

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

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| 1. | | CRA-D-532-DB-2013
Date of decision: 2.2.2017 |
| NEERAJ AND ANR. | vs. | STATE OF HARYANA |
| 2. | | CRA-D-404-DB-2013 |
| RAJESH KUMAR | vs. | STATE OF HARYANA |
| 3. | | CRA-D-455-DB-2013 |
| GAGAN KUMAR | vs. | STATE OF HARYANA |
| 4. | | CRA-D-487-DB-2013 |
| YOGENDER @ YOGI | vs. | STATE OF HARYANA |
| 5. | | CRA-D-627-DB-2013 |
| NAVNEET | vs. | STATE OF HARYANA |
| 6. | | CRA-D-1593-DB-2015 |
| PARVESH @ SHUNTY | vs. | STATE OF HARYANA |
| 7. | | CRA-D-606-DB-2013 |
| VISHVESHWAR @ RINKU | vs. | STATE OF HARYANA |
| 8. | | CRA-D-348-DB-2013 |
| RAJIV RANA | vs. | STATE OF HARYANA |
| 9. | | CRA-D-395-DB-2013 |
| BALVINDER ALIAS BILLU | vs. | STATE OF HARYANA |
| 10. | | CRA-D-942-DB-2013 (O&M) |
| SATPAL SHARMA | vs. | STATE OF HARYANA & ORS |

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Brijender Kaushik, Advocate
for the appellant in Crl. Appeal D-348-DB-2013.

Mr. Amardeep Singh Mann, Advocate
for the appellant in Crl. Appeal D-404-DB-2013.

Mr. S.S.Dinarpur, Advocate with
Mr. Subhash Godara, Advocate for the appellants
in Crl. Appeal D-455-DB-2013 and
Crl. Appeal D-395-DB-2013.

Mr. S.K.Rana, Advocate
for the appellant in Crl. Appeal D-487-DB-2013.

Mr. N.S.Shekhawat, Advocate
for the appellants in Crl. Appeal D-532-DB-2013.

Mr. Lekh Raj Sharma, Advocate
for the appellant in Crl. Appeal D-606-DB-2013.

Ms. Sharmila Sharma, Advocate
for the appellant in Crl. Appeal D-627-DB-2013.

Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate
for the appellant in Crl. D-942-DB-2013.

Mr. Sanjiv Sharma, Advocate
as Legal Aid Counsel assisted by
Mr. Jasvinder Singh Saini, Advocate
for respondent No.12 in Crl. Appeal D-942-DB-2013

Mr. Jasvinder Singh Saini, Advocate
for the appellant in Crl. Appeal D-1593-DB-2015.

Mr. Parveen Bhadu, Asst. A.G., Haryana.

H.S. MADAAN,J.

Vide this judgment, we propose to dispose of aforesaid ten appeals, first nine having been filed by accused – Neeraj, Sunil Kumar @ Shunty, Rajesh Kumar, Gagan Kumar, Yogender @ Yogi, Navneet, Vishveshwar @ Rinku, Rajiv Rana, Balvinder @ Billu and Parvesh @ Shunty, who were convicted by the learned Additional Sessions Judge, Kurukshetra, vide judgment dated 05.03.2013 and sentenced vide order

dated 06.03.2013, whereas appeal No. CRA-D-942-DB-2013 has been filed by complainant Satpal Sharma craving for the enhancement of sentence of the accused – convicts and for grant of compensation as well as for setting aside of the judgment to the extent accused Shivani @ Pooja was acquitted of the charge framed against her.

The accused - convicts were sentenced as follows:-

Name of Convicts	Offence under Section	Sentence
Navneet	U/s 364-A read with Section 149 IPC	To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of 6 months.
	U/s 468 IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.
	U/s 471 IPC	To undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.
Gagan Kumar	U/s 364-A read with Section 149 IPC	To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of 6 months. (It was made clear that he would not be entitled to any remission etc. and life imprisonment in his case would be for the whole of his life)
	U/s 468 IPC	To undergo rigorous imprisonment for a period three years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.
	U/s 471 IPC	To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.

Name of Convicts	Offence under Section	Sentence
Balvinder @ Billu	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of 6 months.</i> <i>(It was made clear that he would not be entitled to any remission etc. and life imprisonment in his case would be for the whole of his life)</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month</i>
Sunil Kumar @ Shunty	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month</i>
Rajesh Kumar	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>

Name of Convicts	Offence under Section	Sentence
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month</i>
Yogender @ Yogi	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 377 IPC</i>	<i>To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 20,000/- (Rs. Twenty thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of two months.</i>
	<i>U/s 411 IPC</i>	<i>To undergo rigorous imprisonment for a period of one year.</i>
	<i>U/s 25(1)(B)(a) of the Arms Act</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- (Rs. five thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
Vishveshwar @ Rinku	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>

Name of Convicts	Offence under Section	Sentence
	<i>U/s 201 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 25(1)(B)(a) of the Arms Act</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- (Rs. five thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
Parvesh @ Shunty	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of 6 months.</i> <i>(It was made clear that he would not be entitled to any remission etc. and life imprisonment in his case would be for the whole of his life)</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 25(1)(B)(a) of the Arms Act</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- (Rs. five thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
Neeraj Kumar	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>

Name of Convicts	Offence under Section	Sentence
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 25(1)(B)(a) of the Arms Act</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- (Rs. five thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
Rajiv Rana	<i>U/s 364-A read with Section 149 IPC</i>	<i>To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine he was ordered to undergo simple imprisonment for a period of 6 months.</i>
	<i>U/s 468 IPC</i>	<i>To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 471 IPC</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 10,000/- (Rs. Ten thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>
	<i>U/s 25(1)(B)(a) of the Arms Act</i>	<i>To undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 5,000/- (Rs. five thousand) and in default of payment of fine, he was ordered to undergo simple imprisonment for a period of one month.</i>

Briefly stated facts of the case are that, since the victim (name of victim is not being mentioned to avoid disclosing his identity and he is simply referred to as victim in the judgment) son of complainant Satpal Sharma, Peeth Adhyaksh, Shakti Peeth, Shree Devi Koop (Bhadarkali) Mandir, Jhansa Road, Kurukshetra, had gone missing, as such, his father Shri Satpal Sharma, had lodged a missing report with the police on 07.03.2008. However, on 07.03.2008, at about 5:00 P.M., the complainant had received a telephonic call from his son the victim, in which he disclosed that accused Shunty, Billu, Gagan and Sunny alongwith their associates had

kidnapped him; that they were having deadly weapons and they would kill him unless ransom amount was paid to them upto 09.03.2008. However, place and time of payment of ransom amount would be conveyed later on. In the complaint, complainant had expressed an apprehension that there was a great danger to the life of his son (the victim).

On receipt of complaint Ex. PC at police station, City Thanesar on 9.3.2008 a formal FIR was recorded. The Police party went to Bhadarkali Temple, Kurukhetra and recorded statement of Satpal Sharma.

During the course of investigation on 14.3.2008 the police party reached Railway Station, Thanesar and raided house of Vijay Kumar @ Gochhi at Railway Colony, Kurukshetra. He was interrogated. On information supplied by him that Vishveshwar and Gagan had come to him, and then they had gone to the place of their relatives at Mohiri Jagir, the police party went there. The police received a secret information that accused Vishveshwar and Gagan having pistols were getting ready to leave that place in their Santro Car bearing registration No. HR-26 AK-6346. The police party was divided into two teams, one headed by ASI Surinder Singh held nakabandi (picket) towards the house of Chaturbhuj Sharma, whereas the second team comprising of Inspector Dharambir Singh and ASI Jahangir Singh held nakabandi towards Shiv temple side. After sometime, car came from village side which was stopped. The driver of the car disclosed his name as Vishveshwar whereas the person sitting by his side gave his name as Gagan.

A rough sketch of pistol recovered from Vishveshwar @ Rinku was prepared as Ex. PGGGG. On being checked the pistol was found to have a cartridge in the chamber and two cartridges in the magazine, which

was seized. Statements of witnesses were recorded.

Accused Vishveshwar @ Rinku and Gagan were interrogated. During the course of such interrogation Vishveshwar @ Rinku disclosed that on 6.3.2008 he in terms of planning with his co-accused, had kidnapped the victim from old bus stand, City Thanesar and the victim was kept at Village Sisoni at pistol point. Thereafter, the police party proceeded for Sisoni village and a raid was conducted at the residential house of Neeraj where the police party came across two boys, who were standing near the house and they tried to run away from that place. One of them was apprehended, who disclosed his name as Balvinder @ Billu, whereas the other succeeded in slipping away. The police party found accused Parvesh @ Shunty covering the victim on pistol point. Parvesh @ Shunty was over powered and the victim was released. The other accused were apprehended and a pistol was recovered from possession of accused Parvesh @ Shunty, said pistol alongwith three live cartridges were taken into possession vide memo Exhibit PA. On personal search of Yogender @ Yogi a countrymade pistol of 12 bore along with two live cartridges was recovered from his possession.

On personal search of Rajiv Rana, a country made pistol of 315 bore was recovered. Such weapon and cartridges were taken in police possession. All the accused were interrogated one by one and were arrested in this case. Car was searched and one Registration Certificate and Insurance Policy were recovered, which were taken into police possession. Rough site plan of place of recovery of victim was prepared. After recording statement of victim, an offence under Section 377 IPC was added.

The investigating officer got accused Yogender @ Yogi and the victim

medico legally examined. Thereafter, the police party went to the house of Shivani @ Pooja at Majri Mohalla, Shahabad. She was found present there and was joined in the investigation and was arrested in this case. After getting accused Yogender @ Yogi and the victim medico legally examined, HC Karambir Singh had handed over MLR of victim and medical opinion qua Yogender @ Yogi along with a parcel to the Investigating officer. Custody of victim was handed over to his father vide Memo Ex. PD.

