

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.466 of 2012

(Against the judgment of conviction dated 21.02.2012 and sentence dated 22.02.2012 passed in Sessions Trial No. 255 of 2010 / 49 of 2011 by the learned Additional District and Sessions Judge, F.T.C.-I, Aurangabad, arising out of Barun P.S. Case No. 134 of 2009).

Arising out of Barun PS.Case No. 134 Year- 2009 Thana -Barun District- AURANGABAD

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Shiv Nath Paswan S/o Late Udit Paswan, resident of Village- Tenduni, P.S- Mali,
District- Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 260 of 2012

Arising out of Barun PS.Case No. 134 Year- 2009 Thana -Barun District- AURANGABAD

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Gani Singh son of Lakhan Singh, resident of village-Habaspur, Police Station-
Barun, District-Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 295 of 2012

Arising out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

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Ajay Paswan @ Tirwan Paswan S/o Kapil Paswan R/o Vill-Sheikhpura,
P.S.Kutumba, Distt-Aurangabad

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 381 of 2012

Arising Out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

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Satendra Paswan S/o Rameshwar Paswan R/o Village - Shori, Police Station - Mali,



District - Aurangabad (Bihar)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 411 of 2012

Arising out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

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Jai Ishwar Paswan, son of Late Ram Chandra Paswan, resident of village-Baranda,
P.S. Dhibra, District-Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 415 of 2012

Arising out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

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Saroj Pawan @ Saroj Kumar Paswan S/o Kaweshwar Paswan R/o Village-Mali,
P.S.-Mali, Distt-Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 423 of 2012

Arising out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

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Shashi Kumar Chandrawanshi S/o Praduman Singh Resident of Village- Makhra,
P.S- Jamhor, Distt- Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 474 of 2012

Arising out of Barun PS.Case No. -134 Year- 2009 Thana - Barun District- AURANGABAD

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Akhilesh Thakur S/o Fudheshwar Thakur, resident of Village- Maghiyawa, P.S.- Nabinagar, Distt- Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 493 of 2012

Arising Out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

Kashmir Paswan S/o Binay Kumar Paswan, resident of Village- Chankar Kasturi, P.S.- Hussainabad, District- Palamu (Jharkhand)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 494 of 2012

Arising Out of Barun PS.Case No. -134 Year- 2009 Thana -Barun District- AURANGABAD

Ramashish Paswan S/o Naresh Paswan, resident of Village + P.S.- Mali, Distt.- Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (DB) No.466 of 2012)

For the Appellant/s : Mr. Amrendra Kumar Singh, Advocate

For the Respondent/s : Mr. Shivesh Chandra Mishra (APP)

Mr. Ajay Mishra, APP

(In CR. APP (DB) No.260 of 2012)

For the Appellant/s : Mr. Ansul, Advocate

Mr. Rampravesh Nath Tiwari, Advocate

For the Respondent/s : Mr. Mr. Shivesh Chandra Mishra (APP)

Mr. Ajay Mishra, APP

(In CR. APP (DB) No.295 of 2012)

For the Appellant/s : Mr. Ansul, Advocate

Mr. Rampravesh Nath Tiwari, Advocate

For the Respondent/s : Mr. Ajay Mishra (APP)

(In CR. APP (DB) No.381 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate



Mr. Sada Nand Roy, Advocate
For the Respondent/s : Mr. D.K. Sinha (APP)
(In CR. APP (DB) No.411 of 2012)
For the Appellant/s : Mr. Amrendra Kumar Singh, Advocate
For the Respondent/s : Mr. A.K. Sinha (APP)
(In CR. APP (DB) No.415 of 2012)
For the Appellant/s : Mr. Varun Kumar Trivedi, Advocate
Miss Divya Verma, Amicus Curiae
For the Respondent/s : Mr. S. Azeem (A.P.P.)
(In CR. APP (DB) No.423 of 2012)
For the Appellant/s : Mr. Ravindra Kumar, Advocate
For the Respondent/s : Mr. A. Sharma (APP)
(In CR. APP (DB) No.474 of 2012)
For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Sunil Kumar Dubey, Advocate
For the Respondent/s : Mr. S.B. Verma (APP)
(In CR. APP (DB) No.493 of 2012)
For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Sunil Kumar Dubey, Advocate
For the Respondent/s : Mr. Mr. D.K. Sinha (APP)
(In CR. APP (DB) No.494 of 2012)
For the Appellant/s : Mr. Ravindra Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma (APP)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)
Date: 18-12-2017

The present appeals were preferred against the judgment of conviction and sentence dated 21.02.2012 and 22.02.2012 respectively passed in Sessions Trial No. 255 of 2010 / 49 of 2011 by the learned Additional District and Sessions Judge, F.T.C.-I, Aurangabad, arising out of Barun P.S. Case No. 134 of 2009.

2. Since the aforesaid 10 appeals arise out of the same Sessions Trial No. 255 of 2010 / 49 of 2011 as well as out of the common impugned judgment of conviction and sentence dated 21.02.2012 and 22.02.2012 respectively, the same have been heard together and are



being disposed off by the present common judgment.

3. All the appellants of the aforesaid appeals except the appellant Gani Singh (in Criminal Appeal (DB) No. 260 of 2012), have been held guilty for the offences punishable under Section 364A/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and have been imposed fine of Rs. 5,000/- (rupees five thousand) each and in default thereof the accused appellants have been directed to undergo imprisonment of one month each separately. The appellant Gani Singh has been held guilty for the offence punishable under Section 120(B) of the Indian Penal code and sentenced to undergo rigorous imprisonment for life along with a fine of Rs. 5,000/- (rupees five thousand) and in default thereof he has been directed to undergo one month imprisonment.

4. The short facts of the case are on the basis of the fardbeyan of the informant, namely, Jagat Kumar Gupta, recorded by Sub-Inspector of Police Ram Sidheshwar Ajad, Officer In-Charge of Barun Police Station on 20.06.2009 at 9:30 in the night at G.T. Road N.H. 2, Siris Chatti, Barun P.S. Case No. 134 of 2009 was registered under Section 364A/34 of the Indian Penal Code, against unknown accused persons travelling on Marshal bearing Registration No. UP65Y-4583. The case of the informant, namely, Jagat Kumar Gupta is that his father had retired from the Armed Forces Service in the



year 1989 and has got nine bighas land as well as they are three brothers out of whom the informant is the eldest and since 15 years he is staying in the State of Chhatisgarh where he has constructed a house and is running a Kirana shop for livelihood. The informant has further stated that his brother, namely, Raju Kumar Gupta aged about 28 years runs a hardware shop from his house situated at Charan More and the youngest brother of the informant, namely, Rajesh Kumar Gupta aged about 25 years is studying in ITI. It has been stated by the informant that about one week ago when he had come to his house to meet his mother and father, his brother Raju Gupta, on the morning of 20.06.2009, like any other day, went to his shop situated at Charan More while the other two brothers were at their home. At about 7:36 P.M. the younger brother of the informant Rajesh Kumar got a call on his mobile no. 9097160653 from his middle brother, namely, Raju Gupta's mobile no. 9934783270, who was perplexed and was speaking in a fearsome tone amongst lot of people and was saying that he was going to Aurangabad and then he disconnected the phone. The informant and others became perplexed and came out of the house and moved towards the shop situated near the road and on the way met Sudama Sao (P.W. 3) and Dukhan Sao (P.W. 20) as well as Samarjeet Singh (P.W. 4), who were coming running and said that just now i.e. at 7:30 P.M. one golden colour Marshal Jeep bearing registration no.



UP65Y-4583 had come there on which many people were sitting and they on pistol point had made Raju Gupta sit in the Marshal Jeep and when they had tried to resist, they were shown pistol and were told to run away otherwise they would be shot, whereafter they had come here running. It was told that the said people had gone towards Aurangabad. The police administration was informed and the informant by his mobile no. 9937469307 had rang Raju Gupta on his mobile and finally contact could be established at 9:19 P.M., however instead of Raju some other person had picked up the mobile and told him that the bother of the informant was in his custody and if he informed the administration, his brother would be killed. The informant was also told to arrange a sum of Rs.50,000,00 (rupees fifty lakh). I was also stated by the informant that at the time of talking with the accused it seemed that several other accused persons were also present in the Jeep who had captivated the brother of the informant. It was further alleged by the informant that he is sure that several accused persons travelling on Marshal Jeep No. UP5Y-4583, have kidnapped his brother on pistol point for a ransom of Rs. 50,00,000 (rupees fifty lakh). On the basis of the aforesaid fardbeyan of the informant, namely, Jagat Kumar Gupta, a formal FIR was drawn at 10:30 P.M. on 20.06.2009 bearing Barun P.S. Case No. 134 of 2009 under Section 364A/34 of the Indian Penal Code, against



unknown accused persons travelling on Marshal bearing Registration No. UP65Y-4583.

