

THE HIGH COURT OF JUDICATURE AT MADRAS
Judgement Reserved on : 23..02..2017
Judgement Pronounced on : 08..03..2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
Crl.A.Nos.34, 41 and 67 of 2017

1. Loganathan (A2)
2. Rajamani (A3)
3. Murugan (A4)
4. Karthik (A5)

... Appellants in Crl.A.No.34 of 2017

(*) Palanisamy (A1)

... Appellant in Crl.A.No.41 of 2017

-Versus-

State Rep. by
The Inspector of Police,
J-5, Shastri Nagar Police Station,
Chennai.
[Crime No.2768 of 2013]

... Respondent in both Criminal Appeals

Criminal Appeal Nos.34 and 41 of 2017: Appeals filed under
Section 374(2) of Cr.P.C against the judgement of conviction and
sentence passed by the learned V Additional Sessions Judge,
Chennai, in S.C.No.135 of 2014 dated 09.12.2016.

S. Prabhu

... Appellant in Crl.A.No.67 of 2017

-Versus-

6.State Rep. By PW1 Defacto Complaint
The Inspector of Police,
J-5, Shastri Nagar Police Station,
Chennai 600 090. [Complainant]

- 1.Palanisamy [A1]
- 2.Loganathan [A2]
- 3.Rajamani [A3]
- 4.Murugan [A4]
- 5.Karthik [A5]

... Respondents in Crl.A.No.67 of 2017

Criminal Appeal No.67 of 2017: Appeal filed under Section 372 of
Cr.P.C. by the victim against the judgement 09.12.2016 in
S.C.No.135 of 2014 acquitting A1 to A5 from the charges under
Sections 147, 323 and 342 of IPC.

For Appellant (s) : Mr. A. Raghunathan Sr.C for
Mr.M.Rajavelu for
Appellant/A1 in Crl.A.No.34
of 2017

: Mr.A.Raghunathan, Senior
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in Crl.A.No.41 of 2017

: Mr. S. Ananthanarayanan
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Appellant/Victim-P.W.2 in
Crl.A.No.67 of 2017

For Respondent(s) : Mr.P.Govindarajan, APP for
Respondent in Crl.A.Nos.34
and 41 of 2017 and 6th
respondent in Crl.A.No.67
of 2017

: Mr.S.Ashok Kumar, Senior
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for Intervenor

COMMON JUDGEMENT

S.NAGAMUTHU, J.

The appellant in Crl.A.No.41 of 2017 is Accused No.1 and the appellants in Crl.A.No.34 of 2017 are Accused Nos.2 to 5 in S.C.No.135 of 2014 on the file of the learned V Additional Sessions Judge, Chennai. The trial court framed as many as four charges against all the five accused. The first charge was under Section 147 of IPC; the second charge was under Section 364A r/w 149 of IPC; the third charge was under Section 323 of IPC; and fourth charge was under Section 342 of IPC. By judgement dated 09.12.2016, the trial court convicted A1 to A5 under Section 364 r/w 149 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months, but, however, acquitted all of them from the charges under Sections 147, 323 and 342 of IPC. Challenging the said conviction and sentence imposed for the offence under Section 364A r/w 149 of IPC, A1 to A5 have come up with these criminal appeals in Crl.A.Nos.34 and 41 of 2017. Challenging the acquittal of A1 to A5 from the charges under Section 147, 323 and 342 of IPC, the victim has come up

with CrI.A.No.67 of 2014. That is how, all these three appeals are before this court for disposal.

2. The case of the prosecution in brief is as follows: P.W.2 is the daughter of P.W.1. She was hardly aged 21 years at the time of occurrence. She was studying B.Tech., final year course in SRM Engineering College at Kattankolathur during the year 2013. P.Ws.1 and 2 along with their other family members were residing at their own house at 12th Cross Street, Shastri Nagar, Adayar, Chennai. P.W.2 used to go every day in the morning in the college bus from Adayar to Kattankolathur and to return in the evening in the college bus. The college bus used to make a stop near Mahindra Tyres shop at M.G. Road. As usual on 23.12.2013, she went to the college in the college bus. In the evening she returned from her college in the college bus and got down at the Mahindra Tyres Bus Stop at M.G. Road from where around 06.00 p.m. she was proceeding towards her house on walk. When she was so walking, she received a phone call through her cellphone from her boyhood friend (P.W.13). When she was walking along the 11th Cross Street, Sasthri Nagar, Adayar, and when she was nearing Thendral Apartment, she found a car coming towards her in the wrong side. Yet another person was coming on walk towards the said place speaking to someone through his cellphone. The car came near P.W.2 and stopped. Suddenly, the person who was walking opened the back door of the car and pushed P.W.1 into the car. Yet another person who was already in the car pulled her inside the car. They made her to lie between the front and back seat of the car. One person stamped her with legs. When she raised alarm, the one, who pushed her into the car, kept a open knife on her neck and threatened of dire consequences if she raised alarm. Out of fear, she did not raise alarm. The car then started.

3. It is the case of the prosecution that the person who pushed P.W.2 into the car is A1 and the person who pulled her into the car is A2. A4 was the driver of the car. It is the further case of the prosecution that A2 and A3 inserted handkerchief into her mouth and kept P.W.2 under fear of death and prevented her from raising any alarm. The car proceeded to Tharamani. A3 and A5 were waiting for them at Tharamani. A3 and A5 got into the car at Tharamani. Then, the car proceeded further with A1 to A5 and P.W.2.

4. It is the further allegation that on his way, A1 spoke to his driver (P.W.7) to bring his Maruti Swift Car near "Vels College" at Pallavaram. Accordingly, P.W.7 came to the said place with Maruti Swift Car and was lying in wait. On reaching the said place, A1 went near the Maruti Swift Car, obtained the key of the car from P.W.7 and asked him to leave the place. Then, quickly, A1 to A5 pushed P.W.2 into Maruti Swift Car. A4

drove the Maruti Swift Car. A2 and A3 got into the said car. The car then proceeded to the rented house of A1 at Pozhichallur. A2 to A4 dragged P.W.2 from the car. A4 kept the open knife behind her so as to keep her under threat and to prevent her from raising any alarm. The rented house of A1 is a Flat in the Second Floor. A2 to A4 pushed her into the house. A1 had already arrived at his house and he was inside the house. Then, they illegally detained P.W.2 in the house of A1 by tying her hands and legs and by closing her mouth with hand kerchief.

5. It is further alleged that P.W.3, the boyhood friend of P.W.2, sensed some foul play because at the time of occurrence, P.W.2 was still speaking to him through cellphone and suddenly P.W.3 heard alarm raised by P.W.2. Sensing some untoward incident, P.W.3 informed P.W.1 about the same over phone. At that time, P.W.1 was at his Office at Thiagaraya Nagar, Chennai. Shocked to hear the said information, he immediately started and came to Adayar in his car. From the bus stop where usually P.W.2 got down and up to his house, he went in search of P.W.2. When he tried to contact P.W.2 through her cellphone, it was in switch off mode. Having searched for P.W.2 in the nearby places at last at 10.00 p.m. on 22.12.2013, P.W.1 made a complaint (Ex.P.1) at J-5 Shastri Nagar Police Station. On the said complaint, P.W.21 registered a case in Crime No.2768 of 2013 for "Girl Missing". Ex.P.41 is the FIR. She forwarded both the complaint and the FIR to the court which were received by the learned Magistrate at 04.35 p.m. on 25.12.2013.

