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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1004/2017

Reserved on: 7th March, 2018
Decided on: 20th March, 2018

ABHAY KUMAR MISHRA

.....Appellant

Through: Mr. Anand Shankar, Advocate for
Mr. Bipin Kumar Sharma, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

....Respondent

Through: Mr. Amit Chadha, APP for the State.

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CRL.A. 1107/2017

NEERAJ MISHRA

...Appellant

Through: Mr. K. Singhal, Advocate(DHCLSC).

versus

STATE (GOVT OF NCT OF DELHI)

...Respondent

Through: Mr. Amit Chadha, APP for the State.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These two appeals are directed against a common judgment dated 3rd August 2017 passed by the learned Additional Sessions Judge–I (North-East), Karkardooma Courts, Delhi in Sessions Case No.44875/2015 arising out of FIR No.182/2010 registered at Police Station (‘PS’) New Usmanpur convicting Abhay Kumar Mishra (Appellant in CrI.A.No. 1004/2017)

(Accused No.3: A-3) and Neeraj Mishra (Appellant in CrI.A.No. 1107/2017) (A-4) for the offences under Section 120-B IPC and Section 364-A IPC. These appeals also challenge the order on sentence dated 11th August 2017 whereby, for the above offences, A-3 and A-4 were each sentenced to undergo imprisonment for life with a fine of Rs.10,000/- and, in default of payment of fine, to undergo simple imprisonment for 6 months.

2. At the outset, it must be noted that the aforementioned two Appellants were sent up for trial along with Manoj Mishra (A-1) and Ravi Kant Pandey (A-2). However, by the impugned judgment of the trial Court, A-1 and A-2 have been acquitted of the offences with which they were charged.

3. The four accused were charged with entering into a criminal conspiracy along with another associate, Puneet Mishra who was a juvenile in conflict with law ('JCL'), of kidnapping Master Mannu @ Ujjwal (PW-1) aged about 5 years for demand of ransom and thus committing an offence punishable under Section 120-B IPC. They were further charged with kidnapping PW-1 at around 12 noon on 6th June 2010 in front of his house at Kartar Nagar, Delhi and keeping him in detention and further that their conduct gave rise to a reasonable apprehension that PW-1 may be put to death or hurt and this kidnapping was done in order to compel the payment of ransom amounting to Rs.5 lakhs thereby committing an offence under Section 364-A IPC.

Complaint made at PS New Usmanpur

4. The process of law got activated with a complaint being received at PS New Usmanpur on 7th June 2010 at around 4.25 pm from Manoj Kumar

(PW-2) stating that his son Master Mannu @ Ujjwal (PW-1), aged around 5 years, disappeared from outside their house at around 12 noon on the previous day, i.e. 6th June 2010. He stated that he had been searching for the child till then. He gave the description of the child. He had suspected that somebody had forcibly abducted the child and he asked that the matter be inquired into. On that basis an FIR No.182/2010 was registered at PS Usmanpur on 7th June, 2010.

5. On 8th June 2010, Manoj Kumar (PW-2) went back to the PS stating that at 2.45 am on 8th June 2010, he received a call on his mobile phone from an unknown caller stating that PW-1 was in their custody and if he wanted the child to be released, he had to arrange to pay a ransom of Rs.5 lakhs failing which the child would be put to death. He further stated that the caller had made PW-2 talk to PW-1 and he was able to recognise the voice of PW-1. PW-2 stated that he had informed the caller that he was not in a position to pay Rs.5 lakhs but the caller insisted that he wanted the full amount of Rs.5 lakhs and further warned PW-2 that if he reported the matter to the police, they would send the dead body of the child back home. This information given to the police was recorded as a statement under Section 161 Cr PC (Ex.PW-4/G).

6. According to PW-2, he gave the police the photograph of PW-1 on 8th June 2010 itself. PW-2 is stated to have recorded about 10 calls received by him on his mobile number, 9871027797. He transferred the recordings of the call onto a CD which he handed over to the investigating officer ('IO'), Inspector Arjun Singh (PW-17), on 29th June 2010. The CD was then

seized (Ex.PW-2/A).