The police had recorded the statement of victim on 14.03.2008, in which he stated that he was a student of 1st year, Computer Engineering in the Engineering College at Mulana; that he was acquainted with Shunty being a neighbour; that he alongwith his other friends of the locality had formed a cricket team and Shunty used to play with them for the last 3-4 years though they were not on visiting terms; that he had heard from his friends that Shunty and others had committed a murder and they were absconder in that case; that on 01.03.2008, he received a call on his mobile phone bearing No. 98130-23123 at about 1/2:00 P.M. from Shunty asking him to meet him in front of his hostel; that he informed him that he was in his class at that time, as such, could not meet him. However, Shunty and Gagan having a motorcycle kept waiting for him upto 8:00 P.M. in front of the hostel of Mulana college and when he was returning to his hostel room, after taking meal, Shunty and Gagan made a telephonic call, asking him to come to them. As such, he went to them and then they proceeded towards the tea shop, where they had tea, staying there for about 15/20 minutes; that Shunty had asked him whether he was in need of money, to which he replied in negative; thereafter, Shunty kept a pistol in

his hand stating that if needed, he could retain it. Shunty further stated that if someone was to be killed, he should inform him, to which he replied that he did not have any enmity with anybody in the college and did not require pistol. As such, Shunty and Gagan went away after 15-20 minutes asking him that they would ring him up on the 3rd day of the month i.e. 03.03.2008. Several calls came on his mobile phone from 9:00 A.M., in the morning till late night hours but he did not attend the same. Then he received a message on his mobile phone that he should attend the phone, he responded to the message himself, messaging that he was in Delhi with his parents, though, actually he was very much present at Kurukshetra; that they had made repeated calls on the said mobile phone on 04.03.2008 and 05.03.2008 but he did not attend those calls. He further stated that since 05.03.2008 happened to be his birthday, he had organized a night party at Saffron hotel on that occasion, where he had invited his friend Mr. Walia to whom he had given his mobile phone. At about 8:30 P.M. a call was received on the said mobile phone which was attended to by Mr. Walia, wherein, Shunty and Gagan asked Mr. Walia to give mobile phone to the victim as they wanted to congratulate him on the occasion of his birthday. After the party was over and almost all the guests had left, then he alongwith his friends S/Sh. Walia, Hitesh, Neeraj, Lokesh and Bhim was still at the hotel and was about to leave it, then he observed that Shunty standing on the road divider was speaking on mobile phone and on seeing him, he called out to him. The victim further stated that he went to Shunty who told him that Gagan was also standing ahead, who wanted to wish (birthday greetings) to him. According to the victim, he observed that an Esteem car was parked near Heritage Hotel; Shunty took him near the car. Shunty and Gagan were

holding pistols and they claimed that they would fire in the air; but he asked them not to do so. Gagan kept 4-5 cartridges on his hands, however, he threw them on the ground, to which they stated that the cartridges were not to be thrown on the ground but were meant to be hit on the body. They demanded party from him stating that party would be taken on the next day by consuming beer at Pipli.

On 06.03.2008, such accused started telephoning him since 7:00 A.M. He picked up his phone at about 8:00 A.M. Shunty stated that they would take party at about 12/1:00 P.M; that they would come to his place and would take him along, to which he agreed. He came out of his house at 11:30 before noon and reached near old bus-stand. Shunty telephoned him to come at that very time, to whom he replied that he was going to the house of his friend. However, on repeated requests of Shunty, the victim went in front of new bus-stand on the bike of his friend, who had left him there; that after sometime, two cars came there, one of which was make Santro in which Shunty, Gagan and one girl were sitting. Shunty was addressing the girl as Anjali. On her arm, name of Shunty was tattooed. The car was being driven by Yogender. The other car was of make Esteem, which had been hit from behind. Shunty had opened the door of the car and made him (the victim) sit therein stating that they would organize a party for him, then he asked them to come to Chopal hotel for party. However, they said that they would take party in the farm house (*Dera*) which was half an hour drive. According to the victim, he had Rs. 1800/- with him and he had stated that the girl should be alighted from the vehicle, to which Shunty replied that girl was his gift. In his statement, the victim further stated that, he requested to such accused several times but to no avail and Gagan asked

him to keep quiet and they would see later on; an Esteem car was parked behind that car in which Billu and Sunny were there in addition to 6-7 other boys. Billu and Sunny stated in a very loud voice that as to what Shunty was doing and that they should move immediately. Both the cars went to Shahabad via Pipli and from Shahabad, they proceeded towards Saha. He (the victim) asked them as to where they were going, to which, Shunty replied that key of the farm house was to be taken from Saha. They stopped at a beer shop on the road leading from Saha to Shahzadpur. Gagan went to take key of the farm house and Shunty brought four bottles of beer; that there was a *dhaba* at a distance of 20-30 meters from the beer shop, where they stopped for 20-25 minutes; that there were 12 persons in both the cars including the girl. In his statement the victim stated that he got frightened on seeing their expression and refused to sit in the car; however, Gagan held his hand and pulled him inside the car asking him not to get frightened and; that they went ahead of Mulana; that Gagan got his car stopped and stated that he was having headache and wanted to take medicine; that there were several shops on the road; they took water bottle and medicines for the victim, which were brought by Gagan; they stayed at the *dhaba* of a Sikh gentleman upto 3:30 P.M., then he (the victim) took juice near Saharanpur, Shivani @ Pooja told Shunty that she had done the work in accordance with his wishes and she should be given her fare and expenses. Gagan and Shunty stated that she should not worry about the same and should take Rs.200/- for the time being and it was a fat hen in their hands and after receipt of the amount, her fat share would be given to her. Shivani @ Pooja was dropped outside the bus-stand, Saharanpur by Gagan and Shunty. The victim requested several times that he should be dropped but to no effect.

The car proceeded towards Karnal side from Saharanpur. At that time, one phone and another mobile phone having No. 92554-19046 were taken by Shunty. The victim was threatened that in case he raised any voice he would be shot in the head. At about 6:30 P.M., Neeraj, a friend of the victim, had telephoned him asking about his whereabouts and as per instructions of the accused he told him that he would reach the house within one and half hour. Thereafter, the accused switched off his mobile phone. After traveling a considerable distance, they reached the place where there was a sugarcane field. Shunty and Gagan took out their pistols and pointed those towards the victim on both sides of his head. The victim started weeping and asked as to why they were doing so to him. Yogender @ Yogi gave him a tight slap stating that "*Saale you had been kidnapped*". Thereafter, other boys also gave him slaps and kicks, abusing him. They started consuming beer. Gagan told that the victim would be alive for five days. However, if he tried to run away, then he would be finished by one bullet.

In his said statement made to the police, the victim narrated further that they covered his eyes and took him to a farm house at a deserted place and was administered sleeping pills where in one room the part of the pumpkin which connects the pumpkin with the plant and the dry cover of pumpkin were lying besides a damaged motorcycle and a damaged bicycle and that in order to frighten him, he was told that those were the remains of human body and he would also be converted like that, and thus they were after him from 22nd January onwards, and his father was to be killed for an amount of Rs. 30 lacs and his younger brother while coming from the school was to be killed 7/8 days earlier and then he was kidnapped and a ransom to the tune of Rs. One crore was to be taken from his family;

that at about 10/11:00 P.M., Yogender @ Yogi came, who told that he (the victim) was to be killed and he also told that how many more were to be killed; that Yogender pointed pistol in his armpit and he kept consuming liquor; that in the morning at about 4:00 A.M., Shunty and Gagan after covering his eyes took him to the nearby sugarcane fields where he was kept for four hours. At about 8:00 A.M., they brought him back to the house and thereafter, Yogender @ Yogi served him food and then he went to sleep. On that day at about 1500/1600 hours, these people made him to sit in the vehicle and they started. He was asked to lower down his neck. At about 1700 hours, they parked the vehicle near the canal and from there they asked him to telephone from his Tata mobile phone bearing No. 92554-19046 at the mobile phone of his mother bearing No. 92530-58115 and to inform her that he had been kidnapped and his kidnapper should be paid Rs. 70/80 lacs and he be got released, otherwise, they would kill him. At that time, Yogi also spoke to his mother. After a while, Yogi telephoned his mother which was picked up by his uncle Dharam Pal and he (the victim) was asked to convey to his uncle that as and when they demand money, it should be paid to them. Thereafter, his eyes were covered and he was taken to a house where he was administered sleeping pills and he was made to sleep. On 08.03.2008, he was awakened at 0600 hours and was made to sit in a car and one boy who was sitting on the rear car on that day and all were addressing him as Boss, took him after closing his eyes to the sugarcane fields where they created space after removing several sugarcanes and made him to stay there till 10.03.2008. All the 10/11 boys used to keep eye on him and kept him in the fields of sugarcane and then at about 1800/1830 hours they made him to call his father from his mobile phone and got conveyed

that he had not taken food for the last three days and whatever those people demanded, that should be given to them, failing which, they would kill him and at the same time, their boss snatched the phone from him and gave threat to his father saying that if he failed to give money, then the victim would be killed and his whole family would be finished. Thereafter, these people made him to sit in the Santro car, and thereafter, in the Esteem car and they kept roaming around. Thereafter, they asked him about the children of the rich people of his town and on his refusal, they made him to sleep after administering sleeping pills. In the intervening night of 12/13.03.2008, they all were whispering that Pandit had parted with a small amount and today if his intention was correct, the whole of the work would be completed; that he was lying in a room in the house with the eyes closed. At night, they kept beating him with fist blows and slaps and abusing him by saying that it appeared that his father did not need him and he had informed the police and he would be taken to another place where he would be done to death and when time would come, his family would also be finished. In the meanwhile, Gagan and his boss told that they would search a place for him in Punjab and others were told to keep watch over him. Yogender @ Yogi kept him on pistol point during intervening night of 10/11.03.2008 in his house at village Rankhandi and sodomized him. The victim stated that he did not discuss this to anybody due to fear. On 14.03.2008, Neeraj Kumar came to his house where he was kept, later on and asked him to play the game of luddo and at that time, he awakened Shunty also and immediately on getting awakened, Shunty pointed pistol towards his right armpit. According to the victim, he had asked Shunty to remove the pistol as he was frightened; that he kept sitting with them for a considerable

duration under fear; that he had won their confidence during that period; that he knew Gagan, Shunty, Billu and Sunny earlier and remaining boys also disclosed their real names before him as Yogender Singh, Neeraj Kumar, Rajiv Rana, Navneet, Rajesh Kumar, Sunil Kumar and boss was being addressed as Vishveshwar @ Rinku.

In the concluding part of his statement, the victim stated that on that day, his father had got him released from their clutches. That he was kidnapped by 11 boys and one girl in two cars and was kept as a hostage at villages Rankhandi and Sisoni in Uttar Pradesh in sugarcane fields on pistol point and Rs. 70 lacs were demanded from his father during the period 07.03.2008 to 13.03.2008 for releasing him.

On 15.3.2008 accused Neeraj Kumar, Vishveshwar @ Rinku , Gagan Kumar, Yogender @ Yogi, Rajiv Rana, Balvinder and Rajesh Kumar were interrogated and they suffered disclosure statements Ex. PCC. Ex. PDD, Ex.PEE, Ex. PGG, Ex. PJJ, Ex. PHH, Ex. PKK, respectively. They were produced in the court of Illaqa Magistrate and were remanded to police custody. Accused Prem Chand was found to be juvenile, as such was sent to Sonapat on 21.8.2008. One CD was handed over by Satpal Sharma during the course of investigation. The Investigating Officer/IO took voice samples of accused Vishveshwar @ Rinku, Gagan, Yogender @ Yogi and Rajiv Rana and got those matched from the Forensic Science Laboratory. The call details of various telephones were collected.

On completion of investigation, the accused were challaned.

