

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : January 31st, 2018

+ CRL.A. 1275/2013

RAVINDER @ BINDA Appellant

Through: Mr.R.M. Tufail, Mr.Farooq
Chaudhary, Ms.Astha,
Advocates.

versus

STATE Respondent

Through: Ms.Aashaa Tiwari, Additional
Public Prosecutor for the State
with Sub-Inspector Jeetendra
Singh, Police Station Subhash
Place, New Delhi.

WITH

+ CRL.A. 1406/2013

KAMAL SAXENA Appellant

Through: Mr.K.Singhal and Ms.Sana,
Advocates.

versus

STATE Respondent

Through: Ms.Aashaa Tiwari, Additional
Public Prosecutor for the State
with Sub-Inspector Jeetendra

Singh, Police Station Subhash
Place, New Delhi.

WITH

+ CRL.A.204/2014

BUNTY

..... Appellant

Through: Mr.Praveen Agrawal,
Advocate.

versus

STATE OF NCT OF DELHI & ANR. Respondent

Through: Ms.Aashaa Tiwari, Additional
Public Prosecutor for the State
with Sub-Inspector Jeetendra
Singh, Police Station Subhash
Place, New Delhi.

AND

+ CRL.A. 415/2014

BIRJESH @ BIRJU

..... Appellant

Through: Mr.Puneet Varshney, Advocate.

versus

STATE

..... Respondent

Through: Ms.Aashaa Tiwari, Additional
Public Prosecutor for the State
with Sub-Inspector Jeetendra
Singh, Police Station Subhash
Place, New Delhi.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S. TEJI, J.

1. The present appeals have been preferred by the convicts/appellants (hereinafter referred to as “the appellants”), namely, Ravinder @ Binda, Kamal Saxena, Bunt and Birjesh @ Birju to assail the judgment dated 14.08.2013-whereby the appellants have been convicted under Section 364-A read with Section 120-B IPC, and against the order on sentence dated 07.09.2013 whereby the appellants have been sentenced to rigorous imprisonment for life along with fine of Rs.10,000/- each, and in default of payment of fine, to further undergo one month simple imprisonment for the offence punishable under Section 364-A read with Section 120-B IPC. Three other co-accused viz. Ashok Kumar, Chetan and Shanu have been acquitted by the aforesaid impugned judgment.

2. The factual matrix emerging from the record, is that on the 11th of December, 2010 information was received at Police Station Saraswati Vihar about a child aged about 7 years going missing from H-334, JJ Colony, Shakarpur. The said information led to DD No.52-B being lodged. SI Sanjay Dahiya

after reaching the spot tried to search the missing child along with Khempal (father) but their efforts went in vain. ASI Radhey Shyam also searched for the missing child and recorded the statement of Khem Pal. He informed that on 11.12.2010, at about 3 P.M. his son (Missing child 'Y') had gone to play along with his friends towards Bihari Chowk. One of his friends, namely Rahul, informed Khem Pal that his child had gone in a TSR along with two persons who were his tenants. The child had asked his friend to take his cycle back to his house. Khem Pal stated that Rahul returned the cycle, but his child did not return thereafter. Thus on the basis of this statement the subject FIR was instituted.

3. Khem Pal received a phone call on his mobile phone bearing number 9716774661 at about 9.07 AM on 12.12.2010, from a mobile number 8650546449. The caller informed Khem Pal not to worry, as his son-who was missing, was with him, and the phone line got disconnected. After some time Khem Pal again received a phone call from the same mobile number and he demanded a sum of Rs. 20-25 lacs for the release of his son. Khem Pal replied that he will not be able to pay such a huge amount. Khem Pal eventually agreed to pay the amount, and told the caller that he will sell his house to arrange the amount. He also requested the caller to make him talk to his son, to which the caller told that he will be allowed to talk to his son around 3:00- 3:30 PM. The caller further

threatened him that his son would be killed if he tried informing the police. Khem Pal immediately informed about the call to the Police and upon getting the details of the mobile number 8650546449 it was found that the said number was issued from Badayun.

4. Khem Pal again received a call at about 10.20 AM on 13.12.2010 on his mobile number from another mobile number bearing No. 8881029270. The caller inquired whether he had arranged Rs. 25 lacs. To this, Khem Pal replied that he had managed to arrange for the money. The caller thereafter told Khem Pal to come at Anand Vihar Bus Terminal (ISBT) to hand over the money and receive his son. The police was informed, and a police party was formed who instructed Khem Pal to take Rs. 60,000/- and other papers in a bag. Khem Pal along with police officer SI Sanjay Dahiya, Sandeep and five-six other police officials went to ISBT, but nobody came. A call was received from mobile number 8881029270 by Khem Pal, and the caller told him that Delhi Police was active and they will not receive the money at Delhi. Instead, he would receive the money at Rampur, UP. Khem Pal again informed the police, and a police team was constituted. Khem Pal, SI Sanjay Dahiya, Anand Gupta- relative of Khem Pal, and few other police officials went to Rampur, UP. The kidnapped child was eventually recovered from House No. 208, Gali No. 1, Lochi Nangla, Badayun, Uttar Pradesh. The neighbors, namely

Dr. Rajeev Saxena and Shyam Babu Saxena were present. The accused Bunty, Brijesh @ Birju, Ravinder @ Binda and Kamal Saxena who were there along with the child, were apprehended. Accused Brijesh @ Birju during formal search was found to be in possession of two mobile SIMS of Vodafone, one mobile SIM of Airtel, and one mobile phone instrument with SIM of mobile no. 8650546449. He further disclosed he was using the said mobile numbers for making ransom calls to Khem Pal. The Mobile Phone and the Sim Cards were seized. On the formal search of accused Bunty, three different Mobile SIMS (Two Vodafone and One Reliance) were recovered alongwith one Dual SIM mobile phone make LEMON with one SIM. Accused Kamal Saxena was formally searched and two SIMS and a mobile Phone with a SIM were recovered. Upon conducting the formal search of accused Ravinder @ Binda, one mobile alongwith one SIM bearing mobile no.9999903166 were recovered which were also seized. The disclosure statements of the accused persons were recorded. Thereafter, the police team along with the accused persons and the victim returned back to Delhi.