6. P.W.24 took up the case for investigation. She went to the bus stop and the other places and tried to make break through. While so, when P.W.1 was returning from the police station after making complaint, he received a phone call to his cellphone with mobile Number 98410 77206 from the cellphone of P.W.2 bearing mobile Number 91593 30860. When he responded he found that initially there was no voice from the caller and for few seconds, the caller did not speak. Then, the caller spoke and told P.W.1 that he along with the others had abducted P.W.2 and detained her. He further told that if P.W.1 wanted his daughter to return alive, he should pay rupees two crores as ransom. It was a male voice.

7. It is the further allegation of the prosecution that the man who so demanded ransom was none else than A1. The caller further warned him not to approach the police. The caller further told that he would later speak to him and inform as to where P.W.1 should come with ransom money. He also told that if P.W.1 disclosed the same to anyone including the police, they would simply kill P.W.2 and throw the dead body. Even before P.W.1 could respond the caller disconnected the call. P.W.1 at once tried to contact the cellphone of P.W.2. But, the cellphone

of his daughter was in switch off mode. P.W.1 gave SMS message also to the cellphone. There was no response. Thereafter, P.W.1 went to Shastri Nagar Police Station and told about the phone call and the demand made by the caller for ransom.

8. When P.W.1 was speaking outside the police station around 12.30 a.m. again, he received a phone call from the cellphone of P.W.2. This time also, the same caller spoke. He asked him as to whether he had mobilized rupees two crores. He further asked him as to whether he was interested in getting his daughter returned alive or not. He warned that if he (P.W.1) failed to pay ransom, he would finish the life of P.W.2. Even thereafter, 2 - 3 times, the caller spoke to P.W.1 to his cellphone. P.W.1 begged him not to cause any harm to P.W.2. He also requested the caller to allow P.W.2 to speak. But, the caller refused.

9. At 01.00 a.m. again the same caller contacted P.W.1 from the cellphone of P.W.2. This time P.W.1 told him that P.W.2 was suffering from diabetes and she should take medicines unfaithfully. The caller told P.W.1 to send ransom of rupees two crores and medicines through his driver. He further warned that he would kill P.W.2 if the driver of P.W.1 was not sent with ransom of rupees two crores and medicine for P.W.2. P.W.1 positively responded. Then, immediately, along with his driver in his car, he started with medicines. the caller again spoke to him to his cellphone and wanted him to come near Coronet Hotel near Adayar Signal. Accordingly, P.W.1 proceeded in his car with his driver towards the said place. Though P.W.1 tried to develop contact to the cellphone of P.W.2, the cellphone of P.W.2 was continuously in switch off mode. On reaching the Adayar Signal, P.W.1 was waiting in the car along with the driver till 01.20 a.m. Again the caller spoke to P.W.1 through his cellphone and wanted him to come to Guindy. Accordingly, P.W.1 with his driver in the car went to Guindy and was waiting. Again the caller spoke to him through cellphone of P.W.2 and wanted P.W.1 to come near DLF Buildings at Ramavaram. The caller also wanted the registration number of the car in which P.W.1 was travelling. P.W.1 told him that he was coming in the car bearing registration No. TN 07 BL 9099. When they reached near DLF Buildings at Ramavaram, the caller again spoke to him and wanted him to stop the car near DLF Buildings and to wait. Accordingly, P.W.1 was waiting with his driver in the car. Again the caller called him over phone twice and inquired as to whether he was lying in wait near DLF Buildings. P.W.1 told him that he had already arrived and he was waiting there. After 02.30 a.m., there was no more phone call. Neither anybody came to meet him as the caller told. Therefore, P.W.1 along with the driver returned to his house around 04.30 a.m. P.W.1 went to the police station and came to know that there was no break through made. When he tried to develop contact to the cellphone of P.W.2, he

could not succeed as the cellphone was in switch off mode.

10. Pausing for a moment, let us now revert back to Pozhichallur where P.W.2 was illegally detained by the accused. When P.W.2 was kept in the rented house of A1 , A1 to A5 were threatening P.W.2 that they would kill her if P.W.1 did not pay rupees two crores as ransom. Then, A1 and A4 went out of the house, after having discussed with the other accused that they would speak to P.W.1, demand ransom and receive the same. A2 and A3 alone remained in the house confining P.W.2.

11. Now, let us go back to the events in the police station. As we have already narrated, after P.W.1 informed P.W.24 about the phone calls and the repeated demands for ransom made by the person through cellphone of P.W.2. P.W.24 decided to lay a trap to apprehend the culprits. On 24.12.2013, around 08.30 p.m. from a new land line number the same caller spoke to P.W.1. The said new number is "42018509". This time, the caller inquired as to whether P.W.1 was ready with ransom. He further wanted P.W.1 to come to Velacherry with ransom amount and medicines for P.W.2. P.W.1 responded positively. P.W.1 informed P.W.24 about the same. P.W.24 the investigating officer instructed P.W.1 to go to Velacherry in his car. He also indicated that police would follow them. P.W.1 returned to his house, took medicines for P.W.2 and was getting ready. Around 09.00 - 09.15 p.m. the same person spoke to him over phone from the land line Number 42020829. This time, the caller told as to whether he had already started to come to Velacherry as instructed by him already or not. When P.W.1 said that he was getting ready, the caller wanted him to come near Velachery railway station. P.W.1 then went in his car to Velachery railway station. The car was driven by P.W.1's driver (P.W.4). When P.W.1 along with his driver and the car had reached Velachery railway station, the same caller spoke to him from a cell phone No. 86828 24197. The caller inquired as to whether he had reached the railway station. When P.W.1 said that he was already near the railway station, the caller instructed him to send his driver (P.W.4) alone in the car with medicines and cash to a place near Kamakshi Hospital. Accordingly, P.W.1 sent the driver in the same car to Kamakshi Hospital. P.W.24, the Inspector of Police along with the police police party followed the said car by concealing their identity and that of the vehicle. As instructed by P.W.24, P.W.4 stopped the car in front of Pallikaranai "Kamakshi Hospital". P.W.24 and other police men concealed themselves in the near by places and were waiting. Around 10.30 p.m. on 24.12.2013, A1 along with another person came near the car on walk. When he approached P.W.4 who was in the car, P.W.4 and the police party swung into action and surrounded him. The other man who came in the car escaped from the scene of occurrence. P.W.24 arrested A1. It was ascertained that the one

who spoke to P.W.1 all along demanding ransom was A1.