Challan against the accused was filed in the Court of learned Illaqa Magistrate, who supplied the copies of documents relied upon therein to the accused free of cost as provided under Section 207 Cr.P.C. then

finding that some of the offences are exclusively triable by the Court of Session, committed the case there.

Consideration on point of framing of charge was made and finding prima-facie case, all the accused were charge sheeted for the commission of offences punishable under Sections 148, 364-A read with Section 149 of Indian Penal Code (for short 'IPC') and Sections 468, 471, 201 IPC, in addition accused Yogender @ Yogi was charge sheeted for the commission of offences punishable under Sections 377 and 411 IPC., furthermore accused Vishveshwar, Parvesh, Yogender, Neeraj and Rajiv Rana were charge sheeted for the commission of offence punishable under Section 25 of the Arms Act, 1959.

Accused pleaded not guilty to the charges and claimed trial.

To prove its case, the prosecution examined, as many as 35 witnesses, the victim as PW1, Satpal Sharma-complainant as PW2, Dr. Lajja Ram as PW3, Mukesh Kumar, draftsman as PW4, Head Constable Hoshiar Singh as PW5, Assistant-Sub-Inspector Hans Raj as PW6, Constable Jagdish Chander as PW7, Constable Suresh Kumar as PW8, Constable Balwan Singh as PW9, Assistant-Sub-Inspector Ram Kumar as PW10, Lady Constable Saroj Bala as PW11, Head Constable Karambir Singh as PW12, Jai Parkash, Reader as PW13, Ranbir Singh, Registration Clerk as PW14, Sheetal Rajput as PW15, Mehar Singh Gandhi, Registration Clerk as PW16, Head Constable Jai Karan as PW17, D.S.P. Randhir Singh as PW18, Assistant-Sub-Inspector Krishan Singh as PW19, Sub-Inspector Satpal as PW20, Sub-Inspector Malkeet Singh as PW21, Sub-Inspector Sita Ram as PW22, Rajesh Sohni, Assistant Director FSL, Madhuban as PW23, Sub-Inspector Agya Ram as PW24, Assistant-Sub-Inspector Daljit Singh as

PW25, Head Constable Richhpal as PW26, Head Constable Krishan Lal as PW27, Constable Rajesh Kumar as PW28, Assistant-Sub-Inspector Surinder Singh as PW29, Sub-Inspector Gulab Singh as PW30, Assistant-Sub-Inspector Kehar Singh as PW31, Shri Naresh Kumar Singhal, learned Chief Judicial Magistrate as PW32, Sub-Inspector SI Jahangir Singh as PW33, Inspector Surinder Singh as PW34 and Constable Lalit Kumar as PW35.

PW-1 - victim narrated his tale of woes in detail deposing in consonance with the prosecution story.

PW-2 Satpal Sharma, complainant supported the prosecution story on material aspects.

PW-3 Dr. Lajja Ram, Medical Officer/Radiologist, LNJP Hospital, Kurukshetra deposed that on 14.3.2008, while posted as Medical Officer in LNJP Hospital, Kurukshetra, he along with Dr. Rajesh Ghangas medico legally examined the victim son of Satpal Sharma a male of 18 years, resident of Bhadrakali Mandir, Kurukshetra. There was history of unnatural sexual assault on him. The medico legal examination was conducted at 8.20 P.M. in the evening of 14.3.2008.

According to this witness, the injured was conscious, oriented and his pulse and B.P. Were normal. He was apprehensive and under depression. There was history of bleeding through the anus while passing stool, 2 to 3 times he was subjected to sodomy. Defecation was painful.

On examination, following injuries were found:-

1. Scabbed semi healed abrasion of the size 0.5 x 0.2 cm. on extensor aspect of middle phalanx of ring finger of left hand.

Local examination of anal region showed reddishness and inflammation. Tone of external anal sphincter appeared to

be increased. Two anal swabs were taken from peri anal region and lower rectal region and were sealed in a vial.

On proctoscopy examination there was a healed tear of superficial nature was found over posterior surface of anal orifice extending upto anal canal. Surrounding mucosa was oedematous and dull red in colour. Tone of the external anal sphincter was increased on proctoscopy examination which was painful and multiple mucosal laceration of variable sizes in healing stage was present.

The witness stated that in their opinion the penetration of anal canal and lower rectum by some blunt object had taken place in view of the above mentioned clinical findings. Ex. PQ is the correct carbon copy of the medico legal report.

The witness further stated that on Police application Ex. PR on the same date he medico legally examined accused Yogender alias Yogi. His sexual characters were well developed and his penis was well normal. He was fit to perform sexual intercourse. The witness proved his report as Exhibit PR/1.

PW-4 Mukesh Kumar, Draughtsman, ASI, S.P. Office, Kurukshetra deposed that he had inspected the spot on 18.4.2008 as per instructions of the local police and on pointing out of victim had prepared a scaled site plan Ex. PS correctly.

PW-5 Hoshier Singh, HC from Cyber Cell Office of S.P. Kurukshetra stated that the Investigating Officer had requested him for collection of details regarding the calls made from all the six telephone numbers and that he had collected the requisite information i.e. calls details Ex.P-80 to P-163 and submitted the same to the Investigating Officer who

took into possession those documents vide Memo Ex. PT.

PW-6 ASI Hans Raj from Police Lines, Kurukshetra working as Armourer with Haryana Police deposed that on 13.5.2008 five sealed parcels containing pistols and country made pistols were produced before him by Surinder Singh ASI. He opened one parcel having seal SS and a pistol of 32 bore made in Italy having number 7111, Exhibit P-164 was found therein along with two live cartridges Exhibits P-165 & P-166 and one missed cartridge Exhibit P-167. He tested the said pistol by putting a dummy cartridge. Its firing mechanism was in order. He proved his report as Exhibit PU.

Thereafter, he opened another parcel having seal SS and a pistol of 9 mm made in USA and having number 7117, Exhibit P-168 was found therein along with two live cartridges Exhibits P-169 & P-170 and one missed cartridge Exhibit P-171. He tested the said pistol by putting a dummy cartridge. Its firing mechanism was in order. He proved his report in this regard as Ex. PV.

Thereafter, he opened another parcel having seal SS and a country made pistol of 12 bore Exhibit P-172 was found therein along with two live cartridges Exhibits P-173 and P-174. Its firing mechanism was in order and the firing pin was checked and he engraved word 'H' on the said pistol. He proved his report as Exhibit PW.

Thereafter, he opened another parcel having seal SS and a country made pistol of 315 bore Exhibit P-175 was found therein along with two live cartridges Exhibits P-176 and P-177. Its firing mechanism was in order and the firing pin was checked by putting a dummy cartridge and shot was fired and he engraved word 'H' on the said pistol. He proved his report as Exhibit PX.

Thereafter, he opened another parcel having seal SS and a country made pistol of 315 bore Exhibit P-178 was found therein along with five cartridges, out of which two were live cartridges Exhibits P-178 and P-179 and three cartridges Exhibits P-181 to P183 were empty. Its firing mechanism was in order and the firing pin was checked by putting a dummy cartridge and shot was fired and he engraved word 'H' on the said pistol. He proved his report in this regard as Ex. PY.

The witness stated that he had handed over all the weapons to the police after testing, besides giving his report.

PW-7 Constable Jagdish Chander from the Police Station, City Thanesar, a formal witness tendered in evidence his affidavit Ex. PZ.

PW-8 Constable Suresh Kumar deposed that on 9.3.2008 he was working as general duty Constable at police station City, Thanesar and he was deputed to deliver a special report in this case and he had delivered copy of FIR Ex. PAA as special report to the Duty Magistrate and other authorities.

PW-9 Constable Balwan Singh, another formal witness tendered in evidence his affidavit Ex. PBB.

PW-10 ASI Ram Kumar from Police post Subhash Mandi, Thanesar who was member of the police party headed by Inspector Surinder Singh, SHO Police Station, City Thanesar deposed regarding what had transpired in his presence on that day including accused Neeraj Kumar, Vishveshwar, Gagan Kumar, Parvesh @ Shunty, Yogender @ Yogi, Balvinder @ Billu, Rajiv Rana, Rajesh Kumar, Navneet, Shivani @ Pooja, Prem Chand and Vishal suffering disclosure statements and on 31.3.2008 his moving an application for recording of specimen voice of accused

Vishveshwar, Gagan Kumar, Yogender and Rajiv Rana and on 5.4.2008, Rajesh Soni, Director, Madhuban coming to the court of CJM, Kurukshetra and recording the voices of such accused and then preparing a CD and handing over the same in a sealed parcel to him in the evening which he had taken into possession vide recovery memo Exhibit POO.

PW-11 Lady Constable Saroj Bala deposed that on 16.3.2008, she was posted as such at Police Station, Sadar Thanesar when she was called by Malkit Singh ASI to join the investigation in this case. Thereafter, she along with ASI and other members of the police reached at the house of accused Shivani, Majri Mohalla, Shahabad where she got recovered Rs. 4,000/- in the form of currency of denomination of Rs. 100/- each from a metaled almirah in her house. Out of the said recovered notes, three notes were initialled by the complainant Satpal and were taken into possession vide recovery memo Ex. PF attested by her.

PW-12 HC Karambir Singh stated that on 14.3.2008 he was posted as Head constable at police station City Thanesar. On that day, Surinder Singh Inspector/SHO had deputed him to get the accused Yogender @ Yogi and the victim medically examined by handing over application Ex. PR to him. As such, he went to LNJP Hospital, Kurukshetra where Dr. Lajja Ram had medico legally examined accused Yogender @ Yogi and handed over to him MLR besides one parcel containing under wear of accused Yogender, which he handed over to SI/SHO who had taken the same into possession vide recovery Memo Ex. PPP.

PW-13 Jai Parkash, Reader to District Magistrate, Kurukshetra brought the original record of sanction orders No. 1031, 1032, 1033, 1034 and 1035 dated 4.6.2008 proving the said orders as Ex. PQQ, Ex.PRR,

Ex.PSS, Ex.PTT and Ex. PUU.

PW-14 Ranbir Singh, registration Clerk, office of Registering Authority, Panipat deposed that on 24.3.2008, he was posed as clerk in the office of Registering Authority, Panipat. On that day, an application was moved by ASI Jahangir Singh inquiring about ownership of vehicle i.e. Car No. HR-06M-8513. That he thereafter perusing the record had reported that there was no car registered against said number which was in the name of Angrej son of Daya Nand resident of Village Israna regarding Bajaj Motor cycle. He proved his report Ex. PVV

PW-15 Sheetal Rajput deposed that she was owner of Esteem car bearing registration No. UP-16J-3999 which was stolen on 11.2.2008 at night and her husband had lodged report in that regard with police in Sector 39, Noida. She added that the said car has not been recovered so far.