5. The accused persons, on 14.12.2010, showed the place of incident from where they had kidnapped the child. Accused Ashok Kumar-at the instance of other co-accused persons, was arrested from H. No, 1059, Gali No. 15, Shyam Colony, Budh Vihar, Delhi. Upon disclosure of accused Ashok,

he got recovered one TSR in which they kidnapped the child. He also got recovered another TSR on which they took the kidnapped child from Rama Vihar to Seelampur, Mustafabad. Accused Ashok was thereafter arrested and a Dual SIM mobile phone make LEMON was recovered with one SIM of TATA Indicom on personal search. Both were seized. The disclosure statement of accused Ashok, the two TSR's bearing number DL-1RJ-4373 and DL-1RJ-1093 were seized.

6. The statement of the victim child was recorded on 15.12.2010 under section 164 Cr.P.C. and, at the instance of accused Bunty, Kamal, Brijesh and Ravinder, the accused Chetan and Shanu were apprehended from Gali No. 10, Seelampur, Kardampuri. Accused persons disclosed that Chetan and Shanu provided the room where they stayed with the kidnapped child at Mustafabad and Rupees one lac was to be paid to him from the ransom amount demanded. Thereafter, Chetan and Shabu were arrested. Upon their formal search, two mobile phones make Lava (dual sim) and another make Nokia were recovered, which were also seized. Charge sheet was filed against all the seven accused after completion of investigation.

7. Charge under Section 120-B IPC was framed against all the accused persons. Further, a charge under Section 364-A/34 IPC was framed against accused Bunty, Kamal Saxena, Brijesh @ Birju, Ravinder @ Binda and Ashok Kumar. Charge under Section 216/34 IPC was also framed against

accused Chetan and Shanu. Accused persons pleaded not guilty to the charges framed, and claimed trial.

8. To prove its case, the prosecution had examined 20 witnesses, namely, W/HC Asha Rani (PW1), Tarun Khurana (PW2), Shishir Malhotra (PW3), Gaganjeet Singh Siddhu (PW4), Deepak (PW5), HC Ravinder (PW6), Mohd. Adil (PW7), Muzeem (PW8), Master Rahul (PW9), victim (PW10), Anand Kumar Gupta (PW11), Khem Pal Gupta (PW12), Dr.Rajeev Kumar Saxena (PW13), Subhash Babu Saxena (PW14), SI Suresh Pal Singh (PW15), Ct.Furkan Hussain (PW16), SI Sandeep Kumar (PW17), Ct.Parmod (PW18), SI Radhey Shyam (PW19) and SI Sanjay Kumar Dahiya (PW20).

9. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed innocence. To prove their defence, the accused persons examined three defence witnesses, namely, Smt.Aradhana (DW1), Bharat (DW2) and Pankaj (DW3).

10. On appreciation of evidence and material brought on record, the trial court convicted the appellants for the offence punishable under Section 364-A read with Section 120-B IPC, whereas accused Ashok Kumar, Chetan and Shanu were acquitted of the charges framed against them. Feeling aggrieved by the judgment of conviction and order on sentence,

the instant criminal appeals have been preferred by the appellants.

11. The most important witness of the prosecution is the victim child (PW10). He had deposed that on the day of incident, he along with his friends was riding bicycle. Rahul, Nitin, Adil and PW10 were the ones who were riding the bicycles. One auto rickshaw came from behind, driven by one Bunty, in which Birju and Binda were sitting in the rear portion. Birju and Binda were visitors to his house. Birju pulled PW10 by his hands in the TSR. Thereafter, they all went to a different house and then he was taken to a far off place in a bus. He further deposed that Birju called him on the pretext that he will take PW10 to his father. At a far off place, one another man came there-whose name PW10 did not know. PW10 identified accused Chetan as the other person who had come to the house. He was confined in the said house, by tying him up. When PW10 asked them to take him to his house, he was made to talk to his father on a phone and during the conversation, the phone was snatched away from him. He further deposed that he was kept inside the house tied from a rope and thereafter he was made to sit on a bed. He was threatened that he would be killed. He further deposed that his father along with police officials came in a car and accused persons were taken away. He stated that the auto rickshaw was driven by accused Bunty, which was occupied by accused Binda, Birju and other accused

whose names he did not know. He was physically assaulted during his confinement. He had identified three accused persons, namely, Birju, Bunty and Chetan in the Court.

12. During cross-examination, PW10 had denied that he got lost while playing and that he went far away. He had further denied that he was not taken anywhere, and that he was not confined anywhere. He denied that he had identified the accused Bunty, Chetan and Birjesh on the instructions of police, or his parents.

13. PW9 Master Rahul had deposed that on 11.12.2010 at about 2.30-3.00 p.m., he along with Master Nitik, Mohd. Adil and the kidnapped child 'Y' were playing and Nitik had brought his cycle. They were taking turns in riding the cycle of Nitik and 'Y' was riding his own cycle. 'Y' went towards Bihari Chowk on his cycle and they were following him. Suddenly, an autowala came from behind and someone called out to 'Y' by putting his hand outside the auto. On this, 'Y' stopped his cycle on one side and went towards the auto and told them *'ye mere kirayedar hain, ghar par mat batana mein apne aap aa jaognd'* and thereafter went inside the auto and the auto went towards the main road side. All three of them i.e. PW9, Adil and Nitik brought the cycle of 'Y' and left the same at his house. The mother of 'Y' asked where 'Y' was, and they told her that 'Y' had gone with autowala *"auto wale ke sath chala gaya aur keh raha tha ye mere kiraydar hai mein inko janta hu"*.

14. During cross-examination, PW9 admitted that he did not see who was driving the auto or who was sitting inside the auto with whom 'Y' was speaking. He denied that he was deposing falsely at the instance of the police to the extent that 'Y' had gone in an auto. He further denied that 'Y' had gone somewhere out on his own.

