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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on 24th November, 2015
Judgment delivered on 25th February, 2016

+ CRL.A.NO.1595/2013

ASHOK KUMAR

...Appellant

Through: Mr.Habibur Rehman, Advocate

Versus

STATE

...Respondent

Through: Mr.Feroz Khan Ghazi, APP for the State

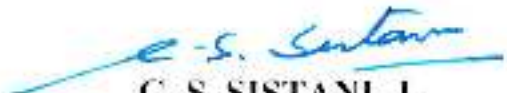
CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

For judgment, see Crl.A.1492/2013.


G. S. SISTANI, J.


SANGITA DHINGRA SEHGAL, J.

25th FEBRUARY, 2016

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.NO.1492/13

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Judgment reserved on 24th November, 2015

Judgment delivered on 25th February, 2016

VINOD @ VINODE @ Bhole

...Appellant

Through: Mr.Praveen Kumar, Advocate

Versus

STATE

...Respondent

Through: Mr.Feroz Khan Ghazi, APP for the State

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CRL.A.NO.182/2014

PREM CHAND @ FAUZI

...Appellant

Through: Mr.Neeraj Bhardwaj, Advocate

Versus

STATE

...Respondent

Through: Mr.Feroz Khan Ghazi, APP for the State

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CRL.A.NO.1595/2013

ASHOK KUMAR

...Appellant

Through: Mr.Habibur Rehman, Advocate

Versus

STATE

...Respondent

Through: Mr.Feroz Khan Ghazi, APP for the State

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J.

1. Since the present appeals arise out of a common judgment and order on sentence, the same have been heard together and disposed of by a common judgment.

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2. Present appeals arise out of a judgment dated 20.07.2013 and order on conviction dated 30.08.2013 passed by learned Additional Sessions Judge, Delhi, by which the appellants have been convicted for the offence punishable under Section 120B of the Indian Penal Code, under Section 368 of the Indian Penal Code read with Section 120B of the Indian Penal Code, under Section 344 of the Indian Penal Code read with Section 120B of the Indian Penal Code, under Section 347 of the Indian Penal Code read with Section 120B of the Indian Penal Code and under Section 364A of the Indian Penal Code read with Section 120B of the Indian Penal Code and sentenced them as under:

Offence under Section	Punishment
Section 120 of the Indian Penal Code	Rigorous imprisonment for five years and to pay fine Rs.1,000/- in default to undergo simple imprisonment for one month.
Section 368 of the Indian Penal Code read with Section 120 of the Indian Penal Code	Rigorous imprisonment for five years and to pay fine Rs.1,000/- in default to undergo simple imprisonment for one month.
Section 344 of the Indian Penal Code read with Section 120 of the Indian Penal Code	Rigorous imprisonment for two years and to pay fine Rs.1,000/- in default to undergo simple imprisonment for one month.
Section 347 of the Indian Penal Code read with Section 120 of the Indian Penal Code	Rigorous imprisonment for two years and to pay fine Rs.1,000/- in default to undergo simple imprisonment for one month.
Section 364A of the Indian Penal Code read with Section 120 of the Indian Penal Code	Life imprisonment for two years and to pay fine Rs.2,000/- in default to undergo simple imprisonment for two months.
All the sentences shall run concurrently	

3. The case of the prosecution as noticed by the learned Trial Court is as under:

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"Factual matrix of the prosecution case is that on 16.09.2007 Mahipal (PW1) visited PS New Ashok Nagar and complained about missing of his brother Ajay (PW5) and neighbour Ravinder Kumar (PW6) since 13.09.2007. He further told that he and relatives of PW6 had been receiving ransom calls. Ins. Arun Kumar (PW16) prepared rukka and got FIR registered under Section 364A IPC. Call detail records (CDRs) of mobile No. 9871276142 belong to victim Ravinder and phone No. 9971427767 belonging to Ajay were analyzed. Number 9997436407 was found as suspect number. On the basis of analysis of CDRs, it was found that victims were somewhere in the area of District Ferozabad, UP. On 01.10.2007, PW16 along with Insp. Ram Kishore (PW15) reached at the office of SSP, Ferozabad and from local intelligence, he came to know that the gang of accused Vinod is involved in such activities. On 04.10.2007, PW16 with other police staffs reached PS-Matsena, District Ferozabad, UP and there he met SO K. K. Mishra (PW19). A strategy was planned for launching combing operation in the area and various teams were constituted. The area was searched next day in the afternoon. PW19 received a secret information that a person named Vinod is standing near Sikera Mata Mandir and is waiting for someone and he has been beholding two persons of Delhi. Team of PW16 reached at Sikera Mata Mandir and on the pointing out of informer, accused Vinod was apprehended. From his possession, one mobile phone belonging to Ravinder (PW6) was recovered. During interrogation, accused Vinod made disclosure statement and led police party to Beehar at a distance of 1½ - 2 kilometers from that place. There two victims i.e. Ajay and Ravinder (PW5 and PW6) were found lying on the ground with their feet tied with rope and their eyes were tied with 'angochhas'. Associates of accused Vinod managed to run away. Both the victims were in bad shape as they had lost their weight, wearing dirty clothes and appear not to have shaved for 20-25 days. Both the victims were brought to Delhi. On 12.12.2007, PW17 received information that accused Prem Chand (@ Fauzi) has been arrested by the police of PS Makhanpur, District Ferozabad, UP. He sought his production warrant and got him produced in the court on 15.12.2007. Accused Prem Chand was arrested in this case. After investigation police filed first chargesheet against both the accused under section 364A/34 IPC.

2. On 20.04.2009 further investigation of this case was assigned to ASI Rajender Singh (PW18). On 23.04.2009, he moved an

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application for production warrant accused Ashok, who was in judicial custody. On 27.04.2009, accused Ashok was arrested in this case. Efforts were made to arrest other accused but they could not be arrested and they were got declared as proclaimed offenders (Pos). Police filed supplementary chargesheet against accused Ashok Kumar and other co-accused by showing them as Proclaimed Offenders. Supplementary chargesheet has been filed under Section 364A/344/34 IPC."