5. The Police had investigated the case and finding the case to be true had submitted charge sheet dated 07.09.2009 against 13 accused persons under Section 364A/34 of the Indian Penal Code, including nine of the aforesaid appellants except Ajay Paswan. It may be pointed out that there are two Ajay Paswan; one Ajay Paswan who is the appellant herein, is son of Kapil Paswan and resident of Sheikhpura while the other Ajay Paswan is resident of village-Shori. The Police had further submitted a charge sheet dated 24.11.2009 against Ajay Paswan (the appellant herein) under Section 364A/34 of the Indian Penal Code.

6. After completion of supply of police papers the case was committed to the Court of Sessions on 14.10.2009 and the charges were framed on 28.06.2010 against Ajay Paswan, appellant herein and against the rest of the aforesaid appellants on 10.02.2011 under Section 364A/34 of the Indian Penal Code.

7. During the course of trial, the prosecution produced 23 witnesses to prove its case while the defense had also produced two defense witnesses. The informant of this case is P.W. 5, namely, Jagat Kumar Gupta, P.W. 18 i.e. Raju Kumar Gupta is the victim, P.W. 3 Sudama Sao and P.W. 4 Samarjeet Singh are the co-villagers and have



been examined as eye-witness to the occurrence. P.W. 20 Dukhan Sah is also a co-villager and P.W. 19 i.e. Ajay Kumar Sharma has signed the test identification chart of the articles. P.Ws. 1 and 2, namely, Binod Kumar Singh and Mukesh Ranjan have been declared hostile, P.W. 21 i.e. Ram Sidheswar Ajad is the Investigating Officer of the present case. P.W. 6 Shabbir Ahmad is the Inspector of Police, P.W. 7 Shri Niwas Ram is Police Constable who was posted at Barun Police Station. P.W. 8 i.e. Raj Kumar Tiwary was posted as S.H.O. Aurangabad Muffasil Police Station, P.W. 9 i.e. Priya Ranjan Raju was posted as B.D.O. Barun, P.W. 10 is Kanhaiya Singh who was posted as S.H.O. Nabi Nagar Police Station, P.W. 11 is Aman Kumar who was posted as Police Inspector, Nabi Nagar Circle, P.W. 12 is Ram Kumar Singh who was posted as Sub-Inspector of Police at Barun Police Station, P.W. 13 is Vijay Bahadur Singh who was posted as S.I., Amba Police Station, P.W. 14 is Kanhiya Gupta who is a constable of Barun Police Station and P.W. 17 i.e. Uday Shankar was posted as S.H.O., Kutumba Police Station. The brother of the informant, namely, Rajesh Kumar Gupta has been examined as P.W. 15 and P.W. 22 i.e. Shiv Pujan Thakur had signed the test identification chart while P.W. 23 i.e. Umesh Singh is a seizure list witness. Shri Upendra Kumar the then Judicial Magistrate had recorded the statement of the victim Raju Kumar Gupta and the



Informant Jagat Kumar Gupta and he has been examined as P.W. 16.

8. The defence witnesses are D.W. 1 i.e. Mukesh Kumar and D.W. 2 i.e. Vinod Kumar Singh who in fact are P.W. 2 and P.W. 1 and who had turned hostile.

9. Shri Ansul, learned counsel for the appellants Gani Singh and Ajay Paswan @ Tirwan Paswan, son of Kapil Paswan, resident of Sheikhpura, Kutumba has submitted that both the said appellants are innocent and they are neither one of the six accused persons, who were apprehended from the Marshal vehicle nor one of the four accused persons who were arrested from the house situated at Baranda from where the victim was recovered. It is further submitted that there is no material to connect the said two appellants with the alleged occurrence. It is also contended that no material whatsoever has come during the course of the evidence, as against them beyond pale of all reasonable doubt. Moreover, both the said appellants have also not been identified by anyone of the police personnel, hence the presumption of innocence.

10. Shri Vikram Deo Singh, learned counsel appearing for the appellants Satendra Paswan, Akhilesh Thakur and Kashmir Paswan has contended that as far as appellant Satendra Paswan is concerned, his case is similar to the case of the aforesaid two appellants inasmuch as he is neither one amongst the six arrested from the Marshal vehicle



nor one of the four arrested from the place from where victim was recovered. It is further contended that as far as Satendra Paswan is concerned, no material whatsoever has come in the evidence against him so as to prove his guilt beyond all reasonable doubt. It is further submitted that as far as appellants Akhilesh Thkur and Kashmir Paswan are concerned, it has been alleged that they were arrested at Kutumba from Marshal vehicle and mobile was recovered from the appellant Kashmir Paswan. The mobile phone of the victim as well as his keys are said to have been recovered from the six apprehended accused persons, however, the victim has not been confronted with the seized articles as well as the victim has not been asked to identify the seized articles, hence the Test Identification chart being not a substantive piece of evidence, cannot be relied upon and, therefore, the genuineness of the seized articles is itself doubtful. It has been further contended that the tower location has not been proved in as much as C.D.R. (Call Detail Record) has not been exhibited. It is also stated that the case of the victim, as made out in his statement under Section 164 Cr.P.C. and his evidence is different from the confessional statement of the accused. It has also been argued that it cannot be said that the victim was recovered on the confessional statement of the accused persons. Moreover, the Police had not taken any pain to ascertain as to who were the owner of the Marshal vehicle,



hence the presumption would be that no vehicle was actually apprehended and further the victim has not identified the vehicle as well. It has also been argued that the statement of Uma Shankar, P.W. 17, Officer In-Charge of Kutumba Police Station, especially paragraph no. 1 thereof, would show that when he received information on mobile that one person had been kidnapped by golden colour Marshal vehicle, he had not disclosed the registration number, however, in the FIR it is mentioned that the informant was knowing the registration number of the Marshal vehicle, hence the entire FIR is concocted. It has also been stated that no Test Identification Parade was held so that the identity of the kidnappers could be ascertained. Further, it has been stated that the victim has identified only one kidnapper. Moreover, the learned counsel has contended that the substantive evidence is identification of the accused persons in the Court, however, the victim has failed to identify the kidnappers. It has also been stated that though the confessional statement was recorded at mid-night, the recovery was made in the morning at 6:00 A.M. belatedly which also casts doubt about the veracity of the case of the prosecution. Moreover, the accused have also not been identified by the victim and as far as the Test Identification Parade of articles is concerned, the same is inadmissible. It has also been contended that the FIR was sent belatedly to the Court which also casts a doubt on



the veracity of the allegations as leveled by the prosecution. Lastly, it has been contended that the number of the mobile which was seized is said to be 9661276513 whereas the mobile number from which the victim was ringing, has been mentioned in the FIR to be 934783270, hence the entire occurrence becomes doubtful in as much as in absence of the mobile number from which the victim was ringing, the tower location could not have been ascertained, hence the entire incident has been fabricated and the appellants have been falsely implicated. The learned counsels for the other appellants have adopted the arguments advanced by the aforesaid two Ld. Counsels and made submission on similar lines as above-mentioned.

11. Mr. Ajay Mishra, learned counsel for the appellants has contended that the present case is a clear case of kidnapping by the appellants and on account of prompt action by the Police, the accused persons were arrested and kidnapped person was recovered. It is further submitted that the evidence led by various witnesses on behalf of the prosecution are consistent and as far as the six accused persons apprehended from the Marshal vehicle and four accused persons arrested from the place from where the victim was recovered are concerned, there is no dearth of evidence and all the witnesses are consistent in their deposition against the said accused persons as well as they have been identified by most of the witnesses in the dock and



no dispute has been raised by the defence as far as the identification of the accused in the dock is concerned and the same have been waived by them, hence there is no doubt that the allegations leveled against the appellants have been proved beyond pale of all reasonable doubt.