15. PW12-Khem Pal Gupta is the father of the victim. He had deposed that he was running a kerosene oil depot at Alipur, Delhi. 'Y' is his son. On 11.12.2010 at about 12 noon, his son 'Y' had gone with his friends Rahul, Adil and Nitik for playing outside the house on cycle. After 3 p.m., they searched for his son 'Y' but he could not be found and thereafter PW12 made a call at number 100 and police came at his house and they made enquiries from him. They had also searched for 'Y' with police in the area but he could not be found. Thereafter, Rahul, Nitik and Adil were enquired by the police and they told the story as noted above. They pointed out the place from where 'Y' boarded the auto. Statement of PW12 was recorded by the police on 11.12.2010 vide Ex.PW12/A. On 12.12.2010, PW12 was present at his house and at about 9.07 a.m., he received a call on his mobile phone bearing no.9716774661 which was in the name of his niece, from mobile number which started from 86 and ended by number 49. PW12 further deposed that the caller told him that: Guptaji, do not worry, your son-who was missing, was with them and then the phone

was disconnected. He further deposed that he again received a call from the said mobile phone number and the caller told him that his son would be handed over to him and he had to arrange Rs.20-25 lacs. PW12 replied to them that it was impossible for him to pay such a huge amount, but the caller was adamant for the said amount and then PW12 told the caller that he would sell his house. PW12 requested the caller to talk to his son, to which the caller replied that PW12 could talk to his son at about 3-3.30 p.m. and thereafter he threatened him not to make any complaint to the police, otherwise, his son would be killed. PW12 did not receive the call at about 3-3.30 p.m. Thereafter, PW12 went to the police station and told all the facts to the police and then he returned back to his house. On 13.12.2010, PW12 again received a call at about 10.20 a.m. on his mobile phone from the number starting from 81 and ending with 70 and the caller asked him whether he had arranged Rs.25 lacs or not, to which PW12 replied that he had managed Rs.25 lacs. Thereafter, the caller told him that he had to come with money at Anand Vihar Bus Terminal (ISBT) and he had to hand over the money to him and receive his son there. PW12 immediately went to the police station and told all the facts to the police. Thereafter, on the directions of the police, PW12 kept Rs.60,000/- and other papers in a bag and he along with SI Sanjay Dahiya, Sandeep and 5-6 other police officials went to Anand Vihar ISBT, Delhi and reached there at about 12 noon and waited there for about an hour, but nobody came there to

receive the money. Thereafter, they returned back to the police station. At about 2.40 p.m., PW12 again received a call from the said mobile which ended with number 70, and caller told him that Delhi Police was active and they would not receive money at Delhi and told him that PW12 had to come to Rampur, U.P. for delivery of the ransom amount. PW12 immediately informed the police about this fact. SI Sanjay Dahiya prepared a team and PW12 along with his relative Anand Gupta (PW11), SI Sanjay Dahiya and other 6-7 police officials went to Rampur, U.P. at about 5.30 p.m. with the bag containing Rs.60,000/- and some papers. At about 6 p.m., PW12 again received a phone call from the mobile phone ending with number 49, and the caller asked about the location of PW12 and he told the caller that he had reached Ghaziabad. At about 12 midnight, PW12 received a phone call from the mobile phone ending with number 49 and the caller told him that there were number of murder cases against them at Rampur, and asked PW12 to come at Bareilly for the delivery of the ransom amount. At about 2 a.m., PW12 again received a phone call from mobile phone ending with number 49 and the caller informed him that he had to deliver the ransom amount at Barreilly and his son would be handed over there. At about 3 a.m., PW12 again received a call and the caller asked him whether he had reached Bareilly or not, to which he replied that he was about to reach there. The caller asked PW12 to take the way towards Badayun and to stop 5 kms before Badayun and

park his vehicle on the side of the road. They reached the pre-fixed spot and parked their vehicle. At about 3.50 a.m., he received a phone call and the caller told that he was sending a man to receive the money but nobody came. At about 4.30 a.m., he received a phone call and the caller asked him to come at Lochhi Ka Nangla, Gali No.1, Badayun and to drop the bag at Gali No.1 and to move away and to take his son after 15 minutes from the place of dropping the bag. They reached the pre-fixed spot from where the police officials went to the local police station and returned back with three police officials of U.P. Police. They went towards Lochhi Ka Nangla Gali No.1 and returned after sometime and informed that one Dr.Rajeev Saxena resident of H.No.209 informed them that 2-3 unknown persons were residing in the house of accused Kamal Saxena, resident of H.No.208. Thereafter, they all went to house no.208 and on knocking, it which as opened by accused Kamal Saxena who was apprehended. On searching the house, victim child along with three persons, namely, accused Bunty, Brijesh @ Birju and Ravinder @ Binda were found. All those three accused were also apprehended. On search of accused persons, 4-5 mobile phones with sim cards were recovered. Recovery Memo of his son Ex.PW11/A was prepared. Accused Bunty was arrested vide memo Ex.PW12/B and his personal search was conducted vide memo Ex.PW12/C. Accused Kamal Saxena was arrested vide memo Ex.PW12/D and his personal search was conducted vide memo Ex.PW12/E. Accused Brijesh

@ Birju was arrested vide memo Ex.PW12/F and his personal search was conducted vide memo Ex.PW12/G. Accused Ravinder @ Binda was arrested vide memo Ex.PW12/H and his personal search was conducted vide memo Ex.PW12/I. Thereafter, they reached PS Badayun and then to Delhi. His son was handed over to him vide memo Ex.PW12/J. Police prepared the site plan Ex.PW12/K where his son was kept for 1-2 hours. Police prepared the site plan Ex.PW12/L of the place where his son was kept in the night of 11.12.2010. The police prepared the site plan Ex.PW12/M of the place of recovery of his son. PW12 identified accused Bunty, Kamal Saxena, Brijesh @ Birju, Ravinder @ Binda and Ashok Kumar in the Court.

16. During cross-examination, PW12 had stated that he was standing with the police outside the house of accused Kamal Saxena when the door was knocked. He denied that the door was opened by the wife of accused Kamal Saxena. On 13.12.2010, he reached the police station after receiving the call of the caller. On the asking of the police, he returned back to his house, kept Rs.60,000/- and some papers in the bag and returned back to the police station. The accused called him three four times during their journey to Badayun from Delhi. The caller was the same person who made call to him at different times. They reached at Badayun at about 5 a.m. The caller gave them the directions where PW12 had to drop the bag

containing the ransom amount at the corner of gali no.1. He denied that he had put his signatures on all the documents at the police station. He denied that he had identified the accused persons at the instance of the IO. He admitted that accused Brijesh @ Birju is the brother in law (sala) of son of his brother. He further stated that his son was wearing one grey colour pant and sky blue shirt and one jersey at the time of his recovery from Badayun.

17. PW7-Mohd. Adil had deposed that he was friend of victim child. In Decembere, 2010, he along with his friends Nitik, Rahul and victim were riding cycles on the road of Samrat Cinema. Three persons came in a TSR, one of whom was driving the TSR in which the victim went to the said persons and told Rahul to leave his cycle at his house and thereafter the victim went away. He also deposed that after sitting in the TSR, the victim told them that persons sitting in the TSR were his relatives and his cycle be left at his house and not to inform his mother. He clarified that the victim told them that the persons sitting in the TSR were his tenants.