4. Learned Counsel for the appellants submit that the impugned judgment and order on sentence is based on conjectures and surmises and the trial Court has erred in reaching a conclusion of guilt against the appellants. It is strongly urged before this Court that there are material inconsistencies between the testimonies of the witnesses. The learned Trial Court has failed to take into account that as per the prosecution the victims were recovered on 05.10.2007, however, as per the complainant PW1, the victims were recovered on 04.10.2007. It is further contended that there are material contradictions with regard to the date when the alleged ransom letter was received. Counsel contend that as per PW1 ransom letter was received on 21.09.2007 while according to PW2 ransom letter was received on 18.09.2007, whereas as per Investigating Officer, PW15, ransom letter was handed over to him on 20.09.2007.
5. Learned counsel for the appellant Vinod submits that the recoveries, which have been made at his instance i.e. mobile phone, rope and angochha stated to have been recovered by the police at the instance of accused Vinod were not sealed and hence can not be relied upon in evidence brought on record by the prosecution that mobile phones which as per prosecution PW5 and PW6 were carrying actually belonged to him. It is further contended by learned counsel for appellant Vinod that there is no evidence to show that mobile phones which PW5 & PW6 were carrying actually belonged to them. It is also contended that there are

material contradictions regarding as to whether PW5 & PW6 were taken to Police Station Matsena or directly brought to Delhi immediately after they were rescued. It is pointed out that as per the testimony of PW19, victims PW5 & PW6 and the accused person were not brought to Police Station Matsena whereas as per PW5 and PW6 after they were rescued they were taken to Police Station Matsena, however, in the testimony of PW15 and PW16, who were mainly involved in the rescue operation, deposed that after the victims were rescued, they along with the accused Vinod were brought to Delhi. According to learned counsel for the appellant Vinod, this major contradiction creates serious doubt in the story of the prosecution.

6. It is also pointed out by learned counsel for the appellant Vinod that the learned Trial Court has failed to consider that in the first disclosure statement, Ex.PW3/B, made by appellant Vinod, when he was initially apprehended by the police, he did not name the other two co-accused persons i.e. Prem Chand @ Fauzi and Ashok Kumar. It is, however, pointed out that the aforesaid two names were incorporated in the second disclosure statement which according to the appellant Vinod was fabricated to implicate them. Counsel contends that in case the other two appellants, namely, Prem Chand @ Fauzi and Ashok were in any way connected with the offence, they should have been named in the first disclosure statement made by Vinod.
7. It is also pointed out by the counsel for the appellant that in the entire case not a single independent witness was associated in the investigation and only family members of the victims, who were interested witnesses deposed against them. Learned counsel for the appellant submits that learned Trial Court has failed to take into account that PW5 was lodged in Tihar Jail in a robbery and murder case along with appellant Ashok

Kumar, and on account of enmity between appellant Ashok Kumar and PW5, Appellant Ashok Kumar was falsely implicated in the case.

8. Learned counsel for the appellant further submits that the entire manner of the investigation of the present case would come under a doubt as despite the statement made that victims were beaten daily, enough food were not provided, they were tied with chains for 22 days long and no MLC of the victims were got prepared thus the testimony of the victims can not be relied upon. If there was any truth in the story of the prosecution, the bodies of the victims would have ligature marks, rashes and injuries.
9. Learned counsel for the appellant Ashok Kumar and Prem Chand submit that no recoveries were made at their instance.
10. Learned counsel for the appellant Vinod has submitted that appellant has been falsely implicated in the present case as he was arrested on 04.10.2007 by the investigating team from Subzi Mandi without assigning any reasons. In support of this contention, it is pointed out that brother of the appellant Vinod in view of the illegal arrest has telegraphed to SSP, DIG on 05.10.2007 informing them about illegal arrest of Vinod, his brother.
11. On the other hand, learned counsel for the State submits that prosecution has been able to prove its case without any shadow of doubt. It is further submitted that the ransom letter was sent to Forensic Science Laboratory and report has been received which reveals that the ransom letter contained the handwriting of the victim as well as of accused Vinod. It is also contended that repeated calls were made and letters were sent for ransom and based on secret information, first Vinod was arrested, who led the police party to the jungle where the victims were recovered. It is also submitted that the victims have rightly pointed towards the appellants and their testimonies are consistent with regard to the manner in which they

were abducted by the appellant Ashok Kumar and then handed over to appellant Prem Chand @ Fauzi and Vinod. It is further submitted that victims were in fact medically examined at Delhi and only thereafter they were handed over to their respective family. It is also submitted that it is wrong to suggest that Vinod was arrested on 04.09.2007, he was arrested on 05.09.2007 which is evident from the testimony of PW2. Learned counsel for the State further submits that the contradictions which have been pointed out by the learned counsel for the appellants are minor which do not go to the root the case of the prosecution and do not go in favour in of the appellants.

12. Before the rival submissions of counsel for the parties are considered, we deem it appropriate to analyse the testimonies of some of the important witnesses.
13. PW-1, Shri Mahipal, is the real brother of one of the victims i.e. Ajay Pal. PW-1 is also the complainant. As per the testimony of PW-1, on 13.9.2007 around 11.00 a.m. he was present at his shop when a person approached him and enquired about his brother, Ajay. PW-1 informed the said person that Ajay was nearby and would come within 10-15 minutes. On asking, he informed PW-1 that his name was Ashok. After 10-15 minutes, Ajay came to the shop. Ajay Pal was informed that one Ashok, was asking his whereabouts. After 10-15 minutes Ashok again came to the shop. PW-1 informed Ajay that this was the person, who had come to the shop and asked about his whereabouts. Ashok informed Ajay Pal that he had some work with him. Both started conversing outside the shop of PW-1 and while talking to each other they left towards Kalyan Puri side. After five minutes one Ravinder, also came to the shop of PW-1, who had asked about Ajay. PW-1 informed him that Ajay had gone towards Kalyan Puri side. Ravinder parked his motorcycle with helmet in front of