12. At this juncture, it would be relevant to discuss the evidence led by the prosecution.

13. P.W. 5 is Jagat Kumar Gupta who is the informant of this case and he has stated in his evidence that on 20.06.2009 at about 7:30 in the evening he was sitting in his house along with his father and in the meantime, one of his middle brother Raju Kumar Gupta called on the mobile of his younger brother Rajesh Kumar Gupta and the voice was jittery. Thereafter, the younger brother of the informant namely, Rajesh came running out of the house and told them that the voice of Raju was not clear and he seemed to be perplexed. After five minutes, the younger brother of the informant rang on his mobile and told him that he has been told by Sudam Sao and Samarjeet Singh that some people have taken away Raju in a Marshal vehicle. Thereupon all the family members and people of the Mohalla reached at the place of occurrence where Sudama Sao and Samarjeet Singh told that Raju has been kidnapped by the kidnappers and then all the people present there went to the shop being run by Raju and also rang the Police. After half an hour the Police came there and the Police Officer was



told about the occurrence. The Police Officer took the mobile no. of P.W. 5 and his brother for giving information. It has been stated by the informant that he was regularly trying to contact Raju on his mobile and at about 9:30 in the night, contact could be established with the mobile of Raju, however, somebody else was speaking and he told that his brother was in their custody and they should make arrangement of a sum of Rs. 50,000,00/- (rupees fifty lakh), as well as he warned that in case they contacted the Police, Raju would be killed. P.W. 5 also identified his signature on the fardbeyan and the same was marked as Exhibit-2. P.W. 5 has further stated that on the next morning i.e. on 21.06.2009 at about 6:00 A.M. Raju Gupta was recovered from a small house situated in the Jungle near Baranda and the appellant Shiv Nath Paswan was also apprehended from there along with 2-3 other persons, whom P.W. 5 does not recognize. Thereafter, the brother of P.W. 5 along with other accused persons was brought to Kutumba and subsequently he was freed. The Police force had also recovered one country made pistol and bullets. From paragraph no. 3 of the examination-in-chief of P.W. 5, it is clear that he had recognized only Shiv Nath Paswan but he could not recognize the other accused persons. In paragraph no. 11 of his cross-examination, P.W. 5 has stated that after recovery of his brother, his statement was recorded under section 164 Cr.P.C. before the Judicial



Magistrate. P.W. 5 has identified the signature made on the said statement and the same has been marked as Exhibit-4/3.

14. P.W. 18 i.e. Raju Kumar Gupta is the victim of this case and he has stated in his evidence that the occurrence dates back to 20.06.2009 at about 7:30 P.M. when he had closed his shop and was going to his home and when he reached north of the G.T. Road, one Marshal vehicle came and went ahead whereafter it came back towards him and stopped. From the Marshal vehicle 5-6 persons alighted and stuck a pistol on his head and told him to sit in the vehicle upon which he asked as to where he was being taken, however, the accused persons forcefully made him sit in the vehicle and tied a towel around his eyes. The accused persons told him that Gani Singh had informed them that his father has 50 bigha of land. Thereafter, the accused persons asked P.W. 18 about the phone number of his brother whereupon he told them that the number of his brother was saved in his phone by the name of Rajesh Gupta. The accused persons then rang his brother from the mobile of P.W. 18 and asked P.W. 18 to tell his brother that he was going to Aurangabad and it would take an hour whereafter P.W. 18, as asked by the accused persons, had informed his brother while crying. After some time, the accused persons stopped the vehicle and told P.W. 18 to again ring his brother and tell him not to inform the Police otherwise they would kill



him as well as asked him to tell his brother to arrange for Rs. 50,000,00/- (rupees fifty lakh). The accused persons had then snatched the mobile phone and Rs. 4,000/- from P.W. 18 and had captivated him in one house, where also his eyes were closed. In the morning, P.W. 18 was permitted to attend to natural call and then he was shut in the room. The Police had come in the morning and had opened the door and recovered P.W. 18 where the accused persons were also caught and he along with the accused persons, who had been apprehended there, were taken to the Police Station. P.W. 18 has further stated that he was kept by the accused persons in the house of some Paswan, however, he does not remember his name. P.W. 18 recognized Jai Ishwar Paswan, standing in the dock, as the person to whose house he was taken by the accused persons. However, he did not recognize any other accused persons present in the dock. P.W. 18 has also stated that after he was recovered by the Police, he was produced before the Magistrate and his statement was recorded under Section 164 of the Cr.P.C. P.W. 18 in paragraph no. 4 of his cross-examination has stated that in the morning when darkness had cleared, he had seen Jai Ishwar. He has further stated in his cross-examination that since his eyes were closed he could not recognize the accused persons till he was taken out of the house for easing out. In paragraph no. 5 of his cross-examination, this witness has stated that he



recognized one of the accused persons and no T.I. Parade was held. He has also stated that his eyes were tied by cloth till the Police had come. In paragraph no. 6 of his cross-examination, P.W. 18 has stated that except one person he does not recognize any other accused persons.

15. P.W. 3 is Sudama Sao who is a co-villager and he has stated in his evidence that the occurrence relates to one and a half year back at about 7:30 in the evening while it had become dark and he was going to his house after closing his shop when one Marshal vehicle had come there. Samarjeet Singh and one other relative were walking behind P.W. 3 and Raju Gupta was walking ahead at a distance of about 20-25 feet when the Marshal vehicle reached near Raju Gupta whereafter he was forced to sit on the vehicle and the vehicle went away. Thereafter, on the way brother of Raju, namely, Rajesh, met P.W. 3 and he told him that one person has been taken away, however, he does not know as to who was in the Marshal vehicle. P.W. 3 did not recognize any person standing in the dock. In paragraph-2 of his cross-examination, P.W. 3 has stated that Gani Singh is resident of his neighboring village.

16. P.W. 21 i.e. Ram Sidheshwar Ajad is the Investigating Officer of the present case as well as was posted as S.H.O., Barun Police Station at the relevant time. He has stated in his evidence that



on 20.06.2009 he was posted as Officer In-Charge, Barun Police Station and on that day at about 7:45 P.M. while he was at the Police Station, he received information on his official mobile phone that from village Siris one Raju Gupta has been kidnapped by the kidnappers by means of golden color Marshal at about 7:30 in the evening and the accused have fled away towards Aurangabad. P.W. 21 had then gone towards the place of occurrence i.e near G.T. Road, Siris chatti, with his police force and after reaching there he found that many people were standing there including Jagat Gupta. Jagat Gupta and other persons present there told him that at about 7:30 P.M. Raju Gupta was kidnapped by the kidnappers by Marshal vehicle bearing Registration No. UP65Y-4583 and the kidnappers have fled towards Aurangabad. The mobile number of the kidnapped Raju Gupta was disclosed as 9934783270 and that of Jagat Gupta was stated to be 9937469307. In the presence of P.W. 21 phone call was made to the mobile number of Raju Gupta by Jagat Gupta and upon connection having been made somebody from the other side told to give Rs. 50,000,00/- and warned not to inform the Police otherwise Raju would be killed. P.W. 21 had rang the Superintendent of Police and sought location of the kidnappers and in the meantime he had recorded the fardbeyan of Jagat Gupta at about 9:30 P.M. P.W. 21 identified the fardbeyan, which is in his handwriting and he further



identified the signature of Jagat Gupta. P.W. 21 had identified the signature of brother of Jagat Gupta namely Rajesh Gupta who had also made his signature on the fardbeyan and the same was marked as Exhibit-5. The endorsement on the fardbeyan was made by P.W. 21 in English which he had recognized and the same was marked as Exhibit-5/1. In the meantime, P.W. 21 received message from the Superintendent of Police that the location of the aforesaid mobile was at Satgawan in Sector-2 under Kutumba Police Station whereafter the Officer In-Charge of Kutumba Police Station was informed for the purposes of apprehending the kidnappers and recovering the kidnapped victim. P.W. 21 had then recorded the statement of Rajesh Gupta and inspected the place of occurrence as well as recorded the statement of Samarjeet singh and Dukhan Sao and then went to the Police Station and registered formal FIR at 10:35 P.M. which has been identified by him and has been marked as Exhibit-6. P.W. 21 had then received information that the vehicle number UP65Y-4583, on which six people were travelling under suspicious circumstances, has been apprehended at village Datpa, Nabi Nagar, Amba and he was told to reach there immediately. P.W. 21 had reached at that place and found the vehicle along with six accused persons and in the presence of two witnesses search was made and from the accused persons, namely, Kashmir Kumar Paswan, Ramashish Paswan, Sujit Paswan,