18. PW8-Muzeem turned hostile. Thus, we are not discussing his testimony.

19. PW11 Anand Kumar Gupta had deposed that on 13.12.2010, he along with his Mause Khempal Gupta and police officials went to Badayun, UP for search of victim child and

local police was taken by the Delhi Police and raided the house of one Kamal. He further deposed that four persons were found present there along with victim child and he was taken into possession vide memo Ex.PW11/A. He identified accused Bunty, Brijesh @ Birju, Ravinder @ Binda and Kamal as the persons who were apprehended at the spot.

20. During cross-examination, PW11 had stated that he was called by his relative Khempal to accompany him and they left Delhi in his I-10 car for Badayun along with police officials. He further stated that at Bareilly as per telephonic instructions, they left for Badayun and stopped en-route for having refreshments. He denied that he did not go to Badayun or that the child was not recovered in his presence or that seizure memo was prepared while sitting in the police station.

21. PW13 Dr.Rajeev Kumar Saxena, an independent witness, had deposed that he was residing at Mohalla Lochinagla, Gali No.1, Badayun, U.P. and was running his clinic in the same premises. On 14.12.2010, police came to the area and they heard very loud noises coming through the house and they came to know that a child had been recovered from the said house and all the boys who were apprehended were from Delhi. He came to know the names of the apprehended boys as Kamal and Bunty and there were one or two other boys. He had also disclosed the name of the victim child and proved his recovery memo as Ex.PW11/A bearing his signatures at point

B. He further stated that the police disclosed the name of other two boys as Brijesh and Binda. During cross-examination by the defence counsel, witness stated that he could not identify any of the accused Brijesh, Buntty and Binda and had voluntarily stated that Kamal was his neighbor and identified him only.

22. PW14-Subhash Babu Saxena, another independent witness, had deposed that he was residing at H.No.205, Gali No.1, Lochinangla, Badayun, UP. On 14.12.2010 at about 4 a.m., he heard loud noises coming from the house of Kamal Saxena on which he came out in the gali and found a large number of persons standing in the gali. He came to know that Delhi Police had conducted a raid in the house of Kamal and had recovered a child whose name was disclosed by him in the Court. He further deposed that Kamal had been apprehended by the police along with 2-3 other boys and recovery memo Ex.PW11/A of the child bore his signatures. He further stated that the police had told the names of other boys who were apprehended along with Kamal from whose house the child was recovered.

23. The Nodal Officers/Alternate Nodal Officers from the different mobile service providers were examined, who proved the call Detail Records (CDR), the identity of the subscribers, call location charts, etc. in accordance with law. They were examined as PW2, PW3, PW4 and PW5.

24. Argument advanced by the counsel for the appellant Ravinder @ Binda is that his identity has not been established on record. The child victim had not identified Ravinder during his testimony as the person who had kidnapped him on the day of incident. The contention of the appellant herein Ravinder @ Binda is that on producing the photographs in front of child-victim, he failed to identify him. It was further argued that no recovery of any article was affected from the person of appellant Ravinder at the time of his apprehension. Even his mobile phone number is not mentioned in the call detail record. He submits that the mobile phone number in the name of one Sharda Devi has falsely been attributed as being used by the appellant. The appellant states that he was using the mobile no.9711145065, and not the mobile no.9999903166 which was registered in the name of his mother Sharda Devi. It was further contended by the appellant that in the CDR, the number of his mother is being reflected but not his no.9711145065 and the prosecution has falsely attributed the mobile number of his mother to the appellant Ravinder @ Binda.

25. Perusal of record shows that witness Ct.Pramod stated that during the apprehension of Ravinder @ Binda, the mobile phone bearing no.9999903166 was seized from accused Binda and he was found in possession of one mobile phone make Nokia of black colour having IEMI no.

357980032488209. From the call detail records of mobile no.9999903166, it is evident that it was actually being used by the appellant Ravinder @ Binda with the other no.9711145065. This is established from the fact that the said mobile no. was used in the same mobile phone/set which had the IMEI no. 357980032488209 which was recovered from the possession of the appellant at the time of his arrest. It may be correct that the mobile phone no. 9999903166 was registered in the name of mother of accused Ravinder, but the fact cannot be lost sight that the said mobile number was being used in the same mobile phone instrument from which another mobile number was, undisputedly, used by the accused Ravinder.

26. On behalf of other appellants, it was argued that the victim had nowhere in his testimony stated that he was kidnapped by the appellants. Rather, he had stated that he himself, of his own, accompanied the occupants of the TSR. There is no evidence against the appellants to establish the offence of kidnapping. Brijesh @ Birju is related to Khem Chand-father of 'Y'. The child 'Y' was taken with the consent and knowledge of Khem Chand. The father Khem Chand was kept informed of the whereabouts of the child 'Y'. Accused Birju also seeks to rely on statement of Mohd.Adil (PW-7), who, inter alia, stated that the child 'Y' went and sat in the lap of the persons in the auto-rickshaw, and that 'Y' told Rahul that his bicycle may be dropped at his residence, whereafter he left.

The submission is that child 'Y' voluntarily, and of his own volition, went away in the TSR without use of any force.

27. Ld. Counsel for Birju submits that his location at the spot of the incident was only till 13.46 hour, but the alleged kidnapping took place only around 15.00 hours. He further submits that though Khem Chand claimed to have made a PCR call, no PCR Form was brought on record. He refers to the DD entry No.52B (Ex.PW20/A), which shows that at about 05:55 p.m., the PCR reported the child going missing. SI Sanjay Kumar Dahiya (PW-20), inter alia, deposed that on 11.12.2010, he was posted at PS-Saraswati Vihar. He was on emergency duty. At about 05:55 p.m., he received DD No.52B (Ex.PW20/A). Thus, according to the appellant, there is delay between 3 p.m.-when the PCR call is stated to have been made, and the recording of the DD entry. According to the appellant, the true genesis of the case is not brought out. Learned counsel for the appellant Birju has placed reliance on ***State of M.P. v. Mishri Lal (dead) & Others***, (2003) 9 SCC 426, and in particular on paragraphs 9 to 11, 19 and 21 thereof, to press the contention that true genesis of the case has not been brought on record.