the shop of PW-1 and proceeded in the direction of Kalyan Puri. PW-1 has further testified that his brother, Ajay Pal, did not return till evening. On the next day, PW-1 enquired from his sister and also from the Villagers about his brother, Ajay Pal. PW-1 has further testified that on 15.9.2007 a telephone call was received by his brother-in-law, Shri Ashok Nagar, at 8.30 a.m. and he informed PW-1 that he was receiving calls from phone of one Ravinder and the caller was asking for ransom of Rs.25.00 lakhs for release of Ajay Pal and Ravinder. Brother-in-law of PW-1 gave him the number of Ravinder but Ravinder did not pick his phone. PW-1 was again informed by his brother-in-law that arrangement for Rs.25.00 lakhs should be made. Later on the place of delivery was told as Kachora Ghat, Hanuman Mandir, Etawah. Caller had also informed him that in case the Police was contacted Ajay Pal and Ravinder would be killed. PW-1 contacted the family members of Ravinder, who also informed that they had received a phone call demanding ransom of Rs.25.00 lakhs. PW-1 has further testified that around 9/10 a.m. he received a call on his PCO phone from the phone of Ravinder, which number had been given to him by his brother-in-law. The caller demanded Rs.25.00 lakhs from him in lieu of release of Ajay Pal and Ravinder. PW-1 was advised not to contact the Police, failing which they would lose both the persons. PW-1 has also testified that on 16.9.2007 a report was lodged with the Police giving details of the entire facts. His statement was recorded as Ex.PW-1/A. He described the person, who came to his shop enquiring about his brother Ajay, had a dense moustache, he was wearing goggles and was 5'8" tall. PW-1 also testified that he received calls from the abductor many times demanding money and threatening not to report the matter to the Police. It is further testified by this witness that ransom letter was received by his brother, Devender, who had delivered the said

letter (Exhibit PW-1/B) to the Police in his presence. A similar letter (Exhibit PW-1/C) was received by the family of Ravinder. The letters were in the handwriting of his brother, Ajay Pal, and Ravinder. Initially, he testified that he cannot identify those letters but could identify the handwriting of his brother Ajay. This witness also testified that on 4.10.2007 police got recovered his brother, Ajay Pal, and Ravinder from Etawah.

14. On the next date of the examination-in-chief, PW-1 identified the letter (Ex.P-1) and the envelope (Ex.P-2) to be those, which were taken in possession by the Police. This witness has also testified that Rs.10.00 lakhs were demanded vide the said letter.
15. PW-1 was cross-examined at length. During cross-examination, he testified that his brother had not informed him specifically where he was going. He further testified that his brother used to sleep on a wooden plank in the shop. Size of the shop was described as 10x12 sq. ft. It is further testified that occasionally, his brother would go to the house of their sister. He also testified that although there was a milk shop, a washer man shop and a grocery shop nearby his shop yet he did not know their names. During cross-examination, PW-1 could not tell the nature of clothes worn by the person, who had come to his shop. He also described the said man as having height of about 5'9" and was having a beard. In Court PW-1 had identified Ashok as the person, who had come to his shop. PW-1 denied the suggestion that Ashok had been falsely implicated at the instance of his brother, Ajay Pal, who was lodged in Tihar Jail along with Ashok. He also denied the suggestion that it was in his knowledge that his brother, Ajay Pal, had threatened Ashok to falsely implicate him in another matter. This witness has also testified that ransom letter was received by him on 21.09.2007.

16. It is the case of the appellants that PW-1, Mahipal Singh, is not a reliable witness. It is further the case of the appellants that there are material contradictions in the evidence of PW-1 as far as the appellant Ashok, visiting the shop in question is concerned.
17. PW-2, Sandeep Singh Verma @ Sintu, has testified that he is running a shop at Ghaziabad. On 15.9.2007 at 9.30 a.m. he received a phone call from Prem Chand @ Fauzi, who informed him that Ravinder and Ajay Pal were in his custody and Rs.25.00 lakhs were demanded for their release, which were to be delivered at Kachora Ghat, Hanuman Temple. The caller also cautioned PW-2 not to inform the Police or else both, Ravinder and Ajay, would be killed. PW-2 also testified that Ravinder was his maternal uncle and he was residing with him since childhood at Village Dagarpur. He also testified that this fact was informed to other family members including maternal aunt, Smt. Poonam Verma. On 16.9.2007, he along with Mahipal, brother of Ajay (PW-1), visited the Police Station and reported the matter. This witness also testified that he was informed by the caller that he would receive letters in the handwritings of Ajay Pal and Ravinder and on 18.9.2007 a postman had delivered a letter at his house at Village Dagarpur. The said letter was in the handwriting of his maternal uncle, Ravinder. As per the letter money was to be arranged as soon as possible, failing which Ravinder would be killed. After receipt of the letter another phone call was received on 19.9.2007 between 8.30 and 9.00 p.m. The caller made Ravinder talk to this witness. Ravinder told him that the demand should be accepted, money should be arranged even if the house and shops are to be sold and in case the money was not arranged the abductors would kill him. At that juncture, his maternal aunt, Smt. Poonam Verma, also requested to have a talk with Ravinder and she was allowed to talk to Ravinder, who

reiterated the same facts to Poonam. Thereafter the phone was disconnected. This witness has also testified that similar letters were received in the house of Ajay Pal, which was handed over to the Police. PW-2 has also testified that the caller was in constant touch with them. The caller asked them to reach Kachora Ghar, Hanuman Temple, via Jaswant Nagar.