PW-16 Mehar Singh Gandhi, Registration Clerk, Registration Authority, Gurgaon deposed that on 9.6.2008 he was posed as Clerk in the office of Registration Authority, Gurgaon and on that day an application was moved by the police enquiring regarding the ownership of Santro Car No. HR 26 AK-3646. He, vide his report Ex. PWW informed that as per record Aman Kumar resident of H.No.358/16, Nai Basti, Gurgaon was owner of the said vehicle.

PW-17 HC Jai Karan had brought the original record relating to DDR No. 29 dated 7.3.2008 and proved its copy as Ex. PXX.

PW-18 DSP Randhir Singh stated that on 27.5.2008 he was posted as Inspector/SHO in Police Station, City Thanesar and after investigation, he had prepared final report under Section 173 Cr.P.C.

PW-19 ASI Krishan Singh deposed that on 20.3.2008, he was posted in Special Staff, Kurukshetra and on that day on directions of Inspector Surinder Singh he took accused Parvesh @ Shunty from police lock up for effecting recovery and that he was accompanied by other police officials. The witness deposed that accused Parvesh @ Shunty led the police party to village Majri, District Panipat to the house of sister of his father (Bua), where after opening of almirah, 30 currency notes of denomination of 100/- each, out of those three currency notes were initialled by some one which are already marked as Exhibit P-51 to P-53. The same were taken into possession vide recovery Memo Exhibit PYY and he had prepared rough site plan of place of recovery which is Exhibit PZZ. On return to the police station, complainant Satpal met them at the gate and he identified the currency notes and the same were deposited with the MHC of the police station. On return the accused was lodged in the police lock up.

PW-20 SI Satpal stated that on 21.3.2008, while he was posted as SI in the police station City Thanesar, on that day, on directions of Inspector Surinder Singh, he had taken accused Sunil from police lock up for affecting recovery and that he was accompanied by other police officials. At that time he had interrogated accused Sunil Kumar during the course of which he suffered a disclosure statement that he had received a share of 5,000/- out of which, some money was spent by him and remaining amount of Rs. 2,000/- had been kept concealed in an iron box at Village Chidav, District Saharanpur which he could get recovered. The disclosure statement was reduced into writing vide memo Exhibit PBBB signed by the accused Sunil Kumar. Thereafter the accused was produced before the Illaqa Magistrate and he was remanded to police custody. On the same day,

accused Sunil Kumar @ Sunny led the police party to the disclosed place i.e. residential house at Village Chidav, District Saharanpur and got recovered 20 currency notes of denomination of Rs. 100/- each from an iron box kept in his room which were seized vide recovery memo Exhibit PCCC. A rough site plan Exhibit PDDD was prepared by him.

PW-21 SI Malkeet Singh stated that on 15.3.2008, he was posted as ASI at Police station City Thanesar and on that day accused Prem Chand @ Sunny had taken the police party to Gurunanak Pur Mohalla, Thanesar and got recovered Rs. 2,000/- from a double bed lying in his room. He further added that on 16.3.2008, he along with EHC Raj Kumar besides a lady constable Saroj Bala took the accused Pooja from police lock up. In pursuance of the disclosure statement, she was taken to Shahabad. On the way at Pipli, complainant Satpal had met them and he had also joined them and when they reached house of Pooja @ Shivani at Village Majri Mohalla, Shivani after entering the house in pursuance of her disclosure statement, got recovered 40 currency notes of denomination of Rs. 100/- each wrapped in a polythene from an almirah. Out of those 40 notes, three notes were having the initials of complainant Satpal, which were identified by him. Those notes have already been marked as Exhibits P6 to P8. The notes were converted into a parcel sealed with a seal MS and were taken into possession vide recovery Memo Exhibit PF. Rough site plan of place of recovery Exhibit PEEE was prepared. The witness subsequently led the police party to the place near new bus stand and got demarcated the place from where the victim was abducted and a Memo Exhibit PFFF was prepared in that respect.

PW-22 SI Sita Ram stated that on 20.3.2008 while he

was posted as SI in CIA Staff, Kurukshetra, on that day, on directions of Inspector Surinder Singh, he took accused Balvinder @ Billu from police lock up for effecting recovery and that he was accompanied by two other police officials. They had gone to Village Kunjpura, Nallkala Road, District Karnal to the house of sister of his father and after entering the house, accused Balvinder got recovered 30 currency notes of denomination of Rs. 100/- each wrapped in a black polythene, out of them four currency notes were initialled by Satpal complainant which have already been marked as P-56 to P-59. Those were taken into possession vide recovery memo Exhibit PGGG attested by the witnesses. He had prepared a rough site plan of place of recovery which was Exhibit PHHH. Thereafter the accused got demarcated the place of occurrence from where he along with other co-accused kidnapped the victim. A memo in that regard was prepared and marked as Exhibit PJJJ. On return to the police station, City Thanesar, complainant Satpal met them and he identified the recovered notes. A memo in this regard was prepared as Exhibit PK which was signed by HC Kuldeep Singh and complainant Satpal Sharma. The witness further stated that on 21.3.2008 on the directions of Inspector Surinder Singh, he took Rajesh from police lock up for effecting the recovery. He was accompanied by Constable Kamal Kumar and EHC Daljit Singh. The accused led the police party to village Ganeshpur, District Patiala to the house of Jaswant Singh, his brother in law and got recovered 20 currency notes of denomination of Rs. 100/- each from the slab. Out of those notes three currency notes bore initials of Satpal, complainant which were marked as Mark P-74 to P-76, those notes were taken into possession vide recovery memo Exhibit PKKK. A rough site plan of place of recovery was prepared

which is Exhibit PLLL. Thereafter they reached near new bus stand where the accused got demarcated the place of occurrence from where he along with other co-accused kidnapped the victim and a memo in that respect was prepared as Exhibit PMMM. On return to the police station, City Thanesar, complainant Satpal met them and identified his initials and a memo in this regard Exhibit PN was prepared and was signed by EHC Daljit Singh and complainant Satpal Sharma.

PW-23 Rajesh Sohni, Assistant Director, FSL, Madhuban stated that on receipt of written request dated 1.4.2008 from Superintendent of Police, Kurukshetra he had gone to the court of Sh. N. K. Singhal, the then CJM, Kurukshetra. On 5.4.2008 he recorded specimen voice of accused Vishveshwar @ Rinku, Gagan, Yogender @ Yogi and Rajiv Rana. A sealed parcel was prepared and handed over to the police. On 10.4.2008 he received one sealed parcel containing audio cassette and one sealed parcel containing compact disc for comparison of the voice of the accused. Accordingly, he did so and submitted his report Exhibit PNNN. The witness proved the comparison documents Exhibit P184 and Ex. P-185.

PW-24 SI Agya Ram, stated that on 20.3.2008 while he was posted as ASI in CIA Staff, Kurukshetra, on that day, he and HC Raj Pal remained associated with the investigation of this case with ASI Jahangir Singh and that the accused Gagan Kumar had got recovered 25 currency notes in the demonination of Rs. 100/- each in pursuance of disclosure statement suffered earlier from Dera Samad in Village Sahniwal in Punjab and out of the recovered currency notes, six currency notes bore initials and these currency notes were converted into a parcel which was taken into possession vide recovery Memo Exhibit P000. Then they returned to

Police Station, Sadar Thanesar where they came across Satpal Sharma who identified his initials on the recovered currency notes. A memo of identification was prepared as Exhibit PL. The witness proved the currency notes bearing initials as Exhibits P61 to P66.

PW-25 ASI Daljit Singh, deposed that on 20.3.2008 while he was posted as Head Constable in Special Staff, Kurukshetra he was member of the police party and accused Balvinder @ Billu led them to the house of one of his relatives in Village Kunjpura in District Karnal and got recovered 30 currency notes of denomination of Rs.100/- each in pursuance of his disclosure statement suffered by him earlier. Four currency notes out of the recovered notes bore initials over them. Then all the currency notes were put in an envelope and taken into possession vide recovery Memo Exhibit PGGG. The witnesses proved the recovered notes bearing initials as Exhibits P-56 to P-59. He further stated that on 21.3.2008, accused Rajesh Kumar while in police custody got recovered 20 currency notes in the denomination of Rs. 100/- each from village Ganeshpur, police station Julka, District Patiala from the house of his sister, in pursuance of his disclosure statement recorded earlier. Out of recovered currency notes Exhibits P-74 to P-76 were having initials of Satpal Sharma. All those recovered notes were put in an envelope and taken into possession vide recovery Memo Exhibit PKKK. Then they returned to Kurukshetra where accused Rajesh Kumar demarcated the place of alleged kidnapping of the victim. A memo in that respect Exhibit PMMM was prepared. Thereafter they went to police station, Thanesar where complainant Satpal met them and identified his initials over the recovered currency notes. A memo of identification was prepared as Exhibit PN.

PW-26 HC Richh Pal stated that on 15.3.2008, accused Prem Chand @ Sunny had got recovered 20 currency notes of denomination of Rs. 100/- each. He further added that on 20.3.2008 he and EHC Karam Singh remained associated in investigation of the case with ASI Kehar Singh and that accused Rajiv Rana who had suffered a disclosure statement earlier on 20.3.2008 while in police custody led the police party to his native village Ugala and got recovered 30 currency notes of denomination of Rs.100/- each from an Alla in his cattle shed. Out of those recovered notes, six notes were having initials of Satpal complainant. The currency notes were taken into possession vide recovery Memo Exhibit PQQQ. Recovered notes bearing initials were Exhibits P-68 to P-72 and Exhibit P-186. The witnesses stated that after effecting recovery they returned back to Kurukshetra and then the accused got demarcated the place of alleged kidnapping of the victim. A memo in that regard was prepared as Exhibit PRRR. Then they returned to the Police Station, Sadar Thanesar.

PW-27 HC Krishan Lal stated that on 20.3.2008 he was member of the police party headed by ASI Surinder Singh and accused Vishveshwar @ Rinku while in police custody led the police party to village Mohri Jagir, Police station Nisang and got recovered a polythene bag containing currency notes after digging the earth from Bara behind the house of his father-in-law. On counting, the currency notes were found 300 in number in the denomination of Rs.100/- each. The recovered currency notes were in three bundles and were taken into possession vide recovery Memo Exhibit PSSS. Each bundle was numbered as bundle 1,2 and 3 and last eight currency notes were having initials of Satpal Sharma which were Exhibits P26 to P49. After effecting recovery they returned to Kurukshetra.

Satpal Sharma, complainant met them in the Police Station, who identified his initials and a identification memo Exhibit PH was prepared.