12. While in custody, A1 gave a voluntary confession in the presence of P.W.4 and one Viswanathan. When body search was made, no incriminating material was found in the possession of A1. In his confession, A1 disclosed the place where P.W.2 had been illegally confined. He told that she was kept in his rented house at Pozhichallur. In pursuance of the said confession statement, he took P.W.24 and the witnesses to his house around 12.30 a.m. on 25.12.2013. On reaching the house, P.W.24 found that it was bolted from inside. P.W.24 knocked at the doors. In response, A2, from inside the house, opened the doors of the house of A1. A3 was inside the house. They found P.W.2 in a room whose hands and legs were tied and her mouth was closed by inserting a kerchief. Then P.W.2 was found disabled from raising any alarm. There were also injuries on her body. P.W.24 rescued P.W.2 and forwarded her to the police station. He arrested A2 and A3 in the presence of P.W.4 and another witness. On such arrest, A2 gave a voluntary confession at 12.45 a.m. in the presence of the same witnesses. A3 also made a voluntary confession at 02.00 a.m. on 25.12.2013 in the presence of the same witnesses. Both the confessions were recorded through the laptop. A1, in his confession, had earlier disclosed the place where he had concealed the Maruti Suzuki Ecco Car bearing Regn. TN 04 AJ 2148, a HTC Cellphone, a Vodafone SIM card and a knife. In pursuance of the said disclosure statement, A1 identified the car parked in the parking area of the Flat. P.W.24 recovered the said Maruti Suzuki Ecco Car (M.O.7) and from inside the house, A1 produced the HTC mobile phone (M.O.8), and vodafone SIM Card (M.O.6) and a knife (M.O.5). The vodafone SIM card has been identified to be that of P.W.2. A2 in his disclosure statement, disclosed the place where he had hidden the cellphone and gold ring (It is alleged that the said gold ring was snatched from P.W.2 by him). In pursuance of the said disclosure statement, he produced the C5 Model Nokia mobile phone (M.O.9), gold ring (M.O.1). P.W.24 recovered the same. In his confession, A3 disclosed the place where he had hidden a cellphone and a silver ring. (It is alleged that the silver ring was snatched away from P.W.2 by him). In pursuance of the said disclosure statement, he produced the Nokia X2 Model Phone (M.O.10) and silver ring with five precious stones (M.O.2). P.W.24 recovered the same under a mahazar. P.W.24 then recovered the rope made of cloth by which P.W.2's hands were tied and also the kerchief which was found inserted into the mouth of P.W.2. Then, he took A1 to A3 to the police station. In the police station, print out of confession, mahazar were taken which were earlier recorded in the computer and P.W.4 and the other witness signed the same. P.W.24 then arranged for taking photographs and the finger prints of A1 to A3. On being identified, at 10.00 a.m. P.W.24 prepared an observation mahazar

and a rough sketch at the place of occurrence from where P.W.2 was abducted in the presence of the witnesses. P.W.24 then forwarded P.W.2 to the hospital for treatment for the injuries sustained. Then, he forwarded the accused to court for judicial remand.

13. Again turning back to the house of A1, at Pozhichallur, P.W.24 prepared an observation mahazar and a rough sketch. On 26.12.2013, P.W.24 examined the driver of P.W.1 by name Mr.Rangadurai (P.W.7) who brought the car near to Vels College at Pallavaram. Dr.Ravindran (P.W.15) examined P.W.2 at Elite Asian Hospital. On examining her, P.W.15, the doctor, found a contusion on the chest of P.W.2, a contusion on the left small finger, abrasions and contusions on the face and many abrasions on the left hand and on the other parts of the body. P.W.2 was unable to lie down. She complained of breathing trouble and chest pain. Ex.P.19 is the Accident Register. He opined that the said injuries were simple and the same could have been caused by attack with hands and legs. P.W.28 recovered the copy of Accident Register of P.W.2 (Ex.P.19), examined the doctor and recorded his statement.

14. On 27.12.2013 at 10.30 a.m., he arrested A4 and A5 near SIET College Signal in Chennai. On such arrest, A4 made a voluntary confession in which he disclosed the place where he had kept the Maruti Swift Car. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the Maruti Swift Car TN 22 CM 0328 (M.O.11) in which P.W.2 was transported from Pallavaram to Pozhichallur. P.W.28 recovered the same under a mahazar. A5 in his confession disclosed that he was in possession of 110 Model cellphone with Airtel SIM Card (M.O.12). In pursuance of the same, he produced M.O.12. P.W.28 recovered the same in the presence of the witnesses. Then on returning to the police station, he forwarded both the accused to court for judicial remand. In the mean while, he made arrangements for taking finger prints of these two accused. Accordingly, they were taken. The photographs of the accused were also taken for the purpose of further investigation. He forwarded all the material objects to court. On 28.12.2013, he handed over the investigation to his succession Mr.Christian Jayaseel (P.W.25).

15. P.W.25 took up further investigation. He examined many more witnesses. He collected the call details of all the above cellphone numbers referred to above. During investigation, it turned out that the Maruti Suzuki Ecco Car bearing registration number TN 04 AJ 2148 belonged to one Mohamed Ahammed and the same was attached to the travel agency run Mr.Musambi. From the Travel Agency A1 had taken the car on rent on 23.12.2013. He collected many more documents, examined a number of witnesses

and recorded their statements. On completing the investigation, he laid charge sheet against the accused on 07.03.2014.

16. Based on the above materials, the trial court framed charges under Sections 147, 364A r/w 149, 323 and 342 of IPC against A1 to A5. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 25 witnesses were examined, 70 documents and 13 material objects were marked.

17. Out of the said witnesses, P.W.2, the victim girl has spoken about the entire occurrence commencing from the abduction that took place at the bus stop at Adayar; the way in which, she was taken to Pozhichallur; and how she was rescued by the police. She has further identified her cellphone, gold ring and a sliver ring which were snatched away by the accused from her when she was in their illegal confinement. She has also stated that she was attacked by these accused one after the other repeatedly with hands and legs which resulted in injuries. P.W.3, the friend of P.W.1 has stated that during the relevant period he was studying B.Tech., course in a college in Coimbatore. He has further stated that P.W.2 was his friend and she was a classmate during his school days. He has further stated that on 23.12.2013 for the purpose of writing some competitive examination, he had come down to Chennai from Coimbatore. Around 06.15 p.m. on the same day, P.W.2 contacted him through her cellphone. For about 15 minutes, she was talking to him. Suddenly, he heard the distress call of P.W.2 through his cellphone. He has further stated that he was not able to realize as to what was happening. He further heard the noise of few more male persons. The cellphone connection was disconnected. Thus, according to him, he tried to establish contact to the said cellphone of P.W.2, but, the response was that the cellphone was not reachable. Then, immediately, he informed P.W.1 about the same.

18. P.W.1, the father of the victim, has spoken about the entire occurrence, more particularly, about the demand made for ransom through the cellphone of P.W.2 on several occasions and other details as to how he went along with P.W.4 in the car and as to how P.W.2 was rescued by the police in the operation. P.W.4, the driver of P.W.1 has stated that he went along with P.W.1 with medicines to Velachery and thereafter, as instructed by the caller, P.W.1 got down at Velachery. Then, he alone went in the car to Pallikaranai and waited in front of Kamakshi Hospital. P.W.4 and other police party followed him in the car near the hospital, the police were lying in wait concealing themselves. He has further stated that A1 came near the car and another person was waiting in another car. He has further stated that the police surrounded A1 and arrested him and the other one

escaped in his car. He has further stated about the arrest of A2 and A3 at the house of A1; the rescue of P.W.2 in the house of A1 and the recovery of material objects.