28. Reference is also made to the statement made by the accused Birju under Section 313 Cr.P.C. in response to question No.70 "Do you wish to say anything else?", Birju had stated that he had been falsely implicated. Kamal-his friend,

who had gone to Delhi from Badayun, received a phone call from Badayun. Kamal asked Birju to accompany him, but since Birju was not having money, he went to the house of his Chacha (father of child 'Y') at Shakurpur and requested him to give Rs.10,000/- and assured Khemchand that he would return the money to him after a few days. Khemchand informed Birju that he was not having Rs.10,000/- but he could give him only Rs.2,000/-. He stated that he took Rs.2,000/- from his Chacha-Khemchand and *"we all went to Badayun when Y (son of my chacha) also accompanied us. When we reached at Badayun, my chacha got suspicious and he made a complaint to the police. Police came to Badayun and arrested us in this false case. Neither we had kidnapped the child nor we had made any demand."*

29. It was further argued that the child 'Y' was a tutored witness. When his statement was recorded on 10.02.2002, he stated that the auto-rickshaw was being driven by Bunty, and Birju & Binda were sitting on the rear side. He also stated that earlier Birju & Binda used to come to his residence. However, when he was shown the photograph of Ravinder @ Binda affixed on the custody warrants, he did not identify Ravinder @ Binda. However, he identified Birju upon being shown the photograph of Birju.

30. It was alleged against the appellants/accused persons that there was prior meeting of minds between the

accused persons for kidnapping the child and to prove the criminal conspiracy hatched by them, the prosecution had relied upon the call details of the appellants to show that they were in constant touch with each other prior to kidnapping. From the evidence brought on record, it is apparent that at the time of apprehension of the appellants, the kidnapped child was recovered from the house of accused Kamal Saxena along with mobile phones having sim cards. From the search of accused Birjesh @ Birju, two sim cards of Vodafone, one sim of Airtel, one mobile phone with sim no.8650546449 were recovered which were seized vide memo Ex.PW17/C and Ex.PW17/D. From the search of accused Bunty, three sim cards, one mobile phone with sim no.9899947835 were recovered which were seized vide memos Ex.PW17/e and Ex.PW17/A. From the search of accused Kamal Saxena, two sim cards and one mobile phone having sim no.9675695523 were recovered which were seized vide memo Ex.PW17/G. One mobile phone with sim no.9711145065 was recovered from accused Ravinder @ Binda which was seized vide memo Ex.PW17/F.

31. The mobile phone no.9560315921 was in the name of Bhagwan Devi i.e. mother of accused Brijesh @ Birju vide application form Ex.PW2/A and its call details were Ex.PW2/C. The mobile phone no.9716774661 was issued in the name of Vanshika Gupta i.e. niece of the complainant and its call details were Ex.PW3/C. The mobile phone no.9289434408 was in the

name of co-accused Ashok vide application form Ex.PW4/D and its call details were Ex.PW4/F. The mobile phone no.8860352686 was in the name of co-accused Chetan Prakash vide application form Ex.PW5/A, and its call details were Ex.PW5/C. The mobile phone no.9675695523 was issued in the name of accused Kamal vide application form Ex.PW5/E and its call details were Ex.PW5/G. The mobile phone no.8650506449 was recovered from accused Brijesh. It was issued in the name of one Dhirpal vide application form Ex.PW5/J and its call details were Ex.PW5/L. The mobile phone no.9899947835 was issued in the name of accused Bunty vide application form Ex.PW5/M and its call details were Ex.PW5/O. The mobile phone no.9999903166 was recovered from accused Ravinder @ Binda. It was issued in the name of one Shardha vide application form Ex.PW5/Q and its call details were Ex.PW5/S.

32. The call details of accused Bunty with regard to mobile phone no.9899947835 shows that he was in touch with co-accused persons Brijesh, Kamal Saxena and others. On the day of incident i.e. 11.12.2010, the accused Bunty was found present in the area of Shakurpur Colony. On 12.12.2010, he was found present in the area of Ghaziabad. The location of accused Bunty matched with the location of co-accused Brijesh, Ravinder @ Binda and Kamal Saxena. The call details of accused Kamal Saxena with regard to mobile no.9675695523

shows that he had made calls to, and received calls from co-accused persons at the relevant period. His location also shows that he was found present in the area of Shakurpur Colony, Majnu ka Tilla, Kardam Puri, Maujpur, Jyoti Nagar West and Badayun. The call details of accused Birjesh @ Birju with regard to mobile phone no.9560315921 shows that at the relevant period, he was in constant touch with co-accused persons and was found in the area of Rama Vihar, Karala Delhi, Shyam Colony, Budh Vihar, Shakurpur Colony and Rajive Nagar, Begam Pur. The call details of accused Ravinder @ Binda with regard to mobile phone no.9999903166 shows that during the relevant period, he was in constant touch with co-accused persons and was in the area of Budh Vihar, Classic Tower, Shakurpur Colony and Rama Vihar. The call details of mobile phone no.9716774661 which was being used by the complainant Khem Pal shows that calls were received on the said phone from the mobile phone nos.8650506449 and 8881029270 which were recovered from accused Brijesh. These were the same mobile phone numbers from which the ransom calls were made on the mobile phone of the complainant.

33. Mr.Singhal, learned counsel appearing on behalf of the accused Kamal Saxena submits that PW-5/Sh.Deepak, Alternate Nodal Officer, Vodafone produced two certificates under Section 65B of the Evidence Act in relation to CDD of

mobile phone no.9675695523 allegedly used by the accused Kamal Saxena being Ex.PW5/I and Ex.PW5/U. The fact that two different certificates were issued in respect of the same mobile phone connection itself casts a doubt on the veracity of the Call Detail Records produced in respect of the mobile phone no.9675695523 attributed to the accused Kamal. Mr.Singhal places reliance on ***Gulf Goans Hotels Company Limited and Another v. Union of India and Others, (2014) 10 SCC 673***

34. Apparently, one certificate issued under Section 65B of the Evidence Act found at page 555 of the compilation was exhibited, whereas the one found at page 733 was not exhibited. Mr.Singhal submits that these two discrepant CDRs raise a serious doubt about the genuineness of the CDRs. He submits that since the certificate under Section 65B of the Evidence Act has been filed in respect of the CDR at page 733 of the compilation, the same stands duly proved and merely because the same may not have been exhibited, it does not mean that the said CDR is not proved.