Akhilesh Thakur and Shashi Kumar Chandravanshi, mobile phones, SIM, cash and key ring were recovered whereafter seizure list was prepared which has been identified by P.W. 21 and the same has been marked as Exhibit-7. Out of the seized articles, Jagat Gupta, brother of the kidnapped person, recognized mobile and key ring as those belonging to his brother Raju Gupta. Thereafter, the said accused persons were arrested and they had gone to Amba Police Station where the said six accused persons were interrogated separately and they accepted their crime as well as their confessional statement was recorded. From the confessional statement of the said accused persons it transpired that all of them have conspired together and kidnapped Raju Gupta and had kept him at village Baranda, Dibra Police Station under the watch of Saroj Paswan and Ajay Paswan. P.W. 21 had then collected his force and along with reserve armed forces and C.R.P.F., had proceeded for conducting raid for recovering the kidnapped person and then had reached at village Baranda and in presence of two independent witnesses the house of Jai Ishwar Paswan was surrounded whereupon it was seen that four accused persons were running away whereafter they were apprehended and their names are Jai Ishwar Paswan, Ajay Paswan, Saroj Paswan and Shiv Nath Paswan. Thereafter, search was made and from the apprehended accused persons, one revolver and two live cartridges, two loaded



pistol and two mobiles were recovered. From inside the house of Jai Ishwar Paswan, kidnapped Raju Gupta was recovered. Then the list of seized articles were prepared in presence of the witnesses and a seizure list was prepared which P.W. 21 has identified. Two seizure list were prepared. The seizure list regarding pistol, cartridge and revolver was made separately. The seizure list of mobile was made separately which is in the writing of P.W. 21 and he has identified the same and the same has been marked as Exhibit 7/1. At that place the confessional statement of Ajay Paswan was recorded whereafter the statement of the police personnel were recorded and then they proceeded to the police station along with the accused persons, kidnapped person and the seized Marshal. Thereafter, Satendra Paswan was arrested from village Sori and Ravi Shankar was also arrested whereafter P.W. 21 along with the said four accused persons, seized articles, seized Marshal and the kidnapped person reached Barun police station. On 22.06.2009, for the purposes of producing 12 accused persons before the Chief Judicial Magistrate, appropriate steps were taken. A petition was then given by P.W. 21 for recording the statement of the recovered Raju Gupta under Section 164 Cr.P.C. and the same has been identified by P.W. 21 and has been marked as Exhibit-8. Thereafter, the statement of Jagat Kumar Gupta was recorded under Section 164 Cr.P.C. P.W. 21 had also given petition



for Test Identification of the seized articles before the Chief Judicial Magistrate, which has been identified by him and has been marked as Exhibit-8/1. In compliance to the direction of the Chief Judicial Magistrate, the Block Development Officer, Barun had conducted the Test Identification Parade of the seized articles. P.W. 21 had sent the SIM recovered from the accused persons for taking print out and finding out the address of the owner to the Airtel officials along with a petition and had then obtained the print out and on the basis of the same location was obtained of the place of occurrence. P.W. 21 also obtained the location of the place of occurrence from the mobile of the accused Ramashish Paswan, Kashmir Paswan and Saroj Paswan at the time of occurrence and the print out was taken on which mark has been made and the same was recorded in paragraph-90 of the case diary. P.W. 21 had then filed charge sheet against 13 accused persons including the appellants herein finding the allegations to be true. P.W. 21 has identified all the accused persons sitting in the dock. It has also been stated that Gani Singh had surrendered afterwards. P.W. 21 has also stated that the accused Satendra Paswan was arrested from his house. In paragraph-4 of his cross-examination, P.W. 21 has admitted that Ajay Paswan of village Sheikhpura was neither seen in the Marshal Jeep nor was arrested from there and he was never put on Test Identification Parade as well as nothing incriminating was



recovered. It has also been stated that the kidnapped Raju Gupta and his brother Jagat Kumar Gupta had not taken the name of Ajay Paswan of village Sheikhpura either before P.W. 21 or before the Chief Judicial Magistrate. In paragraph no. 6 of his cross-examination, P.W. 21 has stated that in the confessional statement of Ramashish Paswan, the name of Gani Singh had come as one of the conspirator. In the confessional statement of Akhilesh Thakur also the name of Gani Singh had come as a conspirator. In the confessional statement of Ajay Paswan also the name of Gani Singh had come. In paragraph no. 10 of his cross-examination, P.W. 21 has stated that mobile number 9661276513 was verified from the Airtel which is at Enclosure-60. In paragraph no. 12 of his cross-examination, P.W. 21 has stated that the accused Ramashish Paswan, Akhilesh Thakur and Ajay Paswan, son of Naresh Paswan had admitted their crime and their confessional statement was also recorded which has been identified by P.W. 21 and has been marked as Exhibit-12, 12/1 and 12/2.

17. P.W. 17 is the S.H.O. of Kutumba Police Station namely Uday Shankar. He has stated in his evidence that on 20.06.2009 while he was posted as Officer In-Charge of Kutumba Police Station, at about 8:00 P.M. in the night he received information from the Control Room as well as from the Officer In-Charge of the Barun Police



Station that under the Barun Police Station, in between Charan More and Siris village, one Raju Gupta has been kidnapped by golden color Marshal vehicle. Thereafter, P.W. 17 had left for investigation at the suspected places and then the Officer In-Charge of the Barun Police Station told him that the tower location of the mobile being used by the criminals is on the south-eastern side of Sector-2 of Satgawan. P.W. 17 had then started searching vehicles and when he reached Datpa, one golden color Marshal Jeep bearing Registration No. UP65&-4583, which was coming from Amba, was stopped and search was made. On this vehicle six persons were sitting and when their names and addresses were asked, there were contradictions, hence suspicion arose whereafter the Officer In-Charge of Barun P.S. was intimated at about 11:00 P.M. in the night. The Officer In-Charge of Barun P.S. along with the family members of the kidnapped person reached there and then search of the said suspected persons was made and one mobile and keys belonging to the kidnapped person was recovered which was recognized by the family members of the kidnapped person and they started crying. The kidnapers had then accepted their guilt and they were taken to Amba police station where they gave their confessional statement and told that they were informed by one Gani Singh, who runs hotel near the shop of the kidnapped person and then this crime was committed and the



kidnapped person was kept at Baranda village. Thereafter, the raiding party had gone to Baranda and from one house situated in an isolated area towards south of brick kiln, three accused persons were apprehended as well as the kidnapped person Raju Gupta was recovered and from the accused persons one revolver and two country made pistol was recovered. Thereafter, the kidnapped person and the accused persons were brought to the Police Station. Raju Gupta had also identified all the accused persons who had participated in the occurrence and said that all the people were present in his kidnapping. In paragraph no. 2 of his cross-examination, P.W. 17 had recognized all the accused persons except one person who was wearing green kurta and upon asking the name of the said accused person bearing green kurta, he disclosed his name as Gani Singh. In paragraph-4 of his cross-examination, P.W. 17 has stated that six accused persons were arrested from Marshal Jeep and three accused persons were arrested along with the kidnapped person whose name have been disclosed in the confessional statement. In paragraph no. 5 of his cross-examination, P.W. 17 has stated that Ramashish Paswan, Akhilesh Thakur and other accused standing in the dock, have disclosed the name of Gani Singh. P.W. 17 has admitted that he had arrested all the six suspects as well as he was involved in search and seizure of the articles. In paragraph-9 of his cross-examination, P.W.



17 has stated that he had told the Investigation Officer that the kidnapped Raju had recognized the kidnapers and told him that the said accused persons had kidnapped him. P.W. 17 had also stated that the key ring which was recovered from the kidnappers was recognized by the family members of the kidnapped person and then they had started crying. He also stated that mobile was also recovered.

18. P.W. 6 is Shabir Ahmad who on the date of occurrence i.e. 20.06.2009 was posted in the Muffasil Police Station at Aurangabad as Inspector of Police. On the said date he received information at about 7:45 A.M. that Rajiv Gupta has been kidnapped from Charan More whereafter he proceeded to the place of occurrence and at the place of occurrence he met the Officer In-Charge, Barun P.S. and other police personnel. He also met the brother of the kidnapped person namely Jagat Gupta. From the place of occurrence, P.W. 6 had contacted the Control Room and obtained the mobile location of the kidnapped person and the location was found nearby the tower situated at Satgawan under the Kutumba police station. On the basis of the information received as well as the information regarding Marshal vehicle bearing Registration No. UP65Y-4583 being used in the said crime, P.W. 6 along with other police officials proceeded and on the way the Officer In-Charge, Kutumba Police Station informed that Marshal vehicle with six people sitting in it has been



apprehended. After sometime, P.W. 6 along with his companions had reached there and saw that six accused persons along with the Marshal vehicle had been apprehended and from their possession six mobile phones, five SIM, one key ring and a sum of Rs. 5560/- was recovered. Out of the seized mobiles one of the mobile was identified by the brother of the kidnapped person and he said that the said mobile and the key ring belonged to them. Upon enquiry from the apprehended accused persons, it transpired that the kidnapped person has been kept at the house of Jai Ishwar Paswan situated at village-Baranda under Dibra police station. P.W. 6 along with his companions and Officer In-Charge, Kutumba Police Station as well as with the Inspector of Police, Nabi Nagar reached Baranda village and from the isolated house of Jai Ishwar Paswan situated in the jungle, the kidnapped person was recovered and Saroj Paswan, Shiv Nath Paswan and others were arrested, from whose possession one revolver, two loaded pistol were seized. The revolver was also loaded. Mobile was also recovered. The seized arms were handed over to the Office In-Charge, Dibra Police Station for registration of a case under the Arms Act. P.W. 6 identified all the persons standing in the dock as more or less the persons who had been arrested. The said accused persons who were identified by P.W. 6 disclosed their names as Saroj Paswan, Shashi Kumar Chandravanshi, Shiv Nath Paswan, Ajay