PW-28 Constable Rajesh Kumar stated that on 21.3.2008, he along with Constable Virender Singh remained associated in the investigation of this case with SI Satpal and the accused Sunil Kumar @ Sunny had suffered a disclosure statement Exhibit PBBB to the effect that Rs. 5,000/- fell to his share for commission of the offence. Out of which, he had spent Rs. 3,000/- whereas Rs. 2,000/- had been kept concealed in a house and that he could get the same recovered. The statement was signed by Sunil Kumar and attested by the witness Constable Virender Singh. Thereafter, the accused Sunil Kumar @ Sunny while in police custody led the police party to his house and got recovered 20 currency notes of denomination of Rs. 100/- each from an iron box lying in his house. Recovered notes were taken into possession vide recovery memo Exhibit PCCC. In the concluding lines in examination-in-chief he stated that on 10.4.2008 he had delivered the sealed parcels in the office of FSL, Madhuban and tendered in evidence his affidavit Exhibit PTTT.

PW-29 ASI Surinder Singh stated that on 17.3.2008 he was posted as Incharge, police post, Sector 7, Kurukshetra. On that day, he along with ASI Jahangir Singh remained associated in this case with SI Gulab Singh. The accused Neeraj Kumar, Yogender @ Yogi and Navneet taken from police lock up led the police party to new bus stand, Kurukshetra and demarcated the place turn by turn from where they had kidnapped the victim. Memos in that regard were prepared as Exhibit PUUU, Exhibit PVVV and Exhibit PWWW respectively duly signed by the accused and thereafter they went to Village Sisoni in Uttar Pardesh, from where accused

Neeraj led them to get recover a polythene containing one bundle of currency notes of Rs.100/- each from the roots of the sugarcane plants. On checking, six currency notes were found containing initials of Satpal. The numbers of currency notes were noted and thereafter all the currency notes so recovered were taken into possession vide recovery memo Exhibit PXXX. He proved the currency notes containing initials from Exhibits P-9 to P-14 and remaining 94 currency notes consisting in one bundle as Exhibit P187. Thereafter the accused led them to his house and got recovered a pistol of .315 bore along with two live and three empty cartridges. Sketch of the recovered pistol was prepared and the same was Exhibit PYYY. The recovery was got effected by Neeraj in pursuance to the disclosure statement already suffered by him. The witnesses proved pistol Exhibit P-178, whereas live cartridges are Exhibit P-179 and Exhibit P-180 and three empty cartridges are Exhibits P-181 to P-183.

He further stated that thereafter they proceeded from village Sisoni for village Rankhandi, District Saharanpur in Uttar Pardesh. Accused Yogender @ Yogi in pursuance of his disclosure statement suffered earlier, demarcated the place where he had done sodomy with the victim and a memo of demarcation Exhibit PAAAA was prepared. Thereafter they went to Meerut, where accused Yogender @ Yogi got recovered 30 currency notes of denomination of Rs.100/- each from the house of his brother. Four currency notes were found to bear initials of Satpal Sharma which were Exhibits P-16 to P-19 and bundle of remaining 26 notes was Exhibit P188. Then accused Yogender got recovered a mobile phone of Make Sony Ericson and a car Make Esteem bearing registration No. HRO6M-8513. Those were also taken into possession vide recovery

Memo Exhibit PBBBB. That thereafter they went to village Salarpur near Saharanpur in Uttar Pardesh where the accused in pursuance of his disclosure statement suffered earlier got recovered 30 currency notes of denomination of Rs.100/- each, out of which four notes bore initials of Satpal. Those were taken into possession vide recovery Memo Exhibits P-21 to P-24. Whereas 26 currency notes consisting in one bundle was Exhibit P-189. On the same day they returned to Kurukshetra and on their arrival Satpal Sharma met them and identified his initials on the notes. The witness further stated that on 20.3.2008 accused Vishveshwar was taken out of lock up and then they went to village Mohri Jagir where he got recovered three bundles of currency notes in the denomination of Rs.100/- each. Eight currency notes bore initials of Satpal Sharma. The notes were taken into possession vide recovery Memo Exhibit PSSS. The currency notes bearing initials were Exhibit P-27 to Exhibit P-49 whereas the bundles containing remaining currency notes were Exhibit P-190 to Exhibit P-192. He proved the rough site plan prepared as Exhibit PDDDD. Then the complainant Satpal Sharma identified his initials and a memo Exhibit PH was prepared. Thereafter the case property was deposited with MHC.

The witness further stated that on 13.5.2008 he had taken sealed parcels from the MM, police station, City Thanesar and carried the same to police line, Kurukshetra producing the same before Hans Raj, Armorur who opened the sealed parcels and thereafter tested the fire arms containing the parcels and submitted his report Exhibits PU to PY and handed over the same to him along with parcels which he sealed after test. He had placed the said reports on the file whereas the sealed parcel with the MM, police station, City Thanesar. He then deposed regarding what he had

done during the investigation of this case.

PW-30 SI Gulab Singh had joined the investigation of this case on 13.3.2008 deposed regarding what had transpired in his presence on various dates.

PW-31 ASI Kehar Singh stated that on 20.3.2008, while he was posted at police station, City Thanesar the investigation of this case was handed over to him to effect recovery from the accused Rajiv Rana. In pursuance of his disclosure statement the accused led them to his native village Ugala, District Ambala and got recovered 30 currency notes of denomination of Rs.100/- each which had been taken into possession vide recovery Memo Exhibit PQQQ.

PW-32 Sh. Naresh Kumar Singhal, who on 31.3.2008 was posted as Chief Judicial Magistrate, Kurukshetra stated that on that day police moved an application for recording sample voice of accused Vishweshwar @ Rinku, Gagan Kumar, Yogender and Rajiv Rana which is Exhibit PVVVV. Thereafter notice was served upon the accused who appeared and suffered their statements giving their consent for the same vide Exhibit PWWWW. He stated that he had recorded their statements. On 5.4.2008 a CD was prepared and in that regard statement of Rajesh Saini was recorded.

PW-33 SI Jahangir Singh, who was member of the police party headed by Inspector Surinder Singh on 14.3.2008 deposed regarding what had transpired in his presence on that day.

PW-34 Surinder Singh, Inspector who had carried out investigation in this case initially and to a large extent deposed regarding his party.

PW-35 Constable Lalit Kumar, police station Sector 39, Noida, Gautam Budh Nagar had brought original FIR register pertaining to the year 2007 stating that FIR No. 45 dated 12.2.2008 was registered under Section 379 IPC which was subsequently given to crime branch vide case no.57 of 2008. Copy of FIR was Ex. PKKKKK.

Learned Public Prosecutor tendered in evidence certified copy of judgment dated 29.11.2010 Exhibit PLLLLL passed by Additional Sessions Judge, Kurukshetra against accused Gagan Kumar, Balvinder Singh @ Billu and Parvesh @ Shunty and others in the Sessions Case no. 37 of 2008/2009 arising out of FIR No. 566, dated 10.11.2007 for the commission of offences punishable under Sections 302,148,323,324 and 120-B IPC, 1860 of Police Station, City Thanesar, vide which those accused were convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each for the commission of an offence punishable under Section 302 read with Section 34 IPC, certified copy of judgment dated 01.05.2012 Exhibit P-MMMMM passed by the Court of Judicial Magistrate, First Class, Kurukshetra against accused Gagan Kumar in the Criminal Case No. 09/1 of 2009 arising out of FIR No. 578, dated 19.11.2008 for the commission of an offence punishable under Section 506 IPC of Police Station, City Thanesar, vide which accused Gagan was convicted for one year for the commission of an offence under Section 506 IPC, 1860.

Thereafter, the evidence of prosecution was closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating evidence appearing against the accused was put to them but they denied the allegations contending that

they are innocent and have been falsely involved in this case.

In addition to that accused Pooja @ Shivani stated that she has neither any relation with any accused nor she knows them; that she was seriously ill on 06.03.2008, 07.03.2008 and remained confined to bed.

Accused Balvinder @ Billu stated that there was a dispute regarding the passage, which leads to their house from Mandir side and complainant party objected to the said passage.

Accused Yogender @ Yogi and Neeraj Kumar stated that they have been falsely implicated in this case because of being close relatives of accused Rajiv Rana r/o villag Ugala.

Accused Rajiv Rana stated that prior to this case, he was arrested in some other case at Ambala and later on he was falsely implicated in this case.

Accused Navneet took up a plea that, he has been arrested from his house on account of having enmity with the complainant party and then falsely implicated in this case.

Accused Rajesh took up a plea that a false FIR was got registered at a belated stage. Prior thereto a cryptic information was given to police about the missing of the victim. Thereafter, young boys from the vicinity numbering 30 to 35 were called to police station. In this sequence the answering accused was also called to the police station and illegally detained there for several days. There were protest against the police in this regard and ultimately accused and many more were wrongly roped in the present false case; that his only fault was that he had a row with the police official when he had gone to the police to vouch for the innocence of Parvesh as he was related to him, that nothing was recovered from him.

During their defence evidence, accused examined inasmuch as nine witnesses, as per following details:-

DW1-Vijay Goel, A.E.T.O office of Deputy Excise and Taxation Commissioner (Excise), Kurukshetra, deposed that as per record 180 application forms for the draw of liquor vends for the year 2008-09 were received on 05.03.2008; that at Sr. No. 51 form No. 1472 in the name of Vishveshwar 1318/5 Vashit Colony, Bye Pass Road Kurukshetra was entered; Sr. No. 49 and form No. 1476 in the name of Raghbir Sharma 402/5, Gudri Mohalla, Thanesar Town is entered; that draw was held on 09.03.2008; that the draw of liquor vends is held in the presence of D.C., S.P. higher officers of their department. However, he could not tell whether the proceedings of draw of lots started at 11:00 A.M. or not.

DW2-Raghbir Sharma, son of Pawan Kumar, Shopkeeper r/o 402/5, Gudri Mohalla, Thanesar, District Kurukshetra, stated that he had applied for the allotment of liquor vend for the year 2008-09 and an application was submitted on 05.03.2008. Vishveshwar @ Rinku accused was their partner and had also applied on 05.03.2008 for the allotment of liquor vend for the year 2008-2009; that he and Vishveshwar had personally gone to file the application in the office of D.E.T.C. Kurukshetra on 05.03.2008; the draw had taken place on 09.03.2008 in which he and Vishveshwar both were present at Kurukshetra; that a number of senior Govt. Officials of Excise and Taxation Dept. as well as of Police Department and other Officials of District Administration were present at the time of draw of liquor vends. The proceedings regarding draw were concluding at about 12:00 noon; that he and Vishveshwar remained there during the draw proceedings till end. Thereafter, Vishveshwar left for

village Mohri Jagir, District Karnal to participate in the marriage.

He further stated that during the night of 12/13.03.2008, he was picked up by the police from his house and was firstly taken near the old Police Station, City Thanesar where one Vijay Kumar, friend of Vishveshwar was already with the police. Thereafter, they both were taken to Police Station, Sadar Thanesar, Pipli where S.P., D.S.P. and other Senior Police Officials were present. That he was interrogated about the whereabouts of accused Vishveshwar and he told them that he had gone to village Mohri Jagir, District Karnal after the draw of the liquor vend on 09.03.2008. That he was detained by the police there and the police left for village Mohri Jagir to apprehend Vishveshwar and he was brought to police station, Sadar Thanesar, Pipli on the intervening night of 12/13.03.2008 in the early hours. He was brought alone from village Mohri Jagir. He was not interrogated in his presence and nothing was recovered from him. The witness further stated that he was set free at 3:00 P.M. on 13.03.2008.