19. P.W.5 is the elder sister of P.W.2. She has stated about the missing of P.W.2 and the other facts. P.W.6 is a resident of Flat No.5 at P.S.V. Garden at Pozhichallur, Chennai. He was working as an Aircraft Service Technician in Chennai Airport. He was the tenant of the said house. In the other portion in the second floor, A1 was residing. His portion is in the second floor. His driver Rangadurai (P.W.7) used to visit A1. According to him, on 24.12.2013, he heard noise of banging at the door of the house of A1 around 12.30 a.m. When he came out of his room, he found A1 and four or five persons accompanying him. Then, within a short while, they entered into the house of A1. Then only he came to know that the people who were with A1 were police party and they arrested him.

20. P.W.7 is the driver of A1. He has stated that on 23.12.2013, around 09.45 p.m. A1 called him over phone and wanted him to immediately rushed to Tharamani taking his car. Accordingly, he went to Tharamani. Then, A1 wanted him to go to Medavakkam in the car. Then, he wanted him to go near Vels College. Accordingly, he went to the said place taking Maruti Swift car of A1. A1 and other were already waiting there in Maruti Ecco Car. A1 received the key of his car and wanted P.W.7 to go back. Accordingly, he went back. On the next day, according to him, when he tried to contact A1 over phone, his phone was in switch off mode. On 26.12.2013, the police found him and interrogated. According to him, his mobile phone number was 72992 47631. The car belonging to A1 which was handed over to him near Vels College is bearing Regn. Number TN 22 CM 0328 (M.O.11). He has identified Maruti Ecco car in which A1 was already waiting near Vels College as M.O.7. P.W.8 was known to A1. According to him, on 23.12.2013, at 12.15 a.m. A1 called him over phone and wanted to send P.W.7 immediately to his house. Accordingly, P.W.8 instructed P.W.7 to respond to A1. P.W.9 has spoken about the ownership of the maruti swift car. He has stated that A1 is the owner. P.W.10 has stated that the Maruti Suzuki Ecco Car bearing registration number TN 04 AJ 2148 (M.O.7) was attached to a Travels Agency run by Mosamil. According to him, on 23.12.2013, the car was engaged by A1. On 06.01.2014, he came to know that the said car has been seized in connection with this case. P.W.11 has stated that he was returning a shop at Thuraipakkam Rajiv Gandhi Road there was a Public Coin Telephone Box (No.86828 24197). He has further stated that A1 spoke through the said phone. P.W.12 was running a shop at Thiruvannmiyur near Post Office. The phone number is 42020829. According to him, on 24.12.2013, using the said public phone, A1 spoke to somebody. P.W.13 has spoken about the

preparation of the observation mahazar at Shastri Nagar, 11th Cross Street from where P.W.2 was abducted. P.W.14 has spoken about the arrest of A4 and A5; the confession statements made by the accused and the consequential recoveries of the material objects. P.W.15 has spoken about the treatment given to P.W.2 on 25.12.2013. P.W.16 has stated that A1 had some transaction with AXIX Bank at Mylapore Branch. P.W.17 has spoken about the preparation of the observation mahazar and the rough sketch at the house of A1 on 26.12.2013. P.W.18 has spoken about the movements of A1 who was working in TATA AIG General Insurance Company. The Nodel Officer from Vodofone Cellular Limited (P.W.19) has spoken about the call details of the cellphone Numbers starting with 98841 and 91593. He furnished the said particulars. P.W.20 is the Nodel Officer of Bharti Airtel Mobile Company. He has spoken about the call details of cellphone number 98408 29663, 95662 27178 and 99402 55211, 99405 31946, 99406 77204 and other cellphone numbers already referred to above. P.W.21 has spoken about the registration of the case on the complaint of P.W.1. P.W.22, the Senior Executive of Aircel Cellular Limited has spoken about the call details of cellphone numbers 98410 77206, 72992 47631 and 99414 09797. P.W.23, the then Sub Inspector of Police, Central Crime Branch, has stated that that is well trained in computer. According to him, when the accused were arrested, the confessions of the accused were typed out by him. Similarly,, he typed out the statements of the witness also. P.W.24 was the then Inspector of Police, Thiruvannmiyur Police Station. According to him, he instructed the Sub Inspector of Police to register the case on the complaint of P.W.1 on 23.12.2013. Then, he took up the case for investigation. He has narrated the entire investigation done by him. The investigation was thereafter continued by P.W.25. He has spoken about the further investigation done by him and the filing of final report.

21. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

22. Having considered all the above, the trial court convicted A1 to A5 for the offence under Section 364A r/w 149 of IPC and sentenced them accordingly as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 to A5 are before this Court with CrI.A.Nos.37 and 41 of 2017 and aggrieved by the acquittal of A1 to A5 from the other charges P.W.2 the victim is before this court with CrI.A.No.67 of 2017. Since all these appeals arise out of the same judgement of the trial court, we have heard all the three appeals together.

23. We have heard the learned counsel appearing for A1 to A5/ appellants herein; the learned Additional Public Prosecutor appearing for the respondent police/State and the learned counsel appearing for P.W.2/victim and we have also perused the records carefully.

24. The learned counsel for the appellants would submit that there was delay in making the complaint to the police and there was also a further delay in forwarding the F.I.R. to the Court. He would point out that the F.I.R. had reached the hands of the learned Magistrate at 04.35 p.m. on 25.12.2013, though it is alleged that the F.I.R. was registered at 11.00 p.m. on 23.12.2013. The learned counsel would submit that absolutely there is no explanation for this delay. The learned counsel would further submit that even according to the case of the prosecution, A1 was arrested at 10.30 p.m. on 24.12.2013 and the others were arrested on the early morning of 25.12.2013. It was only thereafter, F.I.R. had been sent to the learned Magistrate. This, according to the learned counsel, creates enormous doubt in the case of the prosecution.

25. The learned counsel would next contend that though it is stated that ransom was demanded by A1 from P.W.1 through cellphone calls, the call details produced before the Court in evidence do not carry the necessary certificate as required under Section 65B of the Evidence Act. Thus, the call details and other electronic records produced are not admissible in evidence in view of the judgment of the Hon'ble Supreme Court in Anvar P.V. Vs. P.K.Basheer reported in (2014) 10 SCC 473.

26. The learned counsel would next contend that the evidence of P.W.2 also cannot be believed because, according to the learned counsel, there are lot of contradictions and improbabilities in the evidence. He would further submit that the arrest of the accused as projected by the prosecution is false. The learned counsel would further point out that these accused have been falsely arrayed as accused in the case out of animosity. Thus, according to the learned counsel, the accused are entitled for acquittal.

27. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, the delay in forwarding the F.I.R. to the Court in the instant case, would not in any manner cause any doubt in the case of the prosecution, in the light of the evidence of P.W.2 and the others. He would further submit that assuming that the call details and other electronic records produced by the prosecution are eschewed from consideration for want of certificate under Section 65B of the Evidence Act, then, there are other evidences

to prove the demand of ransom by A1.

28. The learned Additional Public Prosecutor would further submit that absolutely there is no reason to reject the evidence of P.W.2 which is duly corroborated by others. So far as the arrest of the accused is concerned, according to the learned Additional Public Prosecutor, there is overwhelming evidence. He would point out that P.W.2 was rescued from confinement from the custody of A2 and A3 and as disclosed by A1. The learned Additional Public Prosecutor would conclude his argument by stating that the evidence projected by the prosecution would conclusively prove the guilt of the accused and thus all these appeals by the accused are liable to be dismissed and the appeal by P.W.2 is liable to be allowed.