18. As per PW-2 on 23.9.2007, he along with Devender, brother of Ajay Pal, and driver proceeded for Jaswant Nagar by a car. They stayed at Firozabad in the night as they became late. They reached Jaswant Nagar in the morning on 24.9.2007. On his mobile number 9410054905 he received a call from the number of Ravinder at 9.30 a.m. As per this witness, he used to receive calls of the caller from the same very number of Ravinder at his mobile, besides landline phone. The caller had informed that they were present in Jaswant Nagar. The caller instructed them to reach Kachora Ghat and further enquired about Prem Chand Fauzi. They made efforts to trace Prem Chand Fauzi but could not do so. Another call was received and they were directed to reach Village Roora. But none came to contact them. The caller again instructed them to reach at Ahir Tola. They reached the said place. They were all along followed by the Police team. They were again informed by the caller to reach the house of a person behind the petrol pump. When they reached the said place, they were again informed to reach Village Sirsa. The details were being informed by this witness telephonically to Inspector Ram Kishore Meena. At night, this witness stayed in a hotel at Etawah, as directed by the Inspector. Again the caller instructed them to reach before a Professor at Jaswant Nagar. They met the Professor, who assured them that the kidnapped persons would be traced out. Thereafter the caller instructed

(b)

them to reach home and arrange for the money and consequently they reached home on 25.9.2007 without any clue of Ajay Pal and Ravinder.

19. On 26.9.2007 again a call was received by this witness from the same caller. The caller had instructed this witness to arrange for money, fixing the last date as 30.9.2007, failing which, Ajay and Ravinder would be killed. On the following morning, again a phone call was received. At the request of this witness, the caller allowed this witness to talk to Ravinder. Ravinder had repeated the same conversation. Time was extended upto 4.10.2007 for arranging money.
20. As per this witness, the caller kept on contacting him about the arrangement of money. On 4.10.2007 PW-2 went to Etawah by train along with Atma Ram Verma for arranging money. Around 9 or 9.30 p.m., he received a call from Inspector Ram Kishore Meena asking him to remain present at Etawah. On the following day i.e. 5.10.2007 around 8.30 or 9.00 a.m. this witness received a call from Inspector Ram Kishore Meena informing him that Ajay Pal and Ravinder had been rescued. He was called at Police Station Matsena. On reaching the Police Station Ajay Pal and Ravinder were found. After meeting them they returned to Delhi. PW-2 was also cross-examined in detail.
21. Another important witness is PW-3, HC Naresh, who has testified that on 4.10.2007 he along with SI Arun Kumar, Inspector Ram Kishore and other police staff had reached Police Station Matsena, District Firozabad, in connection with the investigation of this case. As per his testimony, the above persons had proceeded from Delhi on 1.10.2007 by a private vehicle. Special staff officials of North-East District, Delhi, were already present at Police Station Matsena. I.O. of the case contacted S.O. of Police Station Matsena, namely, Sh. K.K. Mishra. A plan was made to get the abducted persons, Ajay Pal and Ravinder, released. Police party

was divided in two teams, consisting of four members in each. This witness had accompanied Inspector Ram Kishore Meena, SI Arun and SO K.K. Mishra. Both these teams started combing operation during evening in the forest area of Village Sikora. Further, as per the testimony of this witness, on 5.10.2007 SO K.K. Mishra had received information around 12.30 noon that a person was waiting near Sikora Kali Mata Wala Mandir, whose name was Vinod, who had kidnapped two persons and demanded ransom for their release. The entire team reached the informed place at 12.45 p.m. The person was over powered. This witness identified Vinod present in Court. Search was conducted and two mobile phones i.e. (i) Black coloured LG mobile phone and (ii) Silver coloured NOKIA mobile phone were recovered from his possession.

22. The I.O. informed that LG mobile phone belonged to Ravinder and Silver coloured NOKIA phone was of Vinod, who were abducted. Details of Mobile numbers including IMEI numbers were incorporated in the seizure memo. On interrogation Vinod disclosed that he could lead the Police to the forest of Sikora to enable them to recover the abducted persons i.e. Ravinder and Ajay. The disclosure statement of Vinod is Exhibit PW-3/B and the arrest memo and search memo are Exhibit 3/C and D, respectively. All the above documents were signed by this witness at points 'A'. On reaching the spot two persons were found tied with rope pieces and their eyes were tied with a cloth. Both the persons, namely, Ravinder and Ajay, were untied and released. Rope pieces and cloth pieces were seized by the IO, Exhibit PW-3/E. Ravinder and Ajay were recovered by memo Exhibit PW-3/F. Accused were brought to Police Station Matsena and thereafter Police officials along with two victims returned to Delhi. Ravinder and Ajay were examined at LBS Hospital and

handed over to their family members. This witness identified the mobile phone, two towels (angochas) and two pieces of jute rope.

23. During cross-examination, PW-3 could not tell the DD number vide which they had proceeded to Firozabad nor could he tell the time of departure. He also could not tell the Registration number of the vehicle Qualis nor he recalled the time of reaching Police Station Matsena. He also could not tell the number of arrival entry at Police Station. He confirmed that the victims, Ravinder and Ajay Pal, had been tied with the ropes. None from the Village Sikora was called during the disclosure statement.
24. PW4, Shri Auna Ram, who was working as ASI in Delhi Police, has testified that Ravinder is his brother-in-law and Ajay is the neighbour of Ravinder. He has further testified that on 14.9.2007 he was telephonically informed by Smt.Poonam, wife of Ravinder, that Ravinder and Ajay had been kidnapped and a demand of Rs.25.00 lakhs as ransom has been made for their release. This witness also testified that phone calls of the caller were being tapped by Sandeep. The Police was informed and the matter was being pursued. It is further testified that on 5.10.2007 he was present at Dagar Pur. He had received information through Police that Ajay and Ravinder had been rescued. He along with Poonam, Sintu and other persons went to Police Station New Ashok Nagar. Around 11.30 p.m. the Police reached with Ajay and Ravinder and one accused person Vinod, whom he identified in Court.
25. PW5, Ajay, and PW6, Ravinder, are the victims. PW5 has testified that Mahipal (PW1) is his real brother, who runs a grocery shop at Village Kondli. He also used to look after the said shop. He further testified that in the year 1997, he was arrested by the police in connection with a robbery and murder case, which was registered at Police Station Mehrauli,