7. What happened thereafter is spoken to differently by the police on one hand and PW-2 on the other. PW-17 took over the investigation of the case on 8th June 2010. After obtaining the call detail record ('CDR') of the calling number 9654346764, he scrutinized the details and tracked down Neeraj Mishra (A-4) as a suspect. A-4 was, however, not found at the address. From studying the CDR, the police claim to have ascertained the location of the kidnappers in Etawah, Uttar Pradesh. Inspector Raj Kumar Khatana is stated to have visited the said place but could not find anyone.

Arrest and recoveries

8. According to the police, on 15th June 2010, they received secret information that A-4 would be approaching Khajuri Chowk. PW-17 then formed the raiding party comprising of himself, three Sub-Inspectors ('SI'), one Head Constable ('HC') and four Constables ('Ct.'). At round 1am, a person was seen coming from Gamri. At the instance of the secret informer, he was apprehended and on inquiry disclosed his name as Neeraj Mishra (A-4). According to PW-17, upon interrogation, he confessed to the crime and was arrested (Ex.PW-14/B). His personal search was undertaken (Ex.PW-14/C) and a disclosure statement (Ex.PW-14/A) was recorded. According to PW-17, a Motorola mobile phone was recovered from the possession of A-4. It had one MTNL SIM card in it and that also was seized under Seizure Memo (Ex.PW-14/D). The said seizure memo indicated the IMEI number.

9. According to PW-17, A-4 disclosed that PW-1 had been kept at Pawi,

Loni, Ghaziabad behind Sardar Patel School in a house. A-4 took the police to the said house, knocked on the door and got it opened. When they entered the house, they found PW-1 with two persons who disclosed their names as Puneet Mishra (JCL) and Abhay Kumar Mishra (A-3). PW-17 stated that they made inquiries from PW-1 and prepared the recovery memo (Ex.PW-1/F). The JCL and A-3 were then arrested.

10. Three SIM cards and two mobile phones are stated to have been recovered from the JCL. One mobile phone was of Haier make and the other was of Sigmatel make. It is stated that from the personal search of A-3, three mobile phones of Nokia make were recovered. One of them did not have a SIM card. The other two, Nokia 6600 and Nokia 1650, had one SIM card each. Apart from this, two other SIM cards were recovered from his possession, one of Reliance and the other of MTNL. All these SIM cards were also seized.

11. The police then reached Gamri Extension, Gali No.12 in the house of Digamber Prasad where A-1 was apprehended at the instance of A-4. He too was arrested and from his personal search, one mobile phone (Nokia 5030) with the SIM card of Vodafone was recovered and seized. Thereafter, the police party reached Kartar Nagar at the instance of A-4 and A-2 is stated to have been apprehended from a house there. After his arrest, his personal search was conducted. One Chinese mobile phone with two SIM cards of Vodafone and MTNL were recovered from his personal search.

Medical examination of PW-1

12. All of them, along with PW-1, returned to the PS. PW-17 then informed

PW-2 that the child had been recovered. According to PW-17, at that stage, PW-1 disclosed to him that the JCL along with A-1, A-2 and A-3 had kidnapped him; that the JCL and A-3 had given him beatings; and that they had wrongly confined him in a room from where he was recovered.

13. PW-1 was medically examined at 1.03 pm on 15th June 2010 at the Jag Pravesh Chandra Hospital by Dr. Anil Kumar (PW-15). The MLC (Ex.PW-15/A) notes following external injuries:

- (i) Contused lacerated wound measuring about 2 cm over the occipital region.
- (ii) Multiple abrasions both wrists and two stricture marks.
- (iii) Bluish discolouration below the left eye.

14. The column concerning the name of relative or friend who brought the child was left blank. However, it was noted that the child was brought by SI Dharmendra stating that the child was allegedly abducted and assaulted. In his cross-examination, PW-15 stated that injury no.1 may have been caused by a blunt object or by falling and was unlikely to have been caused by slapping unless some blunt object was in hand or worn on the hand. Further, he noted that injury no.3 was a fresh injury. According to PW-15, the bluish colour of the injury would normally change to a blackish hue about 2-3 days after the injury was inflicted. He also deposed that he did not remember whether any relative accompanied the child.