29. We have considered the above submissions.

30. There is no controversy over the fact that P.W.2 was staying with P.W.1 and other family members in 12th Cross Street, Sasthiri Nagar, Adyar and she was everyday going to and returning from the college by the college bus. It is also seen from the evidence of P.Ws.1 and 2 that P.W.2 used to board the bus at the bus stop near Mahindra Tyres Bus Stop at M.G.Road in the morning and would get down from the bus in the evening around 06.00 p.m.

31. P.W.2 has categorically stated that on 23.12.2013, as usual, she got down from the bus at the said bus stop and she was proceeding towards her house on walk. She has further stated that while she was walking she contacted P.W.3 a boyhood friend and she was talking to him. When she was nearing the 11th cross street, Sasthiri Nagar, Adyar, a car was proceeding towards her and another man was walking towards her talking to someone over phone pretending as though he was only a walker. As soon as the car neared her, it is the case of the prosecution that A2 opened the door of the car, A1 violently pushed her into the car. At that time also P.W.2 was still talking to P.W.3. This unexpected event would have driven P.W.2, quite naturally, to raise alarm. This, she did. This was heard by P.W.3. It is the case of the prosecution that A2 dragged her into the car, doors were closed and A4 drove away the car. Thus, according to the case of the prosecution, the abduction took place in 11th cross street, Sasthiri Nagar, Adyar. This is clearly spoken by P.W.2. She has identified A1, A2 and A4 in her evidence. Her evidence is duly corroborated by the evidence of P.W.3. P.W.3 has stated that when they were talking over phone, suddenly he heard the alarm raised by P.W.2 and then abruptly the connection was cut. He tried to establish contact with the cellphone of P.W.2. According to him the cellphone was by then, in switch off mode and therefore he could not establish contact with the

cellphone of P.W.2.

32. In order to corroborate the evidences of P.W.2 and P.W.3, in this regard, the prosecution relies on the call details furnished by the cellphone service providers. As rightly contended by the learned counsel for the appellants, these call details, which are electronic records, are not admissible in evidence for want of necessary certificate under Section 65B of the Evidence Act. Therefore, we eschew these electronic records from consideration. At the most, the call details if at all admitted in evidence would only show that there was telephonic contact from the cellphone of P.W.2 to the cellphone of P.W.3 at the relevant point of time. This would be only a corroborative piece of evidence. Even in the absence of such corroboration, we find no difficulty in believing P.Ws.2 and 3 to hold that the fact that P.Ws.2 and 3 were taking over cellphone during the crucial point of time and P.W.2 raised alarm when she was pushed into the car.

33. Yet another circumstance also would go to prove the above fact. P.W.3, being a true friend of P.W.2, shocked over the alarm raised by P.W.2, had immediately informed P.W.1 about the occurrence. P.W.1 was then in his office at T.Nagar, Chennai. Immediately, he rushed to M.G.Road and searched for P.W.2 and since she was not seen anywhere, including at his house, he went to the Police Station and made a complaint at 10.00 p.m. on 23.12.2013. This conduct of P.W.3 in informing P.W.1 and the conduct of P.W.1 in rushing from his office to the place of occurrence and making search for P.W.2 in so many places and then lodging the complaint at the police station without any delay also would go to further corroborate the evidences of P.Ws.1 and 3 that P.W.2 was abducted from 11th Cross Street, Sasthiri Nagar, Adyar at the crucial point of time.

34. The learned counsel for the appellants would submit that the call details between the cellphone numbers of P.W.1 and P.W.3 at the crucial point of time are not admissible in evidence for want of certificate under Section 65B of the Evidence Act. It is true, since there is no certificate as required under Section 65B of the Act, we are bound to eschew this electronic record namely the call details showing the telephonic calls made between P.Ws.1 and 3. Even after eschewing these electronic records from consideration, we find no difficulty in believing the evidences of P.Ws.1 and 3. This evidence would further corroborate the evidences of P.W.2.

35. It is the case of the prosecution that the F.I.R. was registered on 23.12.2013. But the endorsement made by the learned Magistrate would go to show that it was received by him

only at 04.35 p.m. on 25.12.2013, that is after the arrest of the accused 1 to 3. This delay in forwarding the F.I.R. to the Court was of course explained by prosecution.

36. But on that score, we cannot reject the entire case of the prosecution as doubtful because, the evidences of P.Ws.1 to 3 would clearly go to prove that the occurrence had taken place at 06.30 p.m. and according to the evidence of P.W.1 and the Sub Inspector of Police (P.W.21), the F.I.R. was registered in fact at 10.00 p.m. on 23.12.2013. Between 06.30 p.m. and 10.00 p.m. P.W.1 who was in his office at T.Nagar, on receiving the information from P.W.3, went in search for P.W.2 at many places. This exercise could have quite naturally taken sometime and that is the reason why he made complaint at 10.00 p.m.

37. In this respect, we find no delay at all caused by P.W.1 to make a complaint to the police. The delay in this case was caused only by the police in forwarding the F.I.R. to the Court. The F.I.R. should have been sent to the learned Magistrate immediately and why it was not done so has not been spoken by any police witness. But in our considered view, as we have already concluded, on this ground, the evidences of P.Ws.1 and 3, cannot be doubted and the further case of the prosecution that the case was registered at 10.00 p.m. on 23.12.2013 also cannot be doubted.

38. P.W.24, who took up the case for investigation went in search of P.W.2 and the assailants at many places. But there was no breakthrough. The fact that P.W.2 was abducted came to the knowledge of P.W.1 only because of the phone call that he received from the mobile number of P.W.2 i.e., after he made complaint at 10.00 p.m. on 23.12.2013. The caller disclosed that he along with others had abducted P.W.2. He further demanded a sum of rupees two crores for releasing P.W.2 alive. According to the case of the prosecution, this demand was made by A1. He made such demands repeatedly through cellphone. As we have already narrated, all these were informed to police by P.W.2.

39. The learned counsel for the appellants would contend that here again the fact that there were telephonic calls from the cellphone of P.W.2 to the cellphone of P.W.1 is sought to be proved only through electronic records namely the call details furnished by the service providers. The learned counsel for the appellant would contend that these records are not admissible in evidence for want of certificate under Section 65B of the Evidence Act. Of course, we agree with the learned counsel for the appellant that in view of the judgment of the Hon'ble Supreme Court in Anwar's case (cited supra) these electronic records are not admissible in evidence and therefore we eschew

the same from consideration. But these call details, as we have already stated, while discussing about a different facts, would only go to corroborate the evidence of P.W.1. The evidence of P.W.1 that someone spoke to him through the cellphone on several occasions demanding rupees two crores as ransom for release P.W.2 is a substantive evidence. Though, from out of this substantive evidence, it cannot be established that the person who demanded rupees two crores as ransom for releasing P.W.2 was A1, the fact that for releasing P.W.2 a sum of rupees two crores was demanded as ransom and the fact that she was abducted and kept in illegal detention stands proved. To be precise, we want to reiterate the fact that P.W.2 was abducted and confined only for ransom has been proved from the evidence of P.W.2.