DW3-Chatar Bhuj, son of Gandhi Ram, Private Accountant, resident of Mohri Jagir, District Karnal, deposed that there is a temple of Lord Shiva in village Mohri Jagir on the main metalled road near abadi of that village; that the police neither met him in connection with the present case specifically regarding arrest of accused Vishveshwar @ Rinku nor he ever refused to join the police party on 14.03.2008 or at any other point of time; that his residential house is situated just opposite the said Shiva Temple; the police never held any nakabandi in front of his house or near the temple on the main road on 14.03.2008. The police did not arrest Vishveshwar near the said Shiva Temple on the main road by holding the nakabandi. Vishveshwar is married in their village to the daughter of Pandit

Vishnoo Dutt. That on 13.03.2008, he came to know that Vishveshwar the son-in-law of Pandit Vishnoo Dutt had been arrested by the police from his house in their village during the intervening night of 12/13.03.2008.

DW4-Baba Ashok Giri Chela of Guru Sukhdev Giri, r/o Shiv Temple, village Mohri Jagir, District Karnal, stated that he has been residing in the aforesaid temple since 2005. Temple is situated on the main road outside of village abadi; that there is no house adjacent to the temple; there is no house even in front of the temple of the road. The houses of Chattarbuj and Raj Pal are situated in the East of the Temple. The police neither held any nakabandi in front of Shiva Temple in the year of 2008 nor anyone was ever arrested during nakabandi in front of the temple. The witness further stated that on 13.03.2008, he had heard from the villagers in the morning hours that son-in-law of Vishnoo Dutt had been arrested from his house.

DW5-Raj Pal son of Sh. Ram Dhari, Cultivator, r/o village Mohri Jagir, District Karnal, stated that his house is situated near the Shiva Temple of village Mohri Jagir and adjacent to the house of Chattarbuj; that Vishveshwar @ Rinku is married in their village with the daughter of Pandit Vishnoo Dutt; the temple is on the road; and so is his house and that of Chattarbuj. The witness further stated that the police never held any nakabandi on the main road near Shiva temple and his house in the year 2008 nor arrested Vishveshwar. Thus Vishveshwar was arrested during the night of 12.03.2008 from the house of Pandit Vishnoo Dutt.

DW6- Pala Ram, son of Sh. Harbansh Lal, Ex-Sarpanch, r/o village Mohri Jagir, District Karnal, stated that in the year 2008, he was the Sarpanch of village Mohri Jagir. The police never joined him or any Panch,

lumberdar while arresting the accused Vishveshwar; that he came to know that Vishveshwar was in village Mohri Jagir in connection with the marriage in his in-laws when he was arrested by the police during the intervening night of 12/13.03.2008 from the house of Pandit Vishnoo Dutt of the village.

DW7-Vishnoo Dutt, s/o Sh. Babu Ram, Agriculturist, r/o village Mohri Jagir, District Karnal, stated that accused Vishveshwar present in the Court is his son-in-law; that there was a marriage of his cousin in the village on 09.03.2008. Visheshwar and his wife Anuradha had come to village Mohri Jagir on 07.03.2008 to participate in the said marriage. Vishveshwar left in the evening of 08.03.2008 saying that he was to participate in the draw of liquor vend to be held on 09.03.2008. Vishveshwar returned back to the village to join the marriage celebration on 09.03.2008 after 12:00 noon. Vishveshwar remained in the village on 12th of March 2008 as his cousin who was married on 09.03.2008 was to go back to her in-laws after “Phera ceremony” on 12.03.2008. During the intervening night of 12/13.03.2008 at around 1/1:30 A.M., police reached at his house. One of the police man woke him up. He asked about the whereabouts of Vishveshwar from him to which he replied that he was in nearby room. Thereafter, he and police man went to the room of Vishveshwar where he was sleeping and woken up. The police told that Vishveshwar was required for interrogation. This witness stated that he requested the police to call Sarpanch and other respectable from the village but in the meantime the police reached there and took away Vishveshwar, who was alone when arrested.

DW8-Rajesh Kumar, MHC, PS City, Thanesar, had brought

register containing FIR No. 566 dated 10.11.2007 u/s 302,148,149,323,324 and 120-B IPC, PS City, Thanesar, which was registered against Billu son of not known, Gagan son of Pawan Kumar, Shunty son of unknown, Sunny son of Puran Chand, Naresh Kumar, son of not known and Savitri wife of Puran Chand on the complaint of Sunny son of Prem Chand. The witness stated that after completion of the investigation report u/s 173 Cr.P.C. was presented against Savitri Devi @ Gujri wife of Puran Chand, caste Gujjar, r/o Gurunanakpura Mohalla, Thanesar, arrested on 10.11.2007, Prem Chand @ Sunny son of Puran Chand, r/o Gurunanakpura Mohalla, Thanesar, arrested on 10.11.2007, Gagan Kumar, son of Pawan Kumar, caste Brahman r/o Gurunanakpura Mohalla, Thanesar, arrested on 14.03.2008, Balvinder @ Billu son of Harbans Lal, caste Odd Rajput, r/o Jhansa road, Parvesh @ Shunty, son of Puran Chand, caste Gujjar and Puran Chand son of Gian Chand, r/o Gurunanakpura Mohalla, Thanesar Jhinwar, r/o Motapur Mohalla Shahabad, Vishal @ Monu son of Roshan Lal, Brahman, r/o Saloria Mohalla Shahzadpur, PS Shahzadpur, Sunil Kumar, son of Sehdev, Yadav, r/o H.No. 139 R, new railway colony, Thanesar all arrested on 14.03.2008 and Naresh Kumar son of Chander Shekher, Khatri, r/o Pathronwali gali Chhota Bazar, Thanesar arrested on 27.03.2008. The report u/s 173 Cr.P.C. against accused Savitri and Prem Chand @ Sunny was submitted in Court on 01.02.2008 and against the remaining accused supplementary report was submitted on 30.04.2008. The I.Os in this case were Ram Chander Singh, Inspector, Surinder Singh, Inspector and Ram Kumar ASI. In this case accused Balvinder, Parvesh, Gagan and Naresh were convicted u/s 302 IPC by the Court of Shri L.N.Jindal, the then ASJ, Kurukshetra vide judgment dated 29.11.2010 and the accused Savitri, Sunil

Kumar, Puran Chand and Vishal were acquitted of the charges. He produced the copy of FIR as Exhibit DF.

DW9-Rajesh Kumar, son of Jai Ram, Shopkeeper, r/o village Ugala, P.S.Barara, District Ambala, stated that he has been running a cloth shop in the market of Ugala which is near Arra Wala Chowk, Saw mills for the last ten years; that there is an association of shopkeepers in Ugala of which he is a member for the last five years. There is a Panchayat in village Ugala and he is also an elected member Panchayat. The witness stated that he knew accused Rajiv Rana son of Dharam Singh, resident of village Ugala, who runs a sanitary shop in front of his shop across the road. Rajiv Rana used to sit on the said shop.

On 14.03.2008, he (this witness) was present at his shop at about 9:00 A.M. Accused Rajiv Rana was also present at his shop at that time. Around 9:00 A.M, a police Gypsy had arrived at the shop of Rajiv Rana, in which 6-7 police personnels were there. According to this witness, they reached near the said police gypsy as police officials were asking Rajiv Rana to sit in the Gypsy and enquired from the police as to why he was to be taken and upon which police officials told that he was being taken for inquiry in some criminal case. That they pleaded with the police that something should be given in writing, one person amongst them was proclaiming himself to be a relative of Rajiv Rana and who was telling his name as Pawan and was in police Uniform. He further told that after inquiry, Rajiv would be released. They asked the police to wait for father of Rajiv but to no effect and Rajiv was taken away. At that time at least 10-15 persons had assembled. Later on they came to know that he was implicated in some criminal case.

After hearing arguments, learned trial Court convicted and sentenced accused Neeraj Kumar, Vishveshwar @ Rinku, Gagan Kumar, Parvesh @ Shunty, Yogender @ Yogi, Balvinder @ Billu, Rajiv Rana, Rajesh Kumar, Navneet and Sunil Kumar @ Shunty, as mentioned above, whereas, accused Pooja @ Shivani was acquitted of the charges framed against her.

We have heard learned counsel for the appellant-convicts, counsel for the appellant-complainant, counsel for Shivani @ Pooja, as well as, learned Additional Advocate General for the State and we find that appeals filed by convicts – accused are without any merit, whereas it is otherwise, so far as, appeal filed by the complainant, since accused Shivani @ Pooja was let off by the trial Court without any justifiable reason, when charge against her stood established conclusively and affirmatively.

Nevertheless coming to the merits of the case, the first head of charge against the accused is under Section 364-A IPC i.e. kidnapping for ransom. For ready reference, the provision is reproduced as under :-

“ 364A. Kidnapping for ransom, etc.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to

do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

In this case, the most important witness happened to be the victim. Making reference to his testimony, he had made mention of being acquainted with Shunty, who according to him had been residing near the temple and used to play cricket with him. He also deposed regarding Shunty making telephone calls to him quite often and at times he being accompanied by Gagan accused. He has deposed regarding Shunty offering him money, pistol and then asking him to throw a birthday party. The witness has stated that he tried to avoid Shunty and Gagan, but they were always making an attempt to remain in touch with him. He has given details of Shunty and Gagan meeting him prior to the incident and accused Rajesh and Sunny attending his birthday party uninvited. Such type of instances go to show that accused had done a lot of planning and they wanted to give various types of allurements to the victim, so as to take him away with them and they ultimately succeeded. For that purpose, they had given temptation to the victim by offering him girl Shivani @ Pooja, though according to the victim he refused to have anything to do with her. The common object of all the accused stands established on the record. It transpires that Shunty and Gagan tried to come close to the victim by making telephone calls and meeting him quite often, then having pleasant talks with him, offering to help him monetarily and otherwise. On the fateful day i.e. 6.3.2008, when the victim was kidnapped, all of them were together. On 6.3.2008 at about 7.00 A.M. Shunty had called the victim on telephone on the pretext of

getting birthday party from him and then taking him away by making him sit in the Santro car bearing No. 6346, which was being driven by Yogender – accused; that accused Shivani @ Pooja sitting by his side, Gagan and Shunty sitting on the rear seats. Shunty had given allurement to the victim telling him that the girl was a gift for him and though according to the victim, he had refused saying that he was not interested in such things and had said that girl should be asked to get down so that they could proceed to Saffron hotel for party. Closeness of Shivani @ Pooja with Shunty could be gauged from the fact that, as narrated by the victim, name of Shunty was tattooed on the inner side of forearm of Shivani @ Pooja. Then the victim narrated that an Esteem car was also parked nearby. Accused - Vishveshwar was in the driving seat of Esteem car. Accused Rajiv Rana alongwith Sunny were sitting by the side of driver and on the rear seat accused Balvinder @ Billu, Neeraj and Sunil, as well as, Rajesh and Navneet were sitting and on Billu and Sunny addressing Shunty in a raised voice as to what was being done and that they should proceed immediately, Shunty got down from the Santro car and caught hold of the victim by his arm and made him sit in the Santro car. Then both the cars had started proceeding towards Pipli. From there both cars took a turn towards Shahbad on Kurukshetra-Shahbad stretch on National Highway No.1. That goes to show the common object of all the accused was to kidnap the victim. According to the victim, he was made to sit between Shunty and Gagan and then both of them pulled out a pistol each and nozzles were put against his flank by them and they stated that he should keep sitting and keep silent otherwise they would shoot him. The narration of further facts thereafter goes to show, like both cars being stopped, Gagan going to Dhaba to bring key