Kumar Paswan @ Trivan Paswan, Satendra Paswan, Akhilesh Thakur, Kashmir Kumar, Jai Ishwar Paswan and Ramashish Paswan. In paragraph-3 of his cross-examination, P.W. 6 has stated that at the time when he got the location he was at the place of occurrence at Charan More and the location was received over the phone. The evidence of location was printed out. The place where the location was received, at that place the brother of the kidnapped person as well as 1-2 other people were there. The people present there had not disclosed the name of anyone but had told about the description of the kidnappers and had also disclosed the number of vehicle. In paragraph no. 4 of his cross-examination, P.W. 6 has stated that they had proceeded in the direction towards which the location was received and the kidnappers had already been caught 2-3 minutes before they had reached there. P.W. 6 has also stated that location was told by them. In paragraph no. 6 of his cross-examination, P.W. 6 has stated that Shiv Nath Paswan, Satendra Paswan and Saroj Paswan had been arrested along with the kidnapped person. In paragraph no. 9 of his cross-examination, P.W. 6 has stated that it is not a fact that he has wrongly identified Shiv Nath Paswan.

19. P.W. 7 i.e. Shri Nivas Ram was posted at Barun P.S. on 20.06.2009. P.W. 7 has stated in his evidence that while they were on a routine patrol and when they reached near Keshav More then



through wireless they came to know that one boy has been kidnapped from Siris More. They reached at that place and Sidheshwar also reached at that place, where they came to know that one boy with the name of Gupta Jee had been kidnapped by one light yellow Marshal. In the meantime, the brother and family members of the kidnapped person also reached there. On the mobile phone of the brother of the kidnapped person, message had come to pay a sum of Rs. Five lakh and not to inform the Police. This message was heard by everyone whereafter all in the district were informed on wireless and then they had proceeded towards the way where the kidnappers had fled away. The Officer In-Charge of Kutumba Police Station had put checking at the More and informed that one Marshal vehicle was there in which six people were sitting and then P.W. 7 and others reached there where the Officer In-Charge of the Kutumba Police Station and others took the kidnappers and came to Amba Police Station. Thereafter, the kidnappers were searched and mobile phone, key ring etc. were recovered. Amongst the seized articles, the mobile phone and key ring of the kidnapped person was also present. The brother of the kidnapped person was present there and he identified the mobile and key ring. The kidnappers who were apprehended told that at Siris Road, shop of some Singh is situated and on his information they had engaged in kidnapping. Upon being asked, the kidnappers disclosed



that the kidnapped person has been kept in some village under the Dibra Police Station where P.W. 7 and others had gone and found that the kidnappers were sitting with the pistol pointed at the kidnapped person. The kidnappers were arrested and brought to the Barun Police Station. P.W. 6 identified Akhilesh Thakur, Kashmir Kumar, Saroj Paswan and Gani Singh in the dock. In paragraph no. 3 of his cross-examination, P.W. 7 has stated that Gani Singh was not in the vehicle. P.W. 7 has also stated that when he along with others had raided the house of Gani Singh then he had seen the photograph of Gani Singh hanging there and his family members had said that the said photograph was of Gani Singh and on the said basis he recognized Gani Singh. In paragraph-6 of his cross-examination, P.W. 7 has stated that he had taken the accused persons, whom he has recognized, after making them sit in the car.

20. P.W. 8 is Raj Kumar Tiwary who was posted as Officer In-Charge, Muffasil Thana, Aurangabad on 20.06.2009. P.W. 8 has stated in his evidence that while he along with others were sitting in the Police Station, at about 7:45 in the evening, information was received that at Siris More, one person has been kidnapped and thereafter checking was directed. The Inspector of Police of Muffasil namely Shabir Ahmad was also present there and P.W. 8 along with him and police force reached the place of occurrence while



conducting checking. While information was being collected, P.W. 8 and others came to know at about 9:45 P.M. that the kidnappers had rang from the mobile of the kidnapped person and had contacted his brother. Thereafter, the Inspector of Police immediately contacted the Superintendent of Police and after the Superintendent of Police made technical investigation, he told that the location of the mobile used by the kidnappers is situated at Kutumba and thereafter the Officer In-Charge of the Kutumba Police Station was given direction to conduct checking. P.W. 8 and others also left for Kutumba. Immediately thereafter the Kutumba Police Station informed that one golden color Marshal had been apprehended in which six suspects were sitting and since the golden color Marshal was used in the crime, it appears that the said persons were the kidnappers. Thereafter, P.W. 8 and others including the Police Inspector, Barun Police Station reached at the road in front of Dapta and during the course of checking, mobile phone, SIM and key ring etc. were recovered from the suspects. In the meantime, the brother of the kidnapped person arrived there and identified the key ring and the mobile as the one belonging to the kidnapped person. Thereafter, the articles were seized and the arrested people were brought to Amba Police Station and upon enquiry the accused persons told that the kidnapped person has been kept at the house of Jai Ishwar Paswan at Dibra. Since the said area is Naxal



affected area, a raiding force was legally constituted and thereafter the house of Jai Ishwar Paswan was surrounded whereupon four persons started fleeing away and they were arrested by the police force and then the kidnapped person was recovered from the house of Jai Ishwar Paswan. Upon the search of the accused persons two loaded pistol and one revolver in which two cartridges were loaded, were recovered and the seizure list was prepared. P.W. 8 had recognized all the persons standing in the dock as accused who had committed the crime except the accused Gani Singh. In paragraph no. 4 of his cross-examination, P.W. 8 has stated that the accused Saroj Paswan, Ajay Paswan, Jai Ishwar Paswan and Shiv Nath Paswan were arrested from the place from which kidnapped person was recovered. In paragraph no. 5, P.W. 8 has stated that Ajay Paswan, whom he has recognized, is the one who is resident of Sori village. In paragraph no. 6 of the cross-examination, P.W. 8 has stated that the accused persons were arrested from the place from where the kidnapped person was recovered and they are present in the dock and he has disclosed the name of the said four person hereinabove. In paragraph no. 8 of his cross-examination, P.W. 8 has stated that the suspects had disclosed at Amba Police Station that the kidnapped person was sent with three accused persons to stay at the house of Jai Ishwar. In paragraph no. 9 of his cross-examination, P.W. 8 has stated that it is not a fact that the persons



whom he has recognized today, were not present in the occurrence of kidnapping.

21. P.W. 9 is Priya Ranjan Raju who was posted as Block Development Officer, Barun Block on 28.06.2009 and he had got conducted the Test Identification Parade of the articles on the said day. He has identified the Test Identification chart which has been exhibited as Exhibit-3. He has stated that the witnesses are Ajay Sharma and Shiv Pujan Thakur. He has also stated that the articles were identified by Raju Kumar Gupta who had identified the articles in the presence of Ajay Sharma and Shiv Pujan Thakur.