Delhi. In jail he came in contact with another person, namely, Ashok with whom he became friendly. Although he was released in the year 2000-2001 Ashok continued to be confined in Tihar Jail. In August, 2007, Ashok had come to his village and met him. Ashok informed PW5 that after his release he started a business at Bombay and after winding up of his business at Bombay he settled in Firozabad. Ashok sought the help of PW5 to purchase a plot at NOIDA or Delhi to enable him to start his business. PW5 assured help to Ashok in this regard and informed that he was having a shop at Kondli. The family members of PW5 including one, Devender, were present when Ashok had met him at the Village. Ashok had requested PW5 to accompany him to his village with a view to assure his wife that PW-5 is his well-wisher and may help him in connection with his business at Delhi, as his wife was apprehensive that none would support Ashok in the area of Delhi or NOIDA. Ashok had met them at the bus stand and requested PW-5 to accompany him to Firozabad. Ashok also suggested that they should travel to Firozabad by motorcycle but PW5 declined the request of Ashok and ultimately all the three persons came to the shop of PW-1 at Kondli by that motorcycle. Ashok had alighted from the motorcycle near a barber shop at Kondli for shaving, which was at a distance of about 10-15 steps from the shop of PW5. He had conveyed this fact to his brother, Mahipal. He also parked his motorcycle at this shop. PW5 conveyed to his brother that he had to go to Firozabad with his friend. Ashok had then come to the shop. His brother questioned him and he got his brother introduced with Ashok and thereafter all the three persons proceeded to Firozabad after boarding a bus from Anand Vihar around 3.00 or 3.30 p.m. they boarded bus for Etah. Around 7:30-8:00 PM accused Ashok made a call from his mobile phone while they were travelling. Accused took his phone and talked with someone after shifting

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to back seat. Ashok told him that he was informing his wife so that she may prepare food for them. They reached Firozabad at about 10-10:30PM. Accused Ashok made a call from nearby PCO. One person met him near PCO. Two persons came there on motorcycle. He and PW6 were made to sit on motorcycle. One motorcycle was being driven by accused Vinod and other motorcycle was being driven by accused Prem Chand @ Fauzi. They covered a distance of 8-10 KM. Thereafter 6-7 persons met them on the way. Those persons took out the ignition key from the motorcycle. One of them put country-made revolver on his temporal region. The person who was sitting behind him on motorcycle caught hold of him by his collar. Thereafter his eyes were tied with a cloth band and they were directed to keep quite failing which they were threatened to be killed. Thereafter their hands were tied by rope and they were taken on foot from that place. He covered distance of 2-3 KM and he was made to sit in a place. He was wearing four gold rings and was having mobile phone and Rs. 4,000/- Rs. 5,000/-, all these things were taken away. He requested those persons to let them go but they were told that they have abducted them (*Hamne tumhari pakad kar li*). On being asked about Ashok, he was told that they have taken him from accused Ashok in lieu of Rs. 20,000/- paid as advance and rest of money has to be paid. From the voice of Ravinder, he felt his presence there.

26. PW5 further deposed that he was told that their Chief (mukhiya) would come in the morning. He was kept in chain. His hands were tied with angochha and his eyes were tied with band. Cotton was inserted in his ears. Nothing was given except bread for eating. Mukhiya came; he and PW6 were made to sit adjacent to each other. His eyes band was removed and he was covered with cloth. He was not able to see the face of mukhiya. He was provided a paper and pen, mukhiya asked him to write a

letter demanding Rs.10,00,000/- from his family in lieu of his release. Initially they had talked about Rs.35,00,000/- thereafter they came down to Rs.25,00,000/- and lastly he was directed to write Rs.10,00,000/- for his release for which he wrote a letter. Again his eyes were tied with a band. He provided phone number of his brother in law. Subsequently he was assured that they had talked with his family members and they would be released within 3-4 days. PW6 was also forced to write a similar letter. He was provided roti and chatni in the morning and evening. In case need of natural call, his chain was released little bit and again he used to be brought at the same place. He remained confined for about 22-23 days. During this period, 3-4 persons continuously guarded them with arms. He was made to realize arms by putting such arms in his hands. When police reached persons guarding them managed to escape. At that time, accused Vinod was in the custody of the police. They were taken to local PS and then brought to Delhi. On 28.12.2007 he visited PS New Ashok Nagar with PW6 where he saw accused Prem Chand and he identified him as the same person who has escorted him on motorcycle along with other associates.

27. PW6 Ravinder also deposed on the similar lines as deposed by PW5.
28. PW7 Poonam, wife of Ravinder deposed that she had received phone call from him that he was going to Firozabad and will return within a day or two. She deposed that on 14.09.2007 phone of Ravinder was found switched off and on 15.09.2007 when she called, some person attended the phone call who informed that Ravinder had been abducted by criminals but he was rescued from them and that person asked her to arrange Rs. 25,00,000/-. Thereafter she deposed about another ransom call and the instructions given by the callers and also deposed about the ransom letters received.