40. It is in the evidence of P.W.2 to P.W.1 that around 12.30 p.m. from the cellphone of P.W.2 a male voice called P.W.1 through his cellphone. This time, the caller wanted to know whether P.W.1 had mobilised rupees two crores as demanded earlier. The caller warned him that they would kill P.W.2 if P.W.1 neither failed to pay the ransom nor if he went to police with any complaint. At 01.00 p.m. again he received a similar call. This time, P.W.1 told the caller that P.W.2 was diabetic and therefore she would require medicines. The caller wanted him to come with a driver with medicines. As we have already narrated, the caller wanted him to come to one place or the other and finally when P.W.1 was waiting at DLF at Porur nobody turned up. This fact has been spoken not only by P.W.1 but P.W.4 the driver of P.W.1 also. Because of the telephonic calls demanding ransom and because the caller wanted P.W.1 to come with money and medicine, he went to various places as directed by the caller and finally to a place near DLF at Porur, thus, stands proved.

41. This evidences of P.Ws.2 and 3 would again go to further establish that there was demand for ransom of rupees two crores to release P.W.2. Such demand was made through the cellphone calls. The fact that there was such cellphone calls from 12.30 a.m on 24.12.2013 onwards is sought to be corroborated by the cellphone call details furnished by the cellphone service provider. As we have already concluded, these cellphone call details provided by the cellphone service providers are eschewed from consideration for want of certificate under Section 65B of the Evidence Act. These electronic records are only corroborative piece of evidence to corroborate the evidences of P.Ws.1 and 4. the evidences of P.Ws.1 and 4 are substantive in nature. In our considered view, even in the absence of corroboration from these electronic records which are inadmissible, we hold that the evidences of P.Ws.1 and 4 are substantive in nature which would clearly go to prove that a sum of rupees two crores was demanded as ransom for releasing P.W.2

and P.Ws.1 and 4 had to go to many places in the car with money and medicine and lastly up to Porur. We do not find any reason to reject this part of the case of the prosecution.

42. At this juncture, we need to refer to the evidence of P.W.2. She has stated that as soon as she was pushed into the car, she was made to lie in between the front seat and the back seat of the car and A1 and A2 kicked her and caused simple injuries. A1 held a open knife on her neck and threatened her to kill if she raised alarm. A2 pushed a kerchief into her mouth. A4 was the driver of the car and the car fled away from the scene of occurrence. From the evidence of P.W.2, it has been clearly established that the persons who abducted P.W.2 from the scene of occurrence were A1, A2 and A4.

43. But the learned counsel for the appellants would submit that P.W.2 identified all these accused for the first time in the Court and no test identification parade was conducted. The fallacy of this argument can be exposed. It is not as though P.W.2 had a fraction of a second or a minute to have a glimpse of the physical features of the assailants. As we have already stated, these three accused [A1, A2 and A4] took the victim in the car for such a long distance and kept her in confinement. Thus she had more than sufficient time to notice the physical features of all the accused. Therefore, in our considered view, there was no need to conduct test identification parade and the substantive evidence of P.W.2 in identifying these three accused in Court as the persons who abducted her from 11th Cross Street, Sasthiri Nagar, Adyar would be sufficient to prove that these three accused only had abducted her in the car.

44. While traveling in the car, according to P.W.2 when the car was proceeding, the accused 1 and 2 removed the kerchief from her mouth and closed her mouth with plaster. When the car was proceeding, A1 spoke to someone over phone and informed that the matter was finished. He further wanted the person on the other side of the phone to take one Karthik and come to Tharamani. At Tharamani, according to her, A3 and A5 were lying in wait and they got into the said car. Here again, there was a phone call between A1 and A3 which is sought to be proved through electronic records namely the call details but it is eschewed from consideration for want of certificate under Section 65B of the Evidence Act. But the evidence of P.W.2 that A1 spoke to someone and wanted him to come with one Karthik as the matter had been finished is substantive evidence. This is yet another strong circumstance against the accused. Thereafter only A3 and A5 got into the car. A3 and A5 have also been identified by P.W.2. The learned counsel for the appellants, however, would submit that the identification made by P.W.2 for the first time in the Court cannot be believed. We have to

reiterate that since P.W.2 was in the company of these accused for many hours and since she had enough opportunity to notice the physical features of these accused, even in the absence of test identification parade, we can place intrinsic reliance on the evidence of P.W.2 that A3 and A5 got into the car and accompanied the other accused in abducting P.W.2 further.

45. P.W.2 has further stated that when the car was further proceeding, these accused were discussing among themselves that if they roam around in the same car, the police could identify the car and catch them hold. Therefore, ultimately they decided to take another car. While in the car, the accused, removed the gold ring (M.O.1) and Silver ring (M.O.2) from her. The car went to a place near Vel's college at Thoraipakkam.

46. According to the further case of the prosecution, P.W.2 in the meanwhile had contacted his driver P.W.7 to immediately take the car (Maruthi Swift) belonging to A1 and come and lie in wait near Vel's college at Thoriapakkam. The call was received around 06.30 p.m. Thereafter, according to P.W.7, he took the car and went to Vel's College and he was lying in wait for A1. P.W.7 was not aware of the fact that A1 wanted the said car for the purpose of abduction. Innocently, he had taken the said car to the said spot and was lying in wait. He has identified the said Maruthi car in Court.

47. He has further stated that A1 came in another car namely Maruthi Ecco car (M.O.7). A1 got down from the car came near the Maruthi Swift car (M.O.11) and got the key of the car from P.W.7 and instructed P.W.7 to go back by bus. Accordingly, P.W.7 left the place leaving the car in the possession of A1. At that time also, he was not aware of the fact that inside M.O.7, P.W.2 was kept illegally. There is no reason to reject the evidence of P.W.7, in this regard. He is an independent witness and he has got no axe to grind against A1. After all he was a loyal servant of A1. His evidence is again corroborated by the substantive evidence of P.W.2. P.W.2 has stated that at the said place, they transferred her in the Maruthi Swift car (M.O.11). Now M.O.11 was driven by A4. A2 and A3 got into M.O.11 Swift car and in this car also, P.W.2 was made to lie between the front and backside of the seat. The other car was taken by A1 and A5. The fact that M.O.7 was used for the purpose of abducting P.W.2 initially from 11th Cross street, Sasthiri Nagar, Adyar and thereafter, M.O.11 was also involved for transporting P.W.2 to Pozhichallur has been spoken by P.W.2. This is duly corroborated by the evidence of P.W.7. Thus, the fact that all these five accused, as per the plan already hatched, abducted P.W.2 to Pozhichallur stands proved. We find no reason to reject the evidences of these two witnesses in this regard which are duly corroborated by other evidence and

circumstances also.

48. On reaching Pozhichallur, around midnight, according to P.W.2, A2 and A3 under threat, prevented her from raising alarm. They had already closed her mouth and took her to the second floor of the building known as PSV Gardens at Pozhichallur. They knocked at the door and someone from inside opened the flat and A2 and A3 took P.W.2 inside the house and illegally detained her. A1 has already reached the said house. This evidence of P.W.2 is corroborated by the evidence of P.W.6. P.W.6 the other inmate was working in the Chennai Airport. He was staying in a flat in the second floor of PSV Gardens at Pozhichallur. In the adjacent flat, A1 was staying on rent. He has identified him. According to him around 12.30 a.m. on 24.12.2013, he heard the noise of someone tapping the door of the flat where A1 was staying. This evidence of P.W.6 would duly go to establish that the house where P.W.2 was illegally detained was in the exclusive occupation of A1.

