of one of

the appellants voluntarily cannot be ruled out. It is quite possible that in order to get money from the complainant, she was not permitted to leave the premises. The whole plan seems to have been made to give it a colour of kidnapping. 'X' and her complainant mother have not presented true facts.

25. On the same set of evidence, A-2 and A-4 were acquitted of all the charges. The appellants were also acquitted of serious charges under Sections 354/364A/372 IPC. The investigation conducted is not upto the mark.

26. In the light of the above discussion, I am of the considered view that the prosecution has failed to establish its case beyond reasonable doubt. The conviction recorded by the impugned judgment cannot be sustained and is set aside. The appeals filed by the appellants are accepted. Trial Court record along with the copy of this order be sent back forthwith. Copy of the order be sent to Superintendent Jail for information. Bail bonds and surety bonds stand discharged.

(S.P.GARG)
JUDGE

OCTOBER 08, 2015/sa