29. PW8 Ct. Ramesh was a witness to the arrest of the accused Prem Chand @ Fauji in Court and proved his arrest memo and disclosure statement as Ex.PW8/A and PW8/B respectively. PW9 Shri. G.N. Pandey, I.d. MM proved the TIP proceedings of accused Prem Chand @ Fauji as Ex. PW9/A to PW9/C. PW10 HC Mahavir was the duty officer who proved the copy of the FIR as Ex.PW10/A.
30. PW11 Ashok, brother-in-law of victim Ajay deposed that he had received the ransom call regarding which he informed PW-1 Mahipal. PW12 Davender was the elder brother Ajay who deposed about the abduction of Ajay and Ravinder and the ransom call made by the caller. He further deposed that the custody of victim Ajay was given to him vide memo Ex.PW12/A.
31. PW13 IIC Rambir Singh, the MHC (M) proved the entries made in Register No. 19 as Ex.PW 13/A and PW13/B. PW14 SI Vinay Yadav collected the calls details of mobile numbers 9871276142 of victim Ravinder and 9971427767 of victim Ajay and of No. 9997436407 and proved the same as Ex.Pw14/A to PW14/H5.
32. PW15 Insp. Ram Kishore took over investigation of this case on 19.09.2007 and he deposed that on 20.09.2007 he was handed over ransom letters by Shintu and Mahipal and he examined the call details of phone No. 9971427767 and 9997436407. He further deposed about the investigation done by him, during the time when he reached Jaswant Nagar to Agra and Firozabad. He further deposed about the arrest of accused Vinod and recovery of two mobile phones from him and recovery of both victims at his instance.
33. PW16 Ins. Arun Kumar was the main IO and he deposed that on 16.09.2007 he recorded the statement of Mahipal vide Ex.PW1/A on which he made his endorsement Ex.PW16/A and further provided the

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portrait of accused Ashok which is Ex.PW16/B. He further deposed the investigation proceedings carried out by him. He further proved the seizure memo of motorcycle of victim Ravinder as Ex.PW16/C, specimen handwriting of accused Vinod as Ex.PW16/D1 and D2 and also proved the arrest documents of accused Prem Chand @ Fauji on 15.12.2007 who was produced in Karkardooma Courts by the police of PS Makhanpur, District, Ferozabad. He further proved the FSL Report as Ex.C1 and identified the case property.

34. PW17 Shyam Babu Verma the owner of motor cycle No. DL-8S AH-4584 handed over by him to his cousin Ravinder which he took on superdari under orders of the Court. He proved the superdarinama as Ex.PW17/A and motorcycle as Ex.PW17/Article1. PW18 ASI Rajinder Singh was the IO with regard to accused Ashok on 27.04.2009, he proved his arrest memo as Ex.PW18/A.
35. PW19 SI Krishna Kumar Mishra from PS Matsena, District Ferozabad, UP had joined the investigation team of SI Arun Kumar and Ins. Ram Krishore along with other staff on 04.10.2007. He deposed about the arrest of accused Vinod, he also deposed about the recovery of two mobile phones from him and the recovery of both the victims. He further identified the case property in the Court.
36. PW20 Sh. R.K. Singh, Nodal Officer, Bharti Airtel Ltd proved CDRs of mobile No. 9971427767 and 9871276142 for the period from 01.09.2007 to 18.09.2007 for Delhi Circle and UP West Circle. He also proved customer application form, copy of ID proof, cell ID of these numbers as Ex. PW20/A to E. He also provided certificate required under Section 65B of India Evidence Act as Ex.PW20/E.
37. On the basis of incriminating evidence against accused persons their statement under Section 313 Cr.P.C. were recorded Accused Ashok

Kumar denied the entire evidence against him and took the defence of false implication. He stated that he was lodged in Tihar Jail along with PW5 and used to watch TV along with him. Once he had beaten him in jail since then PW5 was having enmity with him and had threatened to take revenge.

38. Accused Prem Chand @ Fauji also denied entire evidence against him. Accused Vinod also denied entire evidence against him stating that he was lifted from near subzi Mandi. Victims were apprehended a day before and he was falsely implicated in this case.
39. Accused Vinod led defence evidence and examined DW1 Munesh and DW2 Sanjay and took defence to prove his false implication.
40. To decide the present case in hand we are of the view that it is important to discuss the role of all the accused persons. Accused Ashok insisted PW5 to come with him to Ferozabad to assure his wife that PW5 will help him in establishing his business at Delhi. PW6 being friend of PW5 also accompanied them to Ferozabad. As per their plan, accused Prem Chand @ Fauji and accused Vinod came there on the motorcycle and on the point of a gun took PW6 on the motorcycle. Their eyes were covered with cloth and hands were tied with a rope. Accused Vinod was apprehended by the police on 05.10.2007 from Sikora Mata Mandir, he made a disclosure statement Ex. PW3/B, pursuant to the statement he got recovered PW5 and PW6 from the forest nearby. As per FSL report Ex.C1 ransom notes received by relatives of PW5 and PW6 were in handwriting of accused Vinod.
41. On perusal of documents, testimonies of witnesses and submissions of both the counsel, we are of the view that one of the main charges against accused persons is for entering into a criminal conspiracy to abduct PW5

and PW6 for ransom. Section 120A of the Indian Penal Code defines criminal conspiracy as under:

"120A. 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."

42. The ingredients of the Section 120B are also proved in the present case as:
- a) There was an agreement between the persons who are alleged to conspire.
 - b) The agreement was for an illegal activity.
 - c) The common intention of the accused persons was also proved.
 - d) All the accused have played their part in the act for achieving the common purpose for their common benefits.
43. So far as the discrepancies in the statements of the witnesses are concerned, we are of the view that it is not possible for a witness to remember each and every fact of the incident and the law in this regard is well settled by the Apex Court in **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat: (1983) 3 SCC 217**, observed that:

"...overmuch importance cannot be attached to minor discrepancies, by and large a witness cannot be expected to possess a photographic memory as if so happens that a witness is overtaken by events. The powers of observation differ from person to person. Ordinarily a witness cannot be expected to recall accurately the sequence of events which taken place in rapid succession or in a short time span. The reliance on such small

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discrepancies shall not cause injustice to the victims of such grievance act..."

44. In *Krishna Mochi and Ors. vs. State of Bihar*: (2002) 6 SCC 81, the Hon'ble Apex Court held 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..."

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"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 allureances or giving out threats to his life and/or property at the instance of persons, in/or

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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..."