35. From the call details record of the mobile phones of the appellants and the complainant-Khempal, it was duly established that all the appellants/accused persons were in constant touch with each other prior to kidnapping of the child, at the time of kidnapping and post that period too. The call details record further established that at the relevant time and period, the appellants/accused persons were in the area of

Shakurpur Colony from where the child victim was kidnapped and the route they had taken to take the kidnapped child to Badayun from where the recovery of child was affected. The submission of Mr.Singhal with regard to two certificates under Section 65B of the Evidence Act is of no avail. Pertinently what has been led in evidence is only one certificate. The appellant did not lead any evidence to establish the second certificate, and did not even cross-examine the prosecution witnesses on the so called multiple CDR's/certificates. No reliance can be placed by the appellant on the said unexhibited documents in these circumstances.

36. The Ld.ASJ has thread bare examined the electronic evidence in the form of Call Detail Records and location charts, which are a clear pointer to the involvement of the appellant Kamal in the conspiracy. The relevant extract, on the factual aspects emerging from the evidence, found in the impugned judgment, which the appellant has not been able to controvert may be reproduced :

“(88)Coming next to the accused Kamal Saxena who was using the mobile No.9675695523 which was issued in his name. It has been established that from the formal search of accused Kamal Saxena two SIMs and one mobile phone make Nokia of Black Colour having IMEI No.356940131672335 with SIM bearing No.9675695523 was recovered which mobile phone with its SIM was seized. The relevant entries of the Call Detail Records of mobile

No.9675695523, along with the location details establishing the location of the user at various points of time, thereby connecting him to the other accused and lending credence to the prosecution version, are as under :

Sr. No.	Calling No.	Called No.	Date	Time	Duration	Location
1	9675695523	9560315921 (Brijesh)	11.12.10	12.50 PM	55 Sec.	Shakurpur Colony
2	9675695523	9999903166 (Ravinder)	11.12.10	12.55 PM	42 Sec.	Shakurpur Colony
3	9675695523	9899947835 (Bunty)	11.12.10	13.36 PM	35 Sec.	Shakurpur Colony
4	9675695523	9899947835 (Bunty)	11.12.10	14.44 PM	11 Sec.	Shakurpur Colony
5	9675695523	9899947835 (Bunty)	11.12.10	14.50 PM	10 Sec.	Shakurpur Colony
6	9675695523	8860352686 (Chetan)	11.12.10	18.11 PM	1 Sec.	Manju Ka Tilla
7	9675695523	9211429534 (Shanu)	11.12.10	20.26 PM	29 Sec.	Kardam Puri
8	9675695523	9211429534 (Shanu)	11.12.10	20.30 PM	74 Sec.	Kardam Puri
9	9675695523	9211429534 (Shanu)	11.12.10	20.39 PM	92 Sec.	Maujpur
10	9675695523	9211429534 (Shanu)	11.12.10	20.47 PM	19 Sec.	Kardam Puri
11	9675695523	9211429534 (Shanu)	11.12.10	21.03 PM	38 Sec.	Kardam Puri
12	9675695523	9211429534 (Shanu)	11.12.10	21.35 PM	47 Sec.	Kardam Puri
13	9675695523	9211429534 (Shanu)	11.12.10	21.40 PM	38 Sec.	Kardam Puri

14	9675695523	9211429534 (Shanu)	11.12.10	21.43 PM	34 Sec.	----
15	9675695523	9289434408 (Ashok)	12.12.10	12.08 PM	70 Sec.	Jyoti Nagar West
16	9675695523	9289434408 (Ashok)	13.12.10	11.24 AM	81 Sec.	Badayun

(89)The aforesaid call details record of the mobile phone No.9675695523 which was issued in the name of accused Kamal Saxena and was recovered from his possession, conclusively establishes that he was in regular touch with the accused Brijesh, Ravinder @ Binda, Chetan, Shanu and Ashok throughout the date of incident and even thereafter. From the analysis of the same the following facts emerge:

- That on 11.12.2010 the accused Kamal Saxena was present in the area covered by the tower installed at Shakurpur Colony i.e. the place where the house of the victim is situated where he remained from 12:50 PM onwards till 14:50 PM (2:50 PM).
- That thereafter the location of the accused Kamal Saxena is shown at various places i.e. Majnu Ka Tila, Kardam Puri, Maujpur, thereby proving the route taken by the accused persons to reach Badayun [i.e. Shakur Pur Colony (place of kidnapping of child) – Majnu Ka Tila-Kardam Puri-Maujpur, Jyoti Nagar West-Badayun].
- That the accused Kamal Saxena is a resident of House No.208, Gali No.1, Lochi Nangla, Badayun, Uttar Pradesh and he has failed to explain as to how his location is shown at various places in Delhi on the date and time of incident at the place of incident (i.e. on 11.12.2010 in the later afternoon hours) which is matching with the

location of the other co-accused Brijesh, Bunty and Ravinder @ Binda).

103. It stands established from the electronic evidence on record that the accused Brijesh, Bunty, Kamal Saxena and Ravinder @ Binda were in constant touch with each other. Further, it stands established that the location of the various accused Brijesh, Bunty, Kamal Saxena and Ravinder @ Binda is shown in the area where the incident took place, not only during the time of incident but also even a couple of days earlier and even thereafter. The above electronic record also confirms the route taken by the accused Brijesh, Bunty, Kamal and Ravinder while taking the kidnapped child to Badayun from where the child was actually recovered. The defence has not been able to successfully demolish the case put forth by the prosecution as aforesaid. In view of the above I hereby hold that the electronic evidence independently corroborates and connects the accused Brijesh, Bunty, Kamal Saxena and Ravinder @ Binda with the offence.”

37. From the above tabulation, it is evident that the appellant Kamal was not only in frequent contact with the other accused during the relevant times i.e. before, during and after the kidnapping of the child ‘Y’, but he was also in the vicinity of the spot of the crime when the kidnapping took place. The said unimpeached electronic record completely belies the claim of appellant Kamal that he was not a part of the conspiracy to kidnap the child ‘Y’, and that he had innocently provided shelter to the other accused with the child. On the day of the incident i.e. 11.12.2010, there were 11 calls exchanged between the appellant Kamal and the other accused-including those

convicted with him, spanning from 12.50 PM (i.e. before the commission of the offence), and 21.43 PM i.e. well after the commission of the offence.

38. The law regarding criminal conspiracy is well settled that the criminal conspiracies are hatched in secrecy and it is very difficult for the prosecution to establish the conspiracy from a direct evidence.