49. After having illegally confining her in the said house, A1 went out and he again tried to extract ransom from P.W.1 by calling him repeatedly over phone. All these details have been spoken by P.W.1. P.W.1 has further stated that at last, he received a phone call around 08.30 p.m. on 24.12.2013. This time, the call was from a land line bearing No.42018509. This is from a public booth through coin box. The caller wanted P.W.1 to come with his driver with money and medicine to Velacherry railway station. According to P.W.2 he had already informed the same to P.W.24. P.W.24 has stated that he laid a trap this time. He went along with policemen in a car following the car which was driven by P.W.4-the driver of P.W.1. P.W.1 went in the car with cash and medicines. This has been spoken not only by P.W.1 but also by P.W.4 as well as P.W.24. The car went near Velacherry railway station and they stopped the car for a while. Again there was a phone call from a different land line BSNL number. This time the caller instructed P.W.1 to send only his driver in the car to a place near Kamakshi Hospital at Pallikaranai. Accordingly, P.W.1 got down from the car and instructed P.W.4 to go to Kamakshi Hospital. He reached Kamakshi Hospital and he was waiting on the road opposite side to Kamakshi Hospital in his car. P.W.24 and other policemen were lying in wait somewhere near the said place having a watch and concealing themselves. This has been spoken by P.W.4 as well as P.W.24. At that time, another car came from the opposite direction and one person got down from the car and came near the car in which P.W.4 was sitting. When he reached P.W.4, P.W.24 and other policemen surrounded him. The other man who came in the other car fled away with the car. Thus, A1 was caught hold. This fact has been spoken not only by P.W.24, but also by P.W.4 and other witnesses also. The fact that A1 came to

receive the money and medicine from P.W.4 would go to prove beyond reasonable doubts that the one who was demanding money as ransom and the one who wanted P.W.1 to come with money and medicine was none else than A1. A1 has got no explanation to offer as to why he came near the said car in which P.W.4 was sitting just opposite to Kamakshi hospital. It is not at all his plea that he innocently came near the car. This is a very strong circumstance against A1. The one who accompanied him was not then known to the police. But, A1 disclosed the identity of the said man.

50. P.W.24 took A1 into custody. While in custody, A1 made a long statement, which amounts to confession falling within the scope of Section 25 of the Evidence Act. In that long confession, he made certain disclosures. He made a vital disclosure about the identity of the other accused and the place where P.W.2 was illegally confined. In pursuance of the said statement, he led P.W.24 and others to PSV Garden around 12.30 p.m. on 25.12.2013. According to P.W.24, he knocked at the door of the flat which was identified by A1. This knocking of the door was heard by P.W.6. P.W.6 was then working in Chennai Airport. He was residing in the adjacent flat in the same floor of the building. On hearing the noise raised due to tapping of door, he came out of his house. He found A1 along with few more persons. Later he came to know that all those persons were policemen. He also found a girl with them. This evidence of P.W.6 would clearly go to establish that as spoken by P.W.24, the girl was rescued from the house of A1 at 12.30 a.m. on 25.12.2013.

51. According to P.W.24 and P.W.4, as soon as the door was knocked at, the door was opened by somebody from inside. Inside the house, A2 and A3 were there. In a room, P.W.2 was lying on the floor. Her hands and legs were tied and a hand kerchief was inserted into her mouth preventing her from raising alarm. She was rescued. We do not find any reason to reject the evidences of P.W.4, P.W.24 and P.W.6 in this regard. The disclosure statement made by A1 as to the place where P.W.2 was confined would fall within the sweep of Section 27 of the Evidence Act, as in pursuance of the said statement, P.W.2 was rescued from the place identified by A1. This is a very strong piece of evidence against A1 to A3. They have got no explanation to offer. The fact that P.W.2 was tied with cloths and ropes and her mouth was also closed with hand kerchief has been spoken by P.W.2 also. The evidences of P.Ws.2, 4, 6 and 24 would prove beyond reasonable doubt that P.W.2 was illegally confined in the house occupied by A1, where A2 and A3 were present keeping her in confinement.

52. After P.W.2 was rescued, she was sent to the doctor for

examination. The medical opinion is that there were injuries on her body. This would go to corroborate the evidence of P.W.2 that she was kicked and attacked with hands and she was tied with rope. The medical evidence thus supports the case of the prosecution.

53. After P.W.2 was rescued, the A2 and A3 gave voluntary confession. In the confession made already by A1, he disclosed that Ecco car (M.O.7) was parked in the parking area of the building. He took P.W.4 and other witnesses to the said place and identified the car and the same was recovered. That car has been identified by P.W.2 as the one which was used by A1, A2 and A4 for abducting her from Sasthiri Nagar. This has been spoken by P.W.7 also. The cell phones used by the accused were also recovered and sim card of P.W.2 from A1 was also recovered. P.W.2 has identified the same. Though, the electronic evidence regarding the ownership of the said Sim card is not admissible, the evidence of P.W.2 identifying the same would, to some extent, go to prove that it belonged to her. Then M.O.5 knife was recovered. It has been produced by A1 in pursuance of his disclosure statement. The recovery of this material object would all go to support the case of the prosecution as incriminating pieces of evidence.

54. In pursuance of the disclosure statement made by the second accused, he produced a cellphone (M.O.9) and gold ring (M.O.1). M.O.1 belonged to P.W.2. She has identified the same. There is no explanation by A2 as to how he came to possess the same. In the absence of such explanation, we find no reason to reject the evidence of P.W.2 that it was snatched away by A2 and thus A2 came to be in possession of the same. This is yet another incriminating circumstance against A2.

55. Out of the disclosure statement made by A3, he produced M.O.2-the silver ring. P.W.2 has identified the same as that of hers. A3 has got no explanation to offer as to how he came to possess the same. In the absence of any such explanation as to how he came to possess the same, we have no reason to reject the evidence of P.W.2 that it belonged to her and that it was snatched away from her by A3. This is yet another incriminating circumstance against A3. Apart from that, M.O.10 cell phone was also recovered from him. But the connection between the cellphone and the crime has not been established, therefore we are not attaching any importance for the same.

56. P.W.24 has recovered the clothe used as a rope to tie the hands and legs of P.W.2 and also the kerchief inserted into the mouth of P.W.2. They have been marked in evidence and the same have been identified by P.W.2 also. They lend further assurance to the case of the prosecution.

57. The identity of other assailants namely A4 and A5 were not known to the police until then. Though P.W.2 would say that she could identify those two culprits also, the names and other details of A4 and A5 were disclosed only by A1 in his disclosure statement. This part of the statement which led to the discovery of the names and other details of A4 and A5 also is relevant under Section 27 of the Evidence Act. But unfortunately this part of evidence has not been proved in evidence.