22. P.W. 10 is Dina Nath Singh who was posted as Officer In-Charge of Nabi Nagar Police Station on 20.06.2009 and on the said day at about 8:00 P.M. he received information from the Police Control Room at Aurangabad that one person namely Raju Gupta has been kidnapped from Siris Chatti under Barun Police Station and he has been taken on one Marshal vehicle by the accused persons who have gone towards Aurangabad. On this information, P.W. 10 had put checking under his jurisdiction and after some time he received information that one Marshal vehicle had been apprehended under the area falling within Kutumba Police Station, from which six persons have been arrested in a suspicious manner. Thereafter, permission was taken from the higher officials along with C.R.P. Forces and along



with Inspector Aman Kumar and they had gone to Amba Police Station where many police personnel were also present. From there preparation was made for conducting raid at the place disclosed by the accused persons where the kidnapped person had been kept and thereafter, they raided at Baranda village at about 05-06:00 A.M. in the morning and four accused persons were apprehended and the kidnapped person was recovered. Pistol and cartridges were also recovered from the accused persons and then they had come back with the accused persons and the kidnapped person. The accused persons and the kidnapped person were taken to Barun Police Station. This witness recognized Akhilesh Thkaur and Shiv Nath Paswan standing in the dock as well as he recognized other accused persons, however, on the point of identification of the accused persons, no objection was raised. In paragraph no. 2, P.W. 10 has stated that he has recognized six persons since they were apprehended from the vehicle and he also recognizes four persons who had been apprehended along with the kidnapped person. P.W. 10 has further stated that he properly recognizes all the accused persons. In paragraph no. 5 of his cross-examination, P.W. 10 has stated that the accused persons were kept in the lock-up of Amba Police Station. In paragraph no. 7 of his cross-examination, P.W. 10 has stated that in the dock those accused persons are also present who were caught at Baranda along with the



kidnapped person.

23. P.W. 11 is Akhileshwar Rai who was posted as Inspector of Police, Nabi Nagar Circle on 20.06.2009 and he has stated in his evidence that in the night at about 8:00 P.M., he got information from the Police Control Room that one person namely Raju Gupta had been kidnapped from Siris Road near G.T. Road by a Marshal vehicle. He further came to know that six accused persons have been apprehended while proceeding on a Marshal vehicle along with the mobile phone, key ring and it was being said by them that the kidnapped Raju Gupta has been hidden in some village on the border of Dibra-Amba in the house of some brother-in-law of the accused persons. P.W. 11 has further stated that he along with Officer In-Charge, Nabi Nagar and C.R.P.F. reached Amba and found that six accused persons had been apprehended and one golden color Marshal vehicle, key ring and mobile set had been seized. The apprehended accused persons were saying that they had kidnapped Raju Gupta and he had been kept at house of some brother-in-law of accused persons at Baranda village at Dibra-Amba border. He further stated that accused persons disclosed that kidnapped person had been kept at house of some Paswan. Thereafter, raid was conducted at the said place from where the kidnapped person Raju Gupta and four accused persons were apprehended. From the accused persons, two country made pistol, one



loaded country made revolver and two cartridges were recovered whereafter seizure list was made in accordance with law. The confessional statement of the accused persons was also recorded and the accused persons had disclosed the name of their accomplices. In paragraph no. 2, P.W. 11 has stated that all the accused persons who were apprehended are present in Court and he recognizes them. He has further clarified that he can recognize all those accused persons who were arrested along with the Marshal vehicle as well as along with the kidnapped Raju Gupta. In paragraph no. 4 of his cross-examination, P.W. 11 has stated that apart from the six accused persons who were apprehended from the Marshal and four accused persons who were caught along with the kidnapped person, he does not recognize any other accused person. In paragraph no. 7 of his cross-examination, P.W. 11 has stated that he can recognize all the accused persons present in the dock and he also recognizes them. In paragraph no. 8 of his cross-examination, P.W. 11 has stated that the name of the owner of the house on which raid was conducted, is Shiv Nath Paswan, who is standing at the back in the dock.

24. P.W. 12 is Ram Kumar Singh who was posted as Sub-Inspector of Police at Barun Police Station on 20.09.2009. P.W. 12 has stated in his evidence that on the said day he had gone for patrolling along with his reserve guards and in the night at about 8:00



P.M., the Officer In-Charge, Barun Police Station, informed him that one Raju Gupta had been kidnapped from Charan Mahadeva Road-Siris Road, hence, he should reach the place of occurrence while conducting checking on the way. P.W. 12 then while conducting checking reached at the place of occurrence where the Officer In-Charge got information about the location being situated at Kutumba-Hariharganj and thereafter, they proceeded towards Hariharganj. As soon as they proceeded from Aurangabad, the Officer In-Charge, Kutumba Police Station, namely, Uday Shankar informed him on mobile that one golden color Marshal Jeep with six persons has been apprehended in suspicious condition. Thereafter, P.W. 12 and others reached Datpa and saw that Uday Shankar had detained one vehicle with six persons whereafter in the presence of independent witnesses search of the said six persons was made and during the course of search the key ring of the shop of Raju Gupta and his mobile was recovered. Thereafter, the six accused persons were brought to Amba Police Station. During the course of enquiry from the accused persons, they told that the kidnapped person has been kept in Baranda village under Dibra Police Station. Thereafter, several police personnel got together and conducted raid at a house situated in the jungle towards the western side of Baranda village and from there Raju Gupta was recovered and four accused persons were



apprehended as well as two loaded revolver, two loaded pistol and mobile phone were also recovered and then the seizure list was made there. Upon enquiry being made from the accused persons, they accepted their guilt. Thereafter, the recovered kidnapped person and the accused persons were brought to Amba Police Station and after taking the six apprehended accused persons, P.W. 12 and others proceeded to Barun Police Station. In paragraph No. 2, P.W. 12 has stated that except one accused person, he recognizes all the other accused persons standing in the dock. The accused person who was not recognized by P.W. 12 had disclosed his name as Gani Singh. In paragraph no. 5 of his cross-examination, P.W. 12 has stated that apart from the six accused persons apprehended from the Marshal vehicle and four accused persons apprehended along with the kidnapped person, he does not recognize anyone. In paragraph no. 9 of his cross-examination, P.W. 12 has denied the suggestion that the accused persons standing in the dock have been apprehended from here and there.

25. P.W. 13 is Vijay Bahadur Singh who was posted as Sub-Inspector of Police at Amba Police Station on 20.06.2009. P.W. 13 has stated in his evidence that while he was in the Police Station premises at about 8:00 P.M. in the night he received information that a person has been kidnapped by golden Bolero from Siris Chatti under



Barun Police Station area. Thereafter, P.W. 13 along with other police personnel reached Amba Chowk. The Dafadar namely Rajendra Singh came from the police station to Amba Chowk and informed that the said vehicle has been apprehended towards Kutumba near Datpa village. Upon this information, P.W. 13 and others reached Datpa and saw that Officer In-Charge of Kutumba and Barun Police Station were present there and had apprehended six people with the vehicle and mobile, cash and SIM was recovered from the suspects. From there the suspects were brought to Amba Police Station. At Amba Police Station enquiry was made from the suspects and it transpired that they had kept kidnapped Raju Gupta at the house of one Jai Ishwar Paswan of Baranda village under Dibra Police Station. Thereafter, all the police personnel proceeded to the place where the kidnapped person was kept and after raid the kidnapped person was recovered and the owner of the house namely Jai Ishwar Paswan and three other kidnappers were apprehended. Further, pistol and cartridges etc. were also recovered. Thereafter, they came back to Barun Police Station along with the kidnapped person and the accused persons. In paragraph no. 2, P.W. 13 has stated that he recognizes all the accused persons, however, no dispute was raised by the defence on the issue of identification of the accused persons. P.W. 13 further stated that he does not recognize one accused person and upon name being asked



from him he disclosed his name as Gani Singh. In paragraph no. 3 of his cross-examination, P.W. 13 has disclosed that Shiv Nath Paswan had told that the kidnapped person had been kept in a house at Baranda. He has also stated that one of the apprehended persons, out of the six was taken to Baranda and he had shown the house of Jai Ishwar. He has also stated that it is not a fact that people from here and there have been arrested and falsely implicated in the present case. In paragraph no. 8 of his cross-examination, P.W. 13 has stated that apart from the accused persons who had been arrested he cannot recognize any other person.

26. P.W. 14 is Vishambar Sah and he was posted as a Constable in Barun Police Station on 20.06.2009. P.W. 14 has stated in his evidence that on the said day they were on evening patrolling when information was received that one person has been kidnapped from Charan More, Siris whereafter they had proceeded to the place of occurrence where the Officer In-Charge, Barun Police Station had also arrived and then they had gone towards Kutumba Police Station where one Marshal vehicle was said to have been apprehended. On reaching there Marshal vehicle was found detained along with six accused persons who had been apprehended and the said persons had been caught by the Officer In-Charge, Kutumba Police Station. On search being made, the mobile and key ring of the kidnapped person



was recovered from the accused persons. Then the accused persons told that they had kept the kidnapped person at Baranda whereafter the kidnappers were brought to the police station and then they went to Baranda from where the kidnapped person was recovered and four accused persons were arrested. Pistol, revolver etc. were recovered from all the four kidnappers. Thereafter, all of them were taken to Barun Police Station. In paragraph no. 2, P.W. 14 has stated that he recognizes all the accused persons who were apprehended with the Marshal vehicle and were arrested at Baranda along with the kidnapped person, however, no dispute was raised by the defence on the issue of identification. In paragraph-3 of his cross-examination, P.W. 14 has stated that he has recognized only those accused persons who were either with the Marshal or were arrested with the kidnapped person.