39. The Supreme Court in the case of **K.R. Purushothaman vs. State of Kerala AIR 2006 SC 35**

“To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by an illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every details of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission and every conspiratorial acts. **The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy.** While appreciating the evidence of the conspiracy, it is incumbent on the Court to keep in

mind well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the accused is possible. The criminal conspiracy is an independent offence in Indian Penal Code. The unlawful agreement is *sine qua non* for constituting offence under Indian Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not *per se* constitute conspiracy. The offence of conspiracy shall continue till the termination of the agreement.” (emphasis supplied)

40. In the case of ***Adambhai Sulemanbhai Ajmeri and Ors. vs. State of Gujarat (2014) 7 SCC 716*** it was held that :

“123.The ingredients necessary to establish the offence of criminal conspiracy have been discussed by a three Judge bench of this Court in the case of ***Ram Narayan Popli and Ors. v. Central Bureau of Investigation***

(2003) 3 SCC 641 in a portion of the below para, as under:

342.The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act needs be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence....”

41. In the case of ***Firozuddin Basheeruddin and Ors. v. State of Kerala*** 2001 (7) SCC 596, while stating the principles of conspiracy, the Supreme Court observed as follows:

“Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the

crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. **Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission.** The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the Defendant's liability than the fact that the crime was performed as a part of a larger division of labor to which the accused had also contributed his efforts.” (emphasis supplied)

42. Thus, the prosecution has successfully established the charge of entering into a criminal conspiracy by the appellants for kidnapping the victim child.

43. Next question to be determined in the instant case is whether the prosecution has been able to establish the guilt of the appellants with regard to kidnapping of the child victim. To prove the kidnapping of the child by the appellants, the

prosecution examined several witnesses, public and official, but the fact remains that the child victim (PW10) is the main witness of the prosecution and his testimony is to be evaluated on the touch stone whether it is credible or trustworthy or not which could be the basis for the conviction of the appellants.

44. The law regarding testimony of a child is well settled that the testimony of a child witness must be corroborated by other evidence, and it can be relied upon if it is found reliable and trustworthy. The Supreme Court in the case of State of *M.P. vs. Ramesh and Anr.* MANU/SC/0255/2011 observed thus :

“8.In *Panchhi and Ors. v. State of U.P.* AIR 1998 SC 2726, this Court while placing reliance upon a large number of its earlier judgments observed that the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that "the evidence of a child witness would always stand irretrievably stigmatized. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a

child witness is an easy prey to tutoring.

11. In *State of U.P. v. Krishna Master and Ors.* AIR 2010 SC 3071, this Court held that **there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the Court, his deposition does not require any corroboration whatsoever.** The child at a tender age is incapable of having any malice or ill will against any person. **Therefore, there must be something on record to satisfy the Court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.**

12. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from untutored part, in case such remaining untutored part inspires

confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide: ***Gagan Kanojia and Anr. v. State of Punjab (2006) 13 SCC 516.***) (emphasis supplied)

45. Further in the case of ***Alagupandi @ Alagupandian vs. State of Tamil Nadu*** AIR 2012 SC 2405, it was observed that:

“This is clinching evidence against the accused which fully supports the case of the prosecution. PW-7 and PW-8 are said to be child witnesses who had seen the occurrence. They are sons of the deceased. When they appeared before the Court, the Court put certain questions to both these witnesses to form an opinion whether they would be able to depose. It granted the permission to PW-7. but his statement was not recorded. The Court declined permission for examining PW-8. As such, the statement of both these witnesses was not recorded. **It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The Court in such circumstances can safely rely upon the statement of a child witness and**

it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. **The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored.** There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the Court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable.” (emphasis supplied)

46. To establish the kidnapping of the child victim (PW10), the child victim in his testimony before the Court deposed that he was kidnapped on the day of incident. During his testimony before the Court, the child identified accused Binda, Bunty and Birju, but rest of the accused persons were not identified by him. The testimony of the child victim (PW10) had been duly corroborated by other public witnesses i.e.

Master Rahul (PW9) who deposed that on the day of incident, when they all were riding on bicycles, somebody called the child victim by putting his hand out from an auto. The child went to that auto and told them that the persons sitting in the auto were his tenants and do not tell this to anyone. As per PW9, the child victim went in the auto rickshaw and PW9, Adil and Nitik brought the cycle of child victim to his house. PW9 had confirmed that when child victim was put in the auto, three persons were sitting in it, one of whom was driving the same.

47. From the testimony of child victim (PW10), it is apparent that the accused Birju, Binda and Bunty were sitting in the auto rickshaw at the time of taking away of PW10 by the accused persons; the auto was being driven by accused Bunty; he was taken to a house and then to somewhere else in a bus; accused Birju had called PW10 on the pretext that he will take PW10 to his father; he was kept in a house where he had seen co-accused Chetan and; he was tied with ropes and was given beatings. During his statement recorded under Section 164 Cr.P.C., PW10 had stated that he was given beatings and threatened that he would be killed. He had also confirmed the apprehension of accused Bunty, Birju and Binda in his presence when his father along with police went to the place where the accused persons were apprehended. It has also come in his statement under Section 164 Cr.P.C. that when his father along with police came there, he was freed from Birju uncle and

Binda. The statement of PW-10 shows that he even broke down while narrating the incident. The trial court has recorded the demeanour of PW-10 while recording his testimony. The relevant part of the record reads :

“Q: Aur kuch kaha tha?

Ans.: Kha tha jaan se mar donga.

Q: Phir kya hua?

Ans.: Papa aye thai car le kar police walo ke sath aur unko pakar kar ley gayi thi. Buntty jo auto chala raha tha, Binda, Birjoo aur bhi thai jinka naam nahi pata.

Q: Mar pitai kari thi is doran?

Ans.: Ha kari thi.

Q: Kisne kari thi?

Ans.: Merko nahi pata.

At this stage the child is started crying when asked to identify the accused who are present in the court and has hidden his head stating merko nahi pata, merko nahi pata.

The court has noticed that the child is terrified on seeing the accused.”

48. Apart from the above testimony of child victim (PW10), Sh.Khem Pal Gupta (PW12) identified accused Ravinder @ Binda as one of the kidnappers. It is evident from the record that the child victim was recovered from the house of accused Kamal Saxena. The call detail record of the accused

Ravinder @ Binda further establishes his presence at the place of recovery of child victim from Badayun. The police officials i.e. PW17, PW20, PW15, PW16 and PW18 have also identified all the accused persons in the Court as the kidnappers. Therefore, there is no force in the contention of the appellants that the victim child was a tutored witness or that the identity of all the appellants was not duly established before the Court. The child witness (PW-10) is credible and trustworthy. His testimony is natural and his demeanour also demonstrates that he is truthful. His evidence is duly corroborated by the other evidence viz. the location of the accused; their being in contact before, and after the kidnapping; their calls to Khem Pal Gupta (PW-12); their arrest from the place where the child (PW-10) was kept after kidnapping and from where he was recovered, etc.