58. A4 and A5 were arrested on 27.12.2013. On such arrest, they also made voluntary confession. Out of the disclosure statement made by A4, the car (M.O.11) was recovered. P.W.2 has identified him as the one who drove M.O.7 initially and thereafter M.O.11. A4 has got no explanation at all as to how he came to possess M.O.11 Maruthi Swift car. The very fact that the said car was in his possession, for which he has got no explanation would corroborate the evidence of P.W.2

59. The learned counsel for the appellants would submit that the evidence of P.W.2 in identifying A4 for the first time in the Court is of no use. We are not persuaded by the said argument, as we have already stated when P.W.2 was in the company of A4 for such a long time, even in the absence of test identification parade, identification made by her in the Court for the first time during trial could be believed as a substantive evidence.

60. From out of the disclosure statement made by A5, M.O.12-Nokia cellphone was recovered. Of course, the connection between this cellphone and the crime has not been established as the electronic records have not been proved by complying with Section 65B of the Evidence Act. But involvement of A5 has been spoken by P.W.2 also.

61. Now turning to the argument of the learned counsel for the appellants that there is no proof that ransom of Rupees two crores was demanded, we find no force at all. As we have already pointed out, P.W.1 received repeated phone call from A1 demanding Rupees two crores for releasing P.W.2. We have already concluded from out of these various circumstance, more particularly the very circumstance that A1 came to the car driven by P.W.4 near Kamakshi Hospital to receive the ransom money and the medicine which is a very strong piece of evidence, it has been proved that abduction was made only for the purpose of ransom of Rupees two crores. The learned senior counsel appearing for the accused would submit that there is no evidence that A2 to A5 also joined A1 in making demand for ransom. This argument does not persuade us at all in the light of the evidence of P.W.2. P.W.2 has stated in categorical terms

that while she was illegally detained at the house of A1 at Pozhichallur, A1 to A5 threatened and A1 told her that he would demand rupees two crores from her father as ransom and if the same was not paid, she would be killed. After the initial demand was made by A1, P.W.1 and P.W.4 had gone up to Ramapuram. Thereafter, A1 returned to his house. Then, A1 to A5 had further discussion in the same house and in that discussion also, A2 to A5 were present. At that time, all of them told P.W.2 that if P.W.1 did not pay rupees two crores as ransom or if he went to police, she would be killed. This transaction would clearly go to prove that A1 to A5 had common design to abduct P.W.2 for ransom. Thus, all the accused had acted in concert to demand and receive ransom of rupees two crores. We, therefore, hold that the prosecution has clearly established that P.W.2 was abducted by all the five accused for ransom and she was kept in illegal confinement at the house of A1 at Pozhichallur. The trial Court was thus right in convicting all the five accused for offence under Section 364-A r/w 149 of IPC.

62. The trial Court has however acquitted all these accused from the charges under Sections 147, 323 and 342 of IPC. We are really surprised by the said conclusion arrived at by the trial Court. The trial Court has come to the conclusion that all the five accused were in an assembly and abducted P.W.2 for ransom. It is not understandable as to why the trial Court had acquitted all these five accused from the charge under Section 147 of IPC. Though initially when P.W.2 was abducted from Sasthiri Nagar, there were three accused namely A1, A2 and A4, the accused 3 and 5 joined them en route and they fully participated in the abduction. Thus, there is overwhelming evidence to prove that all these accused were in an unlawful assembly and they abducted P.W.2 for ransom. Therefore they are liable to be punished for offence under Section 147 of IPC.

63. Now turning to the acquittal of the accused from the charge under Section 323 of IPC, it is in evidence of P.W.2 that she was attacked with hands and legs by A1, A2, A3 and A5 repeatedly. Therefore the trial Court ought to have convicted all these accused except A4 for offence under Section 323 of IPC. As we have already concluded, it has been clearly established that all these five accused illegally confined P.W.2 at the house of A1 and therefore they are liable to be punished for offence under Section 323 and 342 of IPC also.

64. In view of the above discussion, we are inclined to partly allow the Criminal Appeal filed by P.W.2 in CrI.A.No.67 of 2017 and we are inclined to reverse the acquittal of A1 to A5 from the charges under Sections 147 and 342 of IPC and we further reverse the acquittal of A1 to A3 and A5 from the charge under Section 323 of IPC. We hold them guilty and convict them

under these charges.

65. On the question of sentence, we have heard the learned counsel for the appellants. They have submitted that minimum punishment may be imposed on the accused. Having regard to the said submissions made by the learned counsel for the appellants, we are inclined to sentence A1 to A5 to undergo rigorous imprisonment for six months and pay a fine of Rs.500/- each in default to undergo simple imprisonment for two weeks for offence under Section 147 of IPC, to undergo rigorous imprisonment for six months and pay a fine of Rs.500/- in default to undergo simple imprisonment for two weeks for offence under Section 342 of IPC and further sentence A1 to A3 and A5 to undergo rigorous imprisonment for six months and pay a fine of Rs.500/- in default to undergo simple imprisonment for two weeks for offence under Section 323 IPC. This, according to us, would meet the ends of justice.

66. Now turning to the quantum of punishment imposed on the accused 1 to 5 for offence under Section 364-A r/w 149 IPC, since the minimum punishment prescribed under the said provision itself is only imprisonment for life and fine amount of Rs.1,000/- each imposed on them is very reasonable, we find no reason to interfere with the same.

67. Before parting with this judgement, we record our appreciation for P.W.24 - for the excellent and swift action taken by him in this matter, but for which the victim would not have been rescued safely so soon. We also appreciate the counsel for the parties and Mr.P.Govindarajan, Additional Public Prosecutor for their excellent assistance to this court with their erudition and legal acumen.

68. In the result, (i) Criminal Appeal Nos.34 and 41 of 2017:- Both the criminal appeals are dismissed. The conviction and sentence imposed on A1 to A5 for offence under Section 364-A r/w 149 IPC by the trial court is confirmed.

(ii) Criminal Appeal No.67 of 2017:- This criminal appeal is partly allowed and the acquittal of A1 to A5 from the charges under Sections 147 and 342 IPC and the acquittal of A1 to A3 and A5 from the charge under Section 323 IPC are set aside. A1 to A5 are convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for two weeks for offence under Section 147 IPC; to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for two weeks for offence under Section 342 IPC and further A1 to A3 and A5 are sentenced to undergo rigorous imprisonment for six months and pay a fine of Rs.500/- each in default to undergo simple imprisonment for two weeks for offence

under Section 323 IPC. However, the acquittal of A4 from the charge under Section 323 of IPC is confirmed. We direct that the above sentences shall run concurrently. We further direct that the period of detention already undergone by the accused shall be set off under Section 428 of Cr.P.C.

08.03.2017

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(*) Corrected as per note order dated 18.04.2017

To

- 1.The V Additional Sessions Judge, Chennai.
- 2 The IX Metropolitan Magistrate, Saidapet, Chennai 15
- 3.The Inspector of Police, J-5, Shastri Nagar Police Station, Chennai.
- 4 The Superintendent Central Prison, I, Puzhal, Chennai
- 5.The Public Prosecutor, High Court, Chennai.

Copy to
The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.S.M. Nandinidevan, Advocate, S.R.No.14807
+5cc to Mr.M. Rajavelu, Advocate, S.R.No.15173

ssi(CO)
md(24/04/2017)

सत्यमेव जयते
Crl.A.Nos.34, 41 and 67 of 2017

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