27. P.W. 15 is Rajesh Kumar Gupta and he is the brother of the victim Raju Kumar Gupta. He has stated in his evidence that the occurrence dates back to 20.06.2009 at about 7:30 P.M. in the evening when he was at his home along with his brother Jagat Kumar Gupta and his father. At about 7:35 P.M. in the evening he got a phone call on his mobile from the mobile of his brother Raju Kumar Gupta that he was going to Aurangabad, however, his voice was perplexed and he disconnected the phone. Thereafter, all the family members came



out of the house and saw that co-villager Sudama Sao and Dukhan Sao were coming running and told them that the brother of P.W. 15, on pistol point, has been taken away by some persons on a Marshal vehicle and when they had tried to resist, those people had shown pistol and made them run away. Thereafter, the said people had gone to the shop and informed the Police and then the Police had come at Siris G.T. Road, National Highway and the entire incident was narrated to the Police. Thereafter, someone else had talked from mobile of the brother of P.W. 15 and told him that Raju was in their captivity and had demanded a sum of Rs. 50,000,00/- (rupees fifty lakh) as well as had told them that if they informed the Police they would kill Raju. After the Police came, the elder brother of P.W. 15 namely Jagat Kumar Gupta had given his statement to the Police and on the basis of his statement case was registered and P.W. 15 had also made his signature over the same. P.W. 15 has recognized his signature on the fardbeyan and the same is marked as Exhibit 2/1. Thereafter, P.W. 15 and his elder brother along with Barun Police had gone to Datpa road under the Kutumba Police Station and saw that Kutumba Police had apprehended six accused persons along with Marshal vehicle. The Police had recovered Key ring, mobile and cash belonging to the brother of P.W. 15 and seizure list was made whereafter they had gone to Amba Police Station and interrogation of



the accused persons was conducted and from their interrogation it transpired that the said apprehended persons had kidnapped the victim at the instance of Gani Singh who had told them that the kidnapped person was a moneyed person as well as had asked them to give them one portion of the bounty and keep the rest. The apprehended person had also disclosed that the kidnapped person was kept at Baranda under the Dibra Police Station whereafter all the people had gone along with the Police to Baranda where the brother of P.W. 15 was kept in a hut away from Baranda village and from there his brother was recovered and four accused persons with pistol and cartridges were arrested. Some mobiles were also recovered whereafter all the people had returned from Baranda. In paragraph no. 2, P.W. 15 has stated that he recognizes the accused Gani Singh who is present in the dock and his hotel is situated in front of the shop, however, P.W. 15 did not recognize any other accused person. In paragraph no. 4 of his cross-examination, P.W. 15 has stated that when recovery was effected, he was present at the place from where his brother was recovered. In paragraph no. 6 of his cross-examination, P.W. 15 has stated that Sudama and Dukhan had not disclosed the name of the kidnappers as well as his brother had not told him that he had been kidnapped. However, his brother was quite perplexed. In the night of the occurrence, they came to know that the brother of P.W. 15, had



been kidnapped and was being kept at Baranda. P.W. 15 had also gone to Baranda from where four accused persons along with his brother were apprehended. However, P.W. 15 has stated that he does not recognize any of the said four accused persons and his kidnapped brother had only told about Gani singh. However, Gani Singh was not present at the place from where his brother was recovered and four accused persons were caught. In paragraph no. 10 of his cross-examination, P.W. 15 has stated that he recognizes Gani Singh since he knows him from before. P.W. 15 further stated that he had no dispute with Gani Singh in the past.

28. P.W. 16 is Upendra Kumar who was posted as the Judicial Magistrate- 1st Class, Aurangabad at the Civil Court on 22.06.2009 and on the said date he had recorded the statement of Raju Kumar Gupta and Jagat Kumar Gupta under Section 164 Cr.P.C. He has identified the statement of the said two persons and the same has been exhibited as Exhibit 4 and 4/1. In paragraph no. 3 of his cross-examination, P.W. 16 has stated that Raj Kumar Gupta had disclosed in his statement about Ajay Paswan, resident of village Sori, Akhilesh Thakur and others, however, apart from the said two persons, the kidnapped person had not named anybody else in his statement. He has stated that Raj Kumar Gupta had stated in paragraph no. 5 of his statement that there was land dispute with Gani Singh. In paragraph



no. 4 of his cross-examination, P.W. 16 has stated that even Jagat Kumar Gupta, in his statement, had not stated that any person previously known to him was one of the kidnappers.

29. After completion of the prosecution evidence the appellants herein were examined under Section 313 of the Code of Criminal Procedure and they denied to have committed the alleged occurrence.

30. We have examined the materials on record as well as have perused the evidence led by the prosecution. On going through the evidence on record it is clear that the victim Raju Kumar Gupta had gone to his shop on 20.06.2009, situated at Charan More and in the evening, after closing his shop, while he was returning back to his home at around 7.30 P.M. and had reached at north of the G.T. road, one marshal vehicle had come and stopped near him, whereafter he was forcibly made to sit in the vehicle by about six persons and then a towel was tied around his eyes. The said victim Raju Kumar Gupta was forced to talk to his brother from his mobile and subsequently demand of a ransom of Rs. 50,00,000/- was made by the said accused persons. The victim Raju Kumar Gupta was then captivated in a house belonging to Jai Ishwar Paswan, which was situated in a remote place at village Baranda. The brother of the victim Raju Kumar Gupta namely, Jagat Gupta (P.W. 5) had then informed the police and the



police had intercepted the said Marshal vehicle at village Dathpa which was coming from the side of Amba village and apprehended six accused persons under suspicious condition from whom mobile phone and keys of the victim Raju Kumar Gupta were recovered and the said six accused persons had disclosed that the victim Raju Kumar Gupta had been kidnapped for ransom and was being kept at the house of Jai Ishwar Paswan. The appellants herein, who are one of the said six accused persons are Kashmir Paswan (Appellant in Cr. Appeal (DB) No. 493 of 2012), Ramashishi Paswan (Appellant in Cr. Appeal (DB) No. 494 of 2012), Akhilesh Thakur (Appellant in Cr. Appeal (DB) No. 474 of 2012) and Shashi Kumar Chandrabanshi (Appellant in Cr. Appeal (DB) No. 423 of 2012).

31. Thereafter, the police, on the basis of the confessional statement of the accused persons apprehended from the Marshal vehicle and the information gathered from them, had conducted raid at the house of Jai Ishwar Paswan and recovered the victim Raju Kumar Gupta as also had arrested four accused persons from there namely, Jai Ishwar Paswan (Appellant in Cr. Appeal (DB) No. 411 of 2012), Ajay Paswan (not the one who is appellant in the present proceedings), Saroj Paswan (Appellant in Cr. Appeal (DB) No. 415 of 2012), and Shiv Nath Paswan (Appellant in Cr. Appeal (DB) No. 466 of 2012). Thereafter, the said four accused persons and the victim



were taken to the police station. The said incident as well as the mode and manner of the said occurrence stands fully corroborated by the evidence of P.W. 21, Ram Sidheshwar Azad, the Investigating Officer as also the then SHO of Barun police station, P.W. 10 Kanhaiya Singh, the then SHO, Nabi Nagar police station, P.W. 12 Ram Kumar Singh, the S.I. of Barun police station, P.W. 13 Vijay Bahadur Singh, the then S.I. of Amba police station, P.W. 17 Uday Shankar, the then SHO Kutumba police station, P.W. 6, Shabbir Ahmad, Inspector of Police, then posted at Aurangabad, P.W. 7 Sri Niwas Ram, constable, then posted at Barun Police station, P.W. 8 Shri Raj Kumar Tiwary, the then SHO of Aurangabad Mufasil police station, P.W. 11 Aman Kumar, the then Police Inspector, Nabi Nagar circle, P.W. 5 Jagat Kumar Gupta, who is informant of this case, P.W. 15 Rajesh Kumar Gupta, brother of the victim and P.W. 18 i.e. Raju Kumar Gupta, the victim himself.