(opener) and Sunny bringing 4-5 bottles of beer and both the cars then restarted and stopped near the Dhaba. Accused Rinku, Sunny, Rajiv Rana, Balvinder, Neeraj, Sunil, Navneet and Rajesh alighted from the other car and surrounded the Santro car closely and that victim getting frightened, stated that he be allowed to get out of the car, Gagan pulling his hand asking him to remain sitting without speaking and the further events, that the car stopped at some distance short of Saharanpur in U.P. At that point, accused Shivani addressed accused Shunty as *'Priye Maine Apna Vo Kam Kar Diya Hai Jo Tumne Diya Tha, Ab Mera Hissa Va Kharcha Mujhe De Do'* meaning thereby that she had played the part assigned to her and her share and expenses by paid to her and then Shunty addressing Shivani as *'Priye'* giving her two currency notes of Rs.100/- each and telling her that she would get a large sum as her share as a *'Moti Murghi'* (fat hen) was in their clutches, that clearly indicates that Shivani @ Pooja was in thick of things right from the beginning and the trial Court clearly fell in error in giving clean chit to her. She was part of the conspiracy hatched by all the accused and had prior meeting of minds with them. It also goes to show that everything was being done in a pre-planned manner. According to the victim, he was threatened and intimidated by the accused and was abused also and thereafter told that he had been kidnapped. He narrated that all the accused who were in the other car had also come and started beating him up. He narrated further that Vishveshwar @ Rinku accused stated that they would collect a ransom of Rs. One crore from his father. The victim has narrated long sequence of events stating that near the canal a call was made by accused to the mobile phone of his mother and mobile set was given to him and on asking of the accused, he spoke to his mother saying

that he had been kidnapped by accused Sunny, Billu, Gagan, Shunty and their companions. His father had come on the line and talk was held with him and as asked by accused he told his father that he had been kidnaped and he should get him released by paying ransom of Rs.70 lakhs or 80 lakhs. Thus the essential ingredients of offence under Section 364-A IPC are clearly fulfilled. The victim having been taken away by the accused, abused, beaten up and threatened and told that he had been kidnapped for ransom and then made to speak to his parents, asking them to pay ransom of Rs.70-80 lakhs, so as to get him released and thereafter, he was also made to talk to his uncle Dharampal on the phone by the accused, was in prosecution of their common object of doing so. Thereafter, victim was taken away to various places and confined there including in sugarcane fields. He has narrated that in the evening of 10.3.2008, he was brought out of the sugarcane field; that all the accused except Shivani were there and he was made to talk with his father on mobile phone, when he told that he had not eaten for three days and ransom should be paid at the earliest to get him released and that Rinku accused had snatched the mobile set from him and started saying that, not only he will be killed if ransom is not paid but the entire family would be wiped out. Thus the fact of kidnapping and demanding of ransom by the accused stands established. The victim has narrated about his being made to speak to his father on mobile, abused, beaten up, illegally confined, Yogender, Rajiv Rana, Shunty and Neeraj holding pistol and surrounding him from all the four sides. That ultimately, he was got released.

From the statement of PW-2 Satpal Sharma, kidnapping of victim and demand of ransom amount by the accused from him and payment

of Rs.1.50 lakhs as ransom money by him to the accused on 12.3.2008, some of the currency notes bearing his initials, is also proved on record. From the evidence adduced by the prosecution, it clearly comes out that at the time of kidnapping, all the eleven accused were there, though Shivani @ Pooja had alighted from the vehicle on reaching Saharanpur. But then, as discussed above, and in view of the fact that when she was arrested, she had suffered a disclosure statement and got recovered currency notes from her possession from almirah of her residential house, some of the currency notes bore initials of the complainant, those notes form part of ransom amount of Rs.1.5 lakhs, which had been received by the accused from father of the victim, points out that she had got a share in the booty, as such was a participant in the crime of kidnapping for ransom, of the victim. The remaining accused had also been found actively involved in the crime. The other accused, in pursuance of the disclosure statements made by them had also got recovered currency notes from their possession, some of those notes bear initials of the complainant, which goes to show that they had shared the booty i.e. the ransom amount.

As regards charge for offence under Section 377 IPC against accused Yogender, victim appearing as PW-1 has categorically stated that at 11/12 O' clock, in the day, accused Yogender had sexual intercourse with him against the order of nature through his anus. The victim had been medically examined. PW-3 Dr. Lajja Ram, Medical Officer/Radiologist, LNJP Hospital, Kurukshetra, on 14.3.2008, while posted as Medical Officer had examined the victim and found that there was history of bleeding through the anus while passing stool 2 to 3 times after he was subjected to sodomy. Defecation was painful. He had observed that local examination of

anal region showed reddishness and inflammation. Tone of external anal sphincter appeared to be increased. He had made detailed observations in the MLR. He had also examined Yogender accused, observing that he was fit to perform sexual intercourse. Thus no doubt is left in our mind that victim was subjected to sexual assault by Yogender and he had sexual intercourse with him against order of nature. Therefore, charge for offence under Section 377 IPC is duly proved against Yogender @ Yogi.

As regards, offence under Section 411 IPC against Yogender, PW-15 Sheetal Rajput had deposed that she was owner of Esteem car bearing registration No. UP-16J-3999, which was stolen on 11.2.2008 at night. Her husband lodged the report in that regard with police at Sector 39, Noida. Though the car stood recovered, therefore, theft of the car stood proved from statement of this witness, which means that the said Esteem car was a stolen property. Recovery of the stolen car from the possession of Yogender stands proved from the fact that as deposed by PW-29 ASI Surinder Singh, accused Yogender had got recovered a mobile phone make Sony Ericsson and a car make Esteem, bearing registration No. HR-06M-8513, from his possession at Meerut. Obviously, the accused does not claim ownership of this car and he had not been able to account for his possession. Thus, presumption under Section 114 of the Indian Evidence Act, that a person who is found to be in possession of the stolen property soon after the theft, is either a thief or had received the stolen property, knowing it to be a stolen property. Since there is no direct evidence available on the file that accused Yogender had committed theft of the Esteem car, the alternative part of the presumption that he had received the Esteem car, knowing it to be stolen property, obviously can be drawn against him. His

intention of doing so becomes obvious from the fact that he did so to cause wrongful gain to himself and wrongful loss to owner of car namely, Mrs. Sheetal Rajput, therefore, necessary ingredients of offence under Section 411 IPC against Yogender also stands proved.

Now coming to other head of charge against the accused, i.e. under Sections 468, 471 IPC i.e. forging of number plate bearing No. HR-06M-8513, putting the same on Esteem car having original registration No. UP-16J-3999, intending that it shall be used for the purpose of cheating and then fraudulently using it as genuine number plate, knowing it to be forged. PW-14 Ranbir Singh, Registration Clerk, office of Registering Authority, Panipat had deposed that on 24.3.2008, an application was moved by ASI Jahangir Singh, inquiring about ownership of vehicle i.e. car No. HR-06M-8513 and after perusing the record, he reported that there was no car registered against said number, which was in the name of Angrej s/o Daya Nand, resident of Village Israna regarding Bajaj Motorcycle. He proved his report as Exhibit PVV. Coupled with that, statement of PW-15 Sheetal Rajput, who deposed regarding her ownership of Esteem car bearing registration No. UP-16J-3999, which was stolen on 11.2.2008 at night, regarding which report was lodged with the police and which had not been recovered so far. The victim had deposed regarding the Esteem car being plied using number plate HR-06M-8513 and this very number was there on the car when it was got recovered by accused Yogender from his possession. The accused had been using this car, having forged its registration number, with an intention that the same be used for the purpose of cheating, having full knowledge that the number displayed on the car was forged one. As such charge for offence under Sections 468 and 471 IPC, is

clearly proved against all the accused.

As regards charge for offence under Section 201 IPC, for which accused Vishveshwar @ Rinku, only has been convicted, the prosecution has successfully proved that such accused had destroyed the sim card of Tata Indicom mobile phone having No. 9255419046, which was used for demanding ransom. This fact has been admitted by accused Vishveshwar @ Rinku in his disclosure statement Exhibit PDD, which is duly proved from the testimony of PW-34, Inspector Surinder Singh.

Now coming to other heads of the charge against accused, Yogender @ Yogi, Rajiv Rana, Neeraj, Vishveshwar @ Rinku, Parvesh @ Shunty, have been charged under Section 25 of the Arms Act. As per prosecution story, Vishveshwar @ Rinku, on 14.3.2008, in the area of Police Station City Thanesar, District Kurukshetra was found in conscious possession of pistol and 3 live cartridges without any permit or licence, accused Parvesh @ Shunty on that very day, in that very area was found in conscious possession of pistol and 9 cartridges without any permit or licence, Yogender @ Yogi on the said date and place was found in conscious possession of one country made pistol and two live cartridges, accused Rajiv Rana on that very day, in that very area was found in conscious possession of one country made pistol and two live cartridges, all without any permit or licence. Whereas Neeraj Kumar accused on 17.3.2008 in the area of Police Station City Thanesar, District Kurukshetra, was found in conscious possession of one country made pistol, two live cartridges and three empty shells, all without any permit or licence.

Now coming to charge under Section 25 of the Arms Act, against Vishveshwar @ Rinku, first, PW-30 SI Gulab Singh stated that on

14.3.2008, he alongwith other members of the police party had gone to Village Mohri Jagir, where two teams were formed, first headed by Inspector Surinder Singh and the second by Inspector Dharambir Singh and they had laid Naka. A car came there, its driver was overpowered and on being searched was found to have a pistol lying on his right thigh. Driver disclosed his name as Vishveshwar @ Rinku. Pistol was picked up. On checking it was found to have one bullet in the chamber and two from magazine were found, which were taken out and thereafter the pistol (Exhibit P203) and the live cartridges (Exhibits P204 to P206) so recovered were converted into a parcel, which was sealed by seal 'SS' and then the sealed parcel alongwith specimen sealed impression and car was taken into possession vide recovery memo Exhibit PHHHH. The sketch and the recovery memo were attested by him, ASI Jahangir Singh and Inspector Dharambir. PW 33 SI Jahangir Singh, the other witness of recovery also deposed on those lines. In their lengthy cross examination, they could not be shattered on any material point. The accused could not produce any licence or permit for retention of arm and ammunition, therefore, recovery of pistol and three live cartridges from possession of accused on 14.3.2008 in the area of Police Station Thanesar, District Kurukshetra, without any licence or permit, stands proved.