45. Substantially similar view was taken by Hon'ble Apex Court in **Kuria and Anr. V. State of Rajasthan: (2012) 10 SCC 433**, the Apex Court held:

"...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 discrepancies. Such discrepancies may even in law render credential to the depositions. The improvements or variations must essentially relate to the material particulars of the prosecution case. The alleged improvements and variations must be shown with respect to material particulars of the case and the occurrence. Every such improvement, not directly related to the occurrence, is not a ground to doubt the testimony of a witness. The credibility of a definite circumstance of the prosecution case cannot be weakened with reference to such minor or insignificant improvements. Reference in this regard can be made to the judgments of this Court in *Kathi Bharat Vajsur and Anr. v. State of Gujarat: (2012) 5 SCC 724*, *Narayan Chetanram Chaudhary and Anr. v. State of Maharashtra: (2000) 8 SCC 457*, *D.P. Chadha v. Triyugi Narain Mishra and Ors.: (2001) 2 SCC 205*, *Sukhchain Singh v. State of Haryana and Ors.: (2002) 5 SCC 100*."

46. In **Prabhat Singh vs. State: Crl. A. 926 and 1010/2009, 422 and 452/2010, 192/2011 and 230/2014**, this Court observed:

"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

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discrepancies are inevitable in the statement of witnesses who speak them after long lapse of time."

47. In this case, the first lead was provided by Sh.Mahipal, PW-1, who is the real brother of one of the victims, Ajay Pal. PW-1 has testified that on 13.9.2007, around 11.00 a.m., a person had come to his shop and asked for his brother Ajay. Upon asking, the said person has disclosed his name as Ashok. As his brother, Ajay, was not in the shop, on his returning PW-1 disclosed to him that a person, by the name of Ashok, was asking about his whereabouts. After ten or fifteen minutes the same person returned to the shop. PW-1 told his brother, Ajay, that he was the same person who had introduced himself as Ashok. Thus, the presence and identity of Ashok stands duly established as the person with whom the victim was last seen. PW-1 has further testified that on 15.9.2007 a telephone call had been received by his brother-in-law, Sh.Ashok Nagar, who informed him that someone was making calls from the phone of one, Ravinder, and was asking for ransom of Rs.25.00 lakhs for releasing PW-1's brother and Ravinder (the second Victim). This witness has also testified that he was informed with regard to the place of delivery at Kachora Ghat, Hanuman Mandir, Etawah. This witness has further testified that he was cautioned that in case Police was informed his brother and Ravinder would be killed. PW-1 had contacted the family members of Ravinder, who also informed him that they had also received a phone call concerning demand of ransom of Rs.25.00 lakhs. This witness has also testified that he had received a phone call at his PCO Phone No.64448803 from the phone of Ravinder, which was provided by his brother-in-law. PW-1 had attended the call. The caller had demanded Rs.25.00 lakhs in lieu of release of his brother, Ajay Pal, and Ravinder. PW-1 had lodged a report with the Police on 16.9.2007. He had narrated the entire facts to the Police. Statement of

PW-1 was recorded as PW-1/A. PW-1 had also provided description of Ashok. PW-1 has also described in his testimony regarding phone calls received by him. PW-1 has also testified that a ransom letter was received at his village by his brother, Devender. The said ransom letter was delivered to the Police, which was seized by the Police vide memo No.PW-1/B, which bears the signature of PW-1 at point A. PW-1 has also testified that a similar letter had been received by the family of Ravinder, which was also seized by the Police vide memo Exhibit PW-1/C, which also bears his signature at point B. The said letters were in the handwriting of Ajay Pal and Ravinder. PW-1 has also testified that on 4.10.2007 Police had got recovered Ajay Pal and Ravinder from Itawah. PW-1 has also identified the both the ransom letters in the Court.

48. PW-1 was cross-examined in detail. We find that although there were some contradictions in his testimony but as far as the main issues were concerned his testimony remained unshaken.
49. PW-2, Sandeep Singh, had deposed that Ravinder, one of the victims, is his maternal uncle and he was residing with him since childhood at Village Dagarpur. PW-2 was one of the persons, who was receiving ransom calls regarding abduction of his uncle, Ravinder. PW-2 has testified that he had received a call at his shop from Prem Chand @ Fauji, who was demanding Rs.25.00 lakhs, which amount was to be delivered at Kachora Ghat, Hanuman Temple. PW-2 was told that in case any information was given to the Police then both (Ajay Pal and Ravinder) would be killed. PW-2 had conveyed this message to his other family members. His maternal aunt, Poonam Verma, also informed that she had received a telephone call of ransom to the same effect. PW-2 has also confirmed that on 16.9.2007 he along with Mahipal, brother of Ajay; Ashok Kumar, brother-in-law of Mahipal; and some other neighbours

visited Police Station Ashok Nagar, and a report was made to the Police on 16.9.2007.

50. PW-2 has further testified with regard to the letter delivered at his house at Village Dagarpur. PW-2 has identified the letter to be in the handwriting of his maternal uncle, Ravinder. On receipt of the letter, PW-2 again contacted the Police. On 19.9.2007 PW-2 was made to hear the voice of Ravinder, who had asked him to accept the demand of the caller and arrange money from all possible means. His maternal aunt, Poonam Verma, also talked to Ravinder. PW-2 also confirmed that a copy of the ransom letter was handed over to the Police. PW-2 has also testified that a similar letter had been received by the brother of victim, Ajay Pal.
51. The testimonies of PW-1 and PW-2 are reliable for the reason that both the witnesses have described in an identical manner in which the ransom calls were made and the ransom letters were received. Both PW-1 and PW-2 also testified the place where the ransom money was to be delivered i.e. at Kachora Ghat, Hanuman Temple. PW-2 has also given a complete description how the instructions of the caller were being followed and how the Police was in constant touch. PW-2 has also given the dates and time when the phone calls were being received.
52. The testimonies of PW-1 and PW-2 stand fully corroborated by the testimony of the victim, PW-5 Ajay Pal, whose testimony we have discussed in paragraphs foregoing and the testimony of and PW-6 Ravinder, who deposed on the similar lines as PW-5.
53. PW-5, Ajay Pal (victim) has testified the manner in which he had met Ashok and how he had accompanied him as his presence was required to assure the wife of Ashok that Ajay Pal was a well-wisher and would help him in connection with business at Delhi, as his wife was not satisfied that Ashok had any connection in Delhi and NOIDA. PW-5 had given a