32. At this juncture it may be relevant to state that as far as the appellant Ajay Paswan son of Kapil Paswan, resident of village Sheikhpura (Appellant in Cr. Appeal (DB) No. 295 of 2012), Gani Singh (Appellant in Cr. Appeal (DB) No. 260 of 2012) and Satyendra Paswan (Appellant in Cr. Appeal (DB) No. 381 of 2012) are concerned, the said appellants are neither one amongst the six accused persons who were apprehended from the marshal vehicle nor one of



the four accused persons who were arrested from the house situated at Baranda, from where the victim was recovered. Further, neither any material has come in the evidence led by the prosecution so as to connect the said three appellants to the alleged crime nor they have been identified by the witnesses nor they were arrested from the alleged places of occurrence. Even the Investigating Officer i.e. P.W. 21 has not said anything about the role of the said three appellants in the aforesaid incident. Hence, the prosecution has not been able to prove its case, as far as the said three appellants are concerned, beyond the shadow of all reasonable doubts.

33. Now, coming to the case of six accused persons, apprehended from the Marshal vehicle, as well as the four accused persons arrested from the house from where the victim was recovered, specially those who are the appellants in the present proceedings, namely Shivnath Paswan (Appellant in Cr. Appeal (DB) No. 466 of 2012), Jai Ishwar Paswan (Appellant in Cr. Appeal (DB) No. 411 of 2012), Saroj Paswan (Appellant in Cr. Appeal (DB) No. 415 of 2012), Shashi Kumar Chandrabanshi (Appellant in Cr. Appeal (DB) No. 423 of 2012), Akhilesh Thakur (Appellant in Cr. Appeal (DB) No. 474 of 2012), Kashmir Paswan (Appellant in Cr. Appeal (DB) No. 493 of 2012) and Ramashish Paswan (Appellant in Cr. Appeal (DB) No. 494 of 2012), it will suffice to state that there are sufficient evidence on



record, as already stated herein above, to connect them (herein after referred to as the “said 7 Appellants”) with the alleged occurrence. At this juncture it may be relevant to state that in order to attract the provisions of Section 364-A of the Indian Penal Code 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; (3) that the kidnapping or abduction was for ransom.

34. On going through the evidence elaborately discussed herein above in the preceding paragraphs, it would be apparent that there is ample proof to show that the said 7 Appellants herein had kidnapped the victim Raju Kumar Gupta, had kept him under detention after such kidnapping at the house of Jai Ishwar Paswan from where the four accused persons were apprehended and had also kidnapped the victim for ransom as it has been corroborated by the informant Jagat Kumar Gupta (P.W. 5), the victim himself i.e. Raju Kumar Gupta (P.W. 18) and Rajesh Kumar Gupta, brother of the victim, (P.W. 15). There is ample evidence on record to prove the guilt of the said appellants beyond all reasonable doubts. Apparently most of the witnesses have identified the six accused persons apprehended from the Marshal vehicle as well as the four accused persons apprehended from the house from where the victim was recovered and the said 7



Appellants herein are the ones amongst the said ten accused persons.

35. The learned counsel for the appellants has submitted that no test identification parade has been held to identify the kidnappers and the appellants have not been identified by the victim in the court. In this regard it is stated that firstly, since the victim has stated that towel was tied around his eyes while he was taken on the Marshal vehicle, after being kidnapped, and the towel remained tied around his eyes even when he was captivated in the house, there would not have been any use of test identification parade. In any view of the matter, since most of the witnesses have identified the said appellants in the dock and no objection was raised to the same by the defence as well as no dispute was raised by the defence as far as identification of the accused in the dock is concerned, and the same was also waived by the defence, there cannot be any doubt about the genuineness of identification of the said 7 Appellants herein as the perpetrators.

36. The learned counsel for the appellants has next contended that the call details record has not been exhibited and the tower location has not been proved, however, the said contention of the learned counsel is absolutely misplaced inasmuch as firstly, the Marshal vehicle was intercepted and 6 accused persons were apprehended by the police party on patrol when the police had



instantly got active, just after the kidnapping had taken place and all the police personnel and police station of the area had been alerted on wireless and directed to conduct checking to apprehend the Marshall vehicle, as has also been corroborated by the evidence led by the prosecution and Secondly, the raid was conducted at the house where the victim was kept in confinement by the kidnappers on the basis of the disclosure made by the six accused persons who were apprehended from the Marshal vehicle as well as on the basis of confessional statement of Ramashish Paswan, Akhilesh Thakur and Ajay Paswan (not the one who is appellant in the present proceedings), thus it cannot be said that the tower location of the mobile being used to communicate was the sole source of tracking and apprehending the kidnappers.

37. It is a trite law that confessions made voluntarily, leading to recovery of victim as well as confession receiving independent corroboration on material points from the evidence of the witnesses can definitely be relied upon and can also form the said basis for conviction of the accused persons, who are admitted to have taken part in the alleged crime. It is equally a well settled law that confessional statement leading to recovery of the victim and corroborated by other witnesses are substantive pieces of evidence. Therefore, the contention of the learned counsel for the appellants that



the confessional statement of the accused persons leading to recovery of the victim is of no value if misplaced and does not deserve any consideration. The defence has not been able to extract anything in cross examination of the witnesses so as to either controvert the aforesaid facts or create doubt on the testimony of the witnesses. It may be stated that the contention of the learned counsel for the appellants that the number of the mobile seized and that of the victim mentioned in the FIR are different, hence, the entire case, as set forth by the prosecution, is liable to fall, is of not much worth inasmuch as apart from the police ascertaining the tower location, it had instantaneously become active i.e immediately upon kidnapping of the victim since it was informed promptly by the family members of the kidnapped person and had taken steps by way of patrolling, checking, putting road block etc. as well as was in possession of other materials and information, as discussed herein above, to apprehend the Marshall vehicles and its occupants and locate the house where the victim was being kept in captivity.

38. The learned counsel for the appellants, besides the aforesaid contentions, has made submissions which are very trivial to the nature of the offence and the evidence available on record, hence the same do not deserve any consideration in view of the overwhelming evidence on record, as discussed herein above, in the



preceding paragraphs which definitely goes to prove the guilt of the said 7 Appellants namely Shivnath Paswan, Jai Ishwar Paswan, Saroj Paswan, Shashi Kumar Chandrabanshi, Akhilesh Thakur, Kashmir Paswan and Ramshish Paswan, beyond all reasonable doubt.

39. In view of the aforesaid facts and circumstances, we are of the view that the appellants of Cr. Appeal (DB) No. 260 of 2012 i.e. Gani Singh, Cr. Appeal (DB) No. 295 of 2012 i.e. Ajay Paswan, son of Kapil Paswan and that of Cr. Appeal (DB) No. 381 of 2012, i.e. Sateyendra Paswan deserve to be given benefit of doubt and, accordingly, the said criminal appeals are allowed and the judgment of conviction and sentence dated 21.2.2012 and 22.2.2012, as far as the said three appellants are concerned, is set aside and the said appellants are hereby discharged from the liability of their bail bonds.

40. For the reasons mentioned herein above, and in view of the facts and circumstances of the present case, we do not find any error in the impugned judgment of conviction and sentence dated 21.2.2012 and 22.2.2012 respectively, as far as the appellants Shivnath Paswan, Jai Ishwar Paswan, Saroj Paswan, Shashi Kumar Chandrabansi, Akhilesh Thakur, Kasmir Paswan and Ramashish Paswan are concerned, so as to warrant any interference, hence the appeals bearing Cr. Appeal (DB) No. 466 of 2012, Cr. Appeal (DB) No. 411



of 2012, Cr. Appeal (DB) No. 415 of 2012, Cr. Appeal (DB) No. 423 of 2012, Cr. Appeal (DB) No. 474 of 2012, Cr. Appeal (DB) No. 493 of 2012 and Cr. Appeal (DB) No. 494 of 2012 are dismissed.

41. Since the appellant in Cr. Appeal (DB) No. 466 of 2012 is in custody, he is directed to serve the remaining sentence. As far as the appellants of Cr. Appeal (DB) No. 411 of 2012 (Jai Ishwar Paswan), Cr. Appeal (DB) No. 415 of 2012 Saroj Paswan, Cr. Appeal (DB) No. 423 of 2012 Shashi Kumar Chandrabanshi, Cr. Appeal (DB) No. 474 of 2012 Akhilesh Thakur, Cr. Appeal (DB) No. 493 of 2012 Kashmir Paswan and Cr. Appeal (DB) No. 494 of 2012 Ramashish Paswan are concerned, since they are on bail, their bail bonds are cancelled and they are directed to surrender forthwith to serve their remaining part of the sentence.

(Mohit Kumar Shah, J)

Rakesh Kumar, J: **I agree.**

(Rakesh Kumar, J)

S.Sb/-B.Tiwary/

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