As per statement of PW-6 ASI Hans Raj Armourer, Police Lines, Kurukshetra, on 13.5.2008, he had tested the recovered pistol and live cartridges and submitted his report finding the pistol to be functional and cartridges to be live ones. From the statement of PW-13 Jai Parkash, Reader to District Magistrate, Kurukshetra, who had proved sanction order Exhibit PTT, it comes out that sanction for prosecution of such accused was

granted by the District Magistrate, after due application of mind. Therefore, charge for offence under Section 25 of the Arms Act against Vishveshwar @ Rinku stands established.

Now, coming to such charge against Parvesh @ Shunty, again there are statements of PW-30 SI Gulab Singh and PW-33 SI Jahangir Singh, who have categorically deposed in that regard that on 14.3.2008, when the police party intercepted the car and the occupants were overpowered, driver was found to be Vishveshwar carrying a pistol on his thigh, whereas, the other person sitting on the front seat disclosed his name as Gagan son of Pawan Kumar, resident of Thanesar. Then the police party on the basis of disclosure statement by Vishveshwar went to Jalalabad, U.P. Then three raiding teams were constituted headed by Inspector Surinder Singh, Inspector Dharambir and Inspector Rajesh Kumar. The team headed by Inspector Surinder Singh was deputed in the Northern side, whereas the team headed by Inspector Dharambir was deputed in Eastern side and the team headed by Inspector Rajesh Kumar in Southern side to cover the house of accused Neeraj situated in Village Sisoni. Western side was kept open. They found two youth standing outside the sehan of the house of Neeraj, who ran to enter in the house, on seeing the police party. One of them, namely, Balvinder Singh @ Billu was apprehended, whereas other one had fled away. When the police party entered the house, the victim was found to be in custody of accused Parvesh @ Shunty, who was having a loaded pistol in his hand, whereas accused Yogender @ Yogi, Neeraj Kumar Rana, Rajiv Rana, Navneet and Rajesh alongwith Parvesh were found around the victim and covering him. The pistol and cartridges were recovered from Yogender @ Yogi, taken into possession vide recovery memo Exhibit PLLLL/1. A

country made pistol and two live cartridges were recovered from Rajiv Rana and taken into possession vide recovery memo Exhibit PMMMM/1. Pistol which was recovered from Parvesh was taken into possession vide recovery memo Exhibit PKKKK/1. That was so done after preparing rough sketches of the recovered pistol.

From the statements of PW-30 SI Gulab Singh and PW-33 SI Jahangir Singh, it comes out that accused Neeraj pursuant to his disclosure statement on 17.3.2008 had got recovered one pistol alongwith two live cartridges and three empty shells, which were taken into possession vide recovery memo Exhibit PZZZ and sketch of the pistol Exhibit PYYYY was prepared. As per statement of PW-6 ASI Hans Raj, Armourer, Police Lines, Kurukshetra, on 13.5.2008, he had tested the recovered pistol and live cartridges and submitted his report finding the pistol to be in working order and recovered cartridges to be live ones. From the statement of PW-13 Jai Parkash, Reader to District Magistrate, Kurukshetra, who had proved sanction order Exhibit PTT, it comes out that sanction for prosecution of such accused was granted by the District Magistrate, after due application of mind. Therefore, charge for offence under Section 25 of the Arms Act against Neeraj stands established.

Learned counsel for the convict-appellants had raised various contentions, first being that during the course of investigation, the investigating agency did not try to collect the details of the calls stated to have been made by the victim to his parents and by the accused to the parents of the victim, which is a big lacuna in the prosecution story. However as pointed out by PW-5 HC Hoshiar Singh from Cyber Cell, Office of S.P. Kurukshetra, that at request of Investigating Officer he had

collected call details regarding the calls made from and to six telephone numbers, proving the call details as Exhibit P-80 to P-163, submitting those to Investigating Officer, who took into possession those documents vide memo Exhibit PT, as such the Investigating Agency cannot be faulted for non-collection of call details but since these relates to the calls made from mobile phone of the convict to the mobile phone of his parents and not from mobile phone of parents of victim, thus do not help the prosecution much.

Another argument advanced was that when 11 boys and one single girl were travelling in two cars, that would have aroused suspicion of the onlookers and the police and it is highly unlikely that all the accused alongwith victim would have travelled in two cars in such a manner.

Again this arguments does not convince us, perhaps the accused took Shivani @ Pooja alongwith them as a honey trap to allure the victim and then she was made to sit in the car and the two cars travelled together to give an appearance of a group of family members travelling together and there was nothing unusual to arouse suspicion of the onlookers or the police.

Learned counsel for Shivani @ Pooja raised argument that Pooja was sick on 6.3.2008, when the incident of kidnapping of the victim is stated to have taken place and she has taken a specific plea in that regard while being examined under Section 313 Cr.P.C. that she was seriously ill on 6.3.2008 and 7.3.2008 and was confined to bed. But then this plea is not convincing. Participation of Shivani @ Pooja in the incident stands established from statement of the victim appearing as PW-1, which we do not see any reason to disbelieve. Then currency notes were recovered from

her possession in pursuance of the disclosure statement made by her. Some of the notes bearing initials of the complainant. If she had no concern with the incident then how did she come in possession of such notes, which had been given by complainant to the accused as ransom money. Interestingly, she had not led any evidence to show that she was seriously ill on 6.3.2008 and 7.3.2008 or was unable to move about. One more factor to be taken into consideration is that name of Shunty was tattooed on the inner side of forearm of Shivani @ Pooja, as deposed by the victim appearing as PW-1. If she had no concern with Shunty accused, then how come his name tattooed on her forearm. Therefore, active involvement of Shivani @ Pooja in the incident comes out to be there although she was not found to be present throughout the period when victim was detained by the other accused.

Learned counsel for the convict-appellants further submitted that the report by the Forensic Science Expert to the effect that voice of accused Vishveshwar @ Rinku, Gagan, Yogender @ Yogi and Rajiv Rana, the specimen of which had been taken in the Court of Chief Judicial Magistrate, Kurukshetra, on 5.4.2008 and was converted into compact disc for comparison, and report was given as Exhibit PNNN with regard to matching of voice, learned counsel has referred to citation reported as **Anvar P.V. vs. P.K. Basheer and others (2014) 10 Supreme Court Cases 473.** Since provisions of Section 65-B of the Evidence Act have not been complied with, in as much as, the necessary certificate has not been obtained or proved in evidence. Though the authority referred to by the learned counsel for the convict-appellant had different facts and it relates to an election matter, nevertheless the fact remains that no such certificate was procured or proved in evidence. As such strictly speaking the report may not

be taken as such. However, since statement of victim PW-1 is there that the such accused had spoken to his parents from his mobile phone and statement of PW-2 Satpal Sharma is also there that such accused had spoken to him. Therefore in absence of such report, charge against accused still stands established.

Learned defence counsel pointed out to certain contradictions and variations in statements of PW-1 and PW-2, as regards date and time, with respect to various events and distance between several places etc. However, we find that such contradictions and variations are bound to occur due to difference in power of observation and perception of various individuals and lapse of memory, due to passage of time. While appreciating the statement of the victim, it has to be kept in mind that he had been kidnapped by, in as much as, 11 persons including some hardened criminals and was held hostage for several days, abused, beaten up and even sodomized by one of the kidnappers. In such state of affairs, when one is undergoing traumatic experience, it is difficult to remember exact details, rather one tends to lose sense of direction, time, distance etc.

Similarly, as regards deposition of Satpal – complainant, his son of young age having been kidnapped and a huge ransom amount demanded from him, does leave a big scar on the memory of such a person and it is too much to expect a person who had such a shocking experience to remember minute and precise details.

In view of the above detailed discussion, we find that impugned judgment, as regards accused – convicts Neeraj Kumar, Sunil Kumar @ Shunty, Rajesh Kumar, Gagan Kumar, Yogender @ Yogi, Navneet, Vishveshwar @ Rinku, Rajiv Rana, Balvinder @ Billu and

Parvesh @ Shunty, is based upon proper appraisal and appreciation of evidence and correct interpretation of law, though the trial Court has adopted erroneous approach in acquitting accused Shivani @ Pooja, without any plausible and satisfactory reason and in our considered view, judgment to that extent needs to be set aside. We accordingly, direct so. Therefore, the judgment of conviction and order of sentence against Neeraj Kumar, Sunil Kumar @ Shunty, Rajesh Kumar, Gagan Kumar, Yogender @ Yogi, Navneet, Vishveshwar @ Rinku, Rajiv Rana, Balvinder @ Billu and Parvesh @ Shunty, is upheld and appeals filed by them are dismissed. However, the observations made by the trial Court that convicts Gagan, Balvinder @ Billu and Parvesh would not be entitled to any remission etc. and life imprisonment in their case would be for the whole of their lives, stands withdrawn, since we find such observation to be somewhat harsh, keeping in view the facts and circumstances of the case. Whereas CRA-D-942-DB of 2013, filed by the complainant, challenging acquittal of Shivani @ Pooja, is accepted. Resultantly, Shivani @ Pooja is convicted for offences under Section 364-A read with Section 149 IPC, 468, 471 IPC. Keeping in view the gravity of the offences, no leniency can be shown to her and she deserves to be sentenced at par with her co-accused, for the offences which have been proved against her. Accordingly, the impugned judgment passed by the trial Court is modified to that extent. Shivani @ Pooja is sentenced as follows:-

Name of Convict	Offence under Section	Sentence
Shivani @ Pooja	U/s 364-A read with Section 149 IPC	To undergo life imprisonment and to pay a fine of Rs.50,000/- (Rs. Fifty thousand) and in default of payment of fine, to undergo simple imprisonment for a period of 6 months.

Name of Convict	Offence under Section	Sentence
	U/s 468 IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, to undergo simple imprisonment for a period of one month.
	U/s 471 IPC	To undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.10,000/- (Rs. Ten thousand) and in default of payment of fine, to undergo simple imprisonment for a period of one month.

All the sentences are ordered to run concurrently. Chief Judicial Magistrate, Kurukshetra is directed to take her into custody so as to make her undergo the sentence.

(T.P.S. Mann)

(H.S. Madaan)

Judge

Judge

2.2.2017
chugh

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No