49. PW12-Khem Pal Gupta and PW11-Anand Kumar Gupta have specifically stated that at the time of recovery of child victim from Badayun, accused persons Kamal Saxena, Bunty, Ravinder @ Binda and Brijesh @ Birju were apprehended. From the testimony of independent witnesses PW13 and PW14, the recovery of child victim from the house of accused Kamal Saxena at Badayun has also been duly established.

50. So far as the contention of the appellants that the true genesis of the occurrence has not been brought on record is

concerned, it is apparent from the record that initially PW12-father of the victim child had instituted a complaint for kidnapping of his child, on the basis of which initially the FIR was lodged under Section 363 IPC. Thereafter, the father of the victim child received phone calls demanding ransom amount of Rs.20-25 lakhs for the recovery of his child from the appellants-which fact has already been held to be duly established and, then only, the FIR of the instant case was converted to offence under Section 364-A IPC. It is thus clear that the true genesis of the particular case has been brought out. Therefore, the judgment in the case of **Mishrilal** (supra) is of no assistance to the appellants.

51. So far as the contention of the appellants regarding going of the victim child with the appellants voluntarily of his own is concerned, there is no force in this contention. Firstly, it may be correct that the appellant Birju had taken the money from the father of the victim child, but this fact is highly improbable that the victim who was a child of tender age accompanied the appellants and, that too, such a far place, and remained with them for 2-3 days without his parents. Secondly, the victim in his statement under Section 164 Cr.P.C. had stated that when he was taken away by the appellants-Bunty, Birju and Binda, he was given beatings and he was also threatened that he would be killed. It is also evident from the record that the victim was recovered from the accused of fourth appellant-

Kamal Saxena at his house. It has also come in the evidence that ransom calls were made to the father of the victim to arrange Rs.20-25 lakhs to secure the release of the victim.

52. Apart from the testimony of above mentioned prosecution witnesses, the fact that the kidnapped child was kept in the house of accused Kamal Saxena and his recovery, along with apprehension of the appellants from that place, has been established from the statement of the accused Kamal Saxena under Section 313 Cr.P.C. In his said statement, accused Kamal Saxena had stated that accused Bunty is his friend and he called him on 12.12.2010 that he along with his one or two friends would visit his house to which Kamal Saxena agreed. Then on the next day, accused Bunty came to his house along with his two friends and one small boy. On the asking of accused Kamal Saxena about the small boy, accused Bunty told that the boy was his nephew and they all were going to their native village to drop the child. He further stated that on 14.12.2010, in the early hours, when Kamal Saxena was sleeping in his house with his wife and children, someone knocked the door. When he opened the door, there were few people in civil clothes who asked accused Kamal Saxena whether there was any child in the house. He took those men inside the house and showed the room in which the child was sleeping. He further stated that those people took away the child and three persons. Later on, on the next day, he was

called in PS Saraswati Vihar to record his statement and when he reached there, he was made to sign an already prepared statement. When he refused to sign it, he was beaten up and locked in the lockup.

53. Similarly, DW1-Aradhana, wife of accused Kamal Saxena had deposed that on 13.12.2010 at about 7-8 in the evening, 2-3 guests had come to their house along with a child. When she asked her husband about the guests, he told her that they would leave on the next day morning. After eating dinner, the three guests along with the child slept in the room. At around 4-5 a.m., someone knocked the door, she woke her husband and the person at the door asked her husband whether any child was staying in the home. At that time, DW1 was standing in the courtyard. Then around 4-5 people entered their house and her husband led them to the room where the child was sleeping. Those 4-5 people took the three guests and the child with them. Her husband also accompanied them. When her husband returned home after 2-3 hours, he told DW1 that everything was fine and the police had come because of the child. On the next day, her husband told that he had to go to Delhi to give statement to the police and he had not returned home.

54. From the admission made by accused Kamal Saxena in his statement under Section 313 Cr.P.C., accused Bunty, Ravinder @ Binda and Birjesh @ Birju had come to his

house along with the kidnapped child and he kept all those persons in his house on 13.12.2010 to 14.12.2010 when the raid by the police had taken place at his house, which resulted into recovery of the kidnapped child along with all the appellants. Even the recovery of child victim and apprehension of all the appellants from the place of recovery has further been corroborated from the testimony of defence witness DW-1, wife of the accused Kamal Saxena herself. The call details of the mobile phone which was being used by the accused Kamal Saxena also corroborated the fact that he was present at the place of recovery of child.

55. The contention raised by the accused Kamal Saxena that he was not aware whether the child brought to his house by the other appellants was kidnapped or not, is without any basis. The testimony of child witness which has been found to be natural, reliable, trustworthy and worthy of credence has duly been corroborated by the testimony of his father (PW12), uncle (PW11) and other police officials who remained associated with the conducting of raid on the house of accused Kamal Saxena from where the recovery of child victim was affected, along with apprehension of all the appellants. The call details records of the appellants further corroborates that they were in the area of Delhi and Badayun during the relevant period, and were in constant touch with each other.

56. From the testimony of child victim (PW10) which has duly been corroborated by PW9-Master Rahul, PW12-Khem Pal Gupta and PW11-Anand Kumar Gupta coupled with the testimony of PW13, PW14 and police officials PW15 to PW18 and PW20, it has been established beyond reasonable doubt that the appellants/accused persons Bunty, Brijesh @ Birju, Kamal Saxena and Ravinder @ Binda were involved in the kidnapping of the child victim. Their identity of them being kidnappers has duly been established in the Court.

57. In view of the above discussion, we are of the view that the prosecution has successfully established the guilt of the appellants, beyond reasonable doubt, under Section 364-A read with Section 120B IPC. We are further of the view that the conviction of the appellants is based upon true appreciation of evidence and material brought on record and we find no ground to interfere in the judgment of conviction and order on sentence. Same are accordingly upheld.

58. The instant appeals are hereby dismissed.

P.S. TEJI, J

VIPIN SANGHI, J

JANUARY 31, 2018
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