complete description of how he, Ravinder and the appellant Ashok travelled to Firozabad. He has also corroborated the testimony of PW-1 with regard to the factum of Ashok coming to the shop of PW-1 and enquiring about PW-5. He has also testified how the three (he, Ravinder and Ashok) proceeded for Firozabad by boarding a bus from Anand Vihar at around 3.00 or 3.30 pm and a bus from Etaah. The victim has given a complete description that how he and Ravinder were made to sit on the motorcycle. One motorcycle was being driven by the appellant, Vinod, and the other motorcycle was being driven by Prem chand @ Fauji. PW-5 and Ravinder were made to sit in between on the motorcycle. After eight or nine kilometers 6-7 persons met them. The motorcycles were slowed down and the ignition keys were taken off. One of the persons had put a country made pistol on the temporal region of PW-5. PW-5 has further testified that their eyes were tied with a cloth and hands were tied with a rope. They were taken on foot for a distance. The way was rough and having pits and heights at several places. All the belongings of PW-5 were removed. PW-5 has also testified that he was informed that they were handed over to them by Ashok in lieu of Rs.20,000/-, which was paid as advance. This witness has also given a vivid description of the manner in which he was made to write the ransom letter and the manner in which his hands and eyes were tied. PW-5 identified the ransom letter which was got written by him.

54. PW-5 also identified the appellant, Prem Chand @ Fauji, as the person, who had escorted him on motorcycle along with other associates.
55. PW-6, Ravinder, has corroborated the evidence of PW-5. PW-6 has testified and confirmed that a bus was boarded from Anand Vihar to Etaah and from Etah again bus was taken for Tundia. PW-6 has also testified on the lines of PW-5 with regard to the manner in which he and Ajay Pal

were made to sit in between on the motorcycle. PW-6 has identified appellant, Vinod. PW-6 has also testified the manner in which a country made pistol was put on his temporal rejoin; his hands were tied and eyes were covered; the manner in which the persons were addressing each other i.e. Chotta Fauji, Bada Fauji, Chela Ram, Prem Chand, etc. PW-6 has also identified the letter written by him demanding ransom money for his release. PW-6 has also identified Prem Chand @ Fauji as the person, who had taken them on the motorcycle.

56. PW-7, Poonam, wife of Ravinder Kumar, has also confirmed that she had received a phone call from her husband, who informed her that he would be going to Ferozabad and would return in one or two days. PW-7 had tried to contact her husband but his phone was switched off. PW-7 has testified that she was informed by the phone of Ravinder that he had been abducted. PW-7 has confirmed that she was directed to arrange Rs.25.00 lakhs and also confirmed about the place, being Kachora Ghat, Hanuman Temple, where the money was to be delivered. PW-7 confirmed the manner in which she was threatened that in case Police was informed Ravinder and Ajay would be killed. This witness also confirmed receipt of ransom letter.
57. Based on the testimonies of PW-1, PW-2 and PW-7, being close family members of the victims, and based on the testimonies of PW-5 and PW-6, being the victims, there is no room for doubt to reach the conclusion that the victims, PW-5 and PW-6, were kidnapped for ransom. The victims were put under fear that in case the ransom amount was not paid, they would be killed. Similar threats were extended to the family members of the victims. The victims were made to write ransom letters, which were delivered to their family members. Their testimonies also leave no room for doubt that constant phone calls were being made to their family

members, Rs.25.00 lakhs was being demanded towards ransom and the family members were being threatened that in case Police was informed both, Ajay and Ravinder, would be killed.

58. The witnesses have not made any contradictions with regard to the main issues such as the amount of ransom, the place where the money was to be delivered, the date when the Police was informed, the manner of phone calls and the kind of language used. Similarly both the victims have given an almost identical description about the manner in which they were kidnapped, how they reached Firozabad and then Etah, their further journey on motorcycle, and the manner they were kept with their hands tied and eyes covered. The victims and their family members have also given a consistent description of the ransom letters, which stand duly identified by PW-5 and PW-6, respectively.
59. PW-3, HC Naresh, has testified the manner in which he along with SI Arun Kumar, Inspector Ram Kishore and other Police Staff reached Police Station Matsena, District Firozabad; the manner in which the Police party was divided into two teams consisting of four members in each team; the manner in which Vinod, one of the appellants, was overpowered; about the mobile phones including LG Phone, which belonged to Ravinder, which were recovered from him, and based on the disclosure of Vinod, Ravinder and Ajay were recovered from the forest of Sikora. PW-3 has also proved the arrest memo of Vinod and his personal search, being Exhibit PW-3/C and PW-3/D, respectively. PW-3 has also confirmed that the victims were found tied with ropes and their eyes were also covered with cloth, an identical description given by the victim themselves.

60. PW-3 has also identified the towel, two mobile phones and two rope pieces made of jute, which were used to tie up the victims and the mobile phones used to make ransom calls.
61. We may also notice at this stage that the accused persons had refused to take part in the TIP.
62. Another witness, PW-11, Ashok also testified that that he had received a phone call on 15.9.2007 after confirming that he was brother-in-law (Behnoi) of Ajay, he was informed that Ajay and Ravinder had been abducted and Rs.25.00 lakhs were demanded in lieu of their release.
63. After perusing the judgments referred to in the paragraphs foregoing and taking into consideration the facts and circumstances of the present case as well as the criminality of the offence of the appellants, we are of the considered view that the decision rendered by the learned Trial Court in the present case is just and proper and any interference therein by this Court might cause injustice to the victims of the present case.
64. 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.
65. 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.

G. S. Sistani
G. S. SISTANI, J.

Sangita Dhillon
SANGITA DHINGRA SEHGAL, J.

25th 2
FEBRUARY, 2016 gr/msr