15. According to the police, a mobile number ending with 6764 was used by A-3 to make the ransom calls. The SIM card of the said mobile number was

recovered from him. The CDR showed that the accused were in contact with each other before the date of the incident and even after the incident. On 29th August 2010, the auto-rickshaw bearing registration DL-1R-J2400 in which PW-1 is stated to have been abducted was produced by Anil Singh (PW-10) who had lent it to A-3 and thereafter seized (Ex.PW-10/A). On the same date, i.e. 29th August 2010, PW-2 is stated to have produced a memory card and CD containing a voice recording of the conversation with the kidnappers. PW-17 kept the CD and the memory card in plastic packs and both were sealed.

16. At the end of the investigation, a charge sheet was filed and, by an order dated 15th December 2010, charges were framed against all four accused persons in the manner indicated hereinbefore. Seventeen witnesses were examined by the prosecution.

Defence of the accused

17. Since the trial Court has convicted A-3 and A-4 who have filed the present appeals, it is necessary to refer only to the statements of A-3 and A-4 made under Section 313 of Cr PC As far as A-3 is concerned, he claimed to have been falsely implicated and to have been falsely arrested after being lifted from the house of A-4. He further stated that he was shown to PW-1 as well as other PWs during the investigation in police custody as a result of which he could be identified by PWs-1 and 2. He stated that all the writing work was done by the police at the PS.

18. As far as A-4 is concerned, he too claimed to have been falsely

implicated. He claimed to have been arrested from his house at Gamri Extension and denied any involvement in the kidnapping of PW-1. He too stated that he was shown to PW-1 as well as other PWs during investigation in police custody as a result of which his identification in the Court became possible. He too stated “all the writing work was done by the police at PS”.

Findings of the trial Court

19. By the impugned judgment, the trial Court came to the following conclusions:

- (i) Although PW-2 had denied the suggestion that he had not gone with the police officials for the rescue of the son, he later admitted that PW-1 was not rescued in his presence. Therefore, the contention of the Addl. PP that PW-2 had not gone for the recovery of PW-1 had force in it.
- (ii) As regards PW-1, he was merely 6 years old and, therefore, the location of the place where he was kept would not have been known to him. This part of his testimony should be disregarded.
- (iii) The witnesses to the arrest of A-3 and A-4 and the recovery of the child have been consistent. Since these were made either late at night or during the early hours, it was almost impossible to persuade any public witness to join.
- (iv) The testimonies of Navin Nischal (PW-5) and Ram Gyan (PW-6) proved that A-3 had approached PW-5 to take a room on rent in the house of PW-6.

- (v) Although PWs-5 and 6 had turned hostile, the prosecution had proved that the room wherefrom the child was recovered was indeed taken on rent by A-3 and A-4.
- (vi) The handset which was used to operate the mobile number ending in 6764 to make the ransom call was recovered from A-3. Although the CDR of the mobile phone of A-4 could not be read in evidence for want of a certificate under Section 65-B of the Indian Evidence Act ('IEA'), the fact that from the said phone ransom calls were made was established from the CDRs.
- (vii) Accordingly, the trial Court concluded that there was clear evidence regarding the involvement of A-3 and A-4 and therefore, the case against them has been proved beyond reasonable doubt by the prosecution. However, there was insufficient evidence as regards A-1 and A-2 and therefore, they were entitled to the benefit of doubt.

20. By a separate order on sentence, the trial Court sentenced A-3 and A-4 in the manner already noticed.

21. This Court has heard the submissions of Mr. Anand Shankar, learned counsel for A-3, Mr. Kanhaiya Singhal, learned counsel for A-4 and Mr. Amit Chadha, learned APP for the State.

Testimony of PW-1

22. The star witnesses for the prosecution are the kidnapped child (PW-1) and his father, Manoj Kumar (PW-2). Therefore, their evidence has to be

very carefully examined in order to ascertain the exact role of the convicted accused in the offence. It must be noted at the outset that A-3 and A-4 are stated to be cousins. A-4 was also related to PW-2. The examination-in-chief of both PW-1 and PW-2 took place on 3rd February 2011.

23. The settled legal position regarding the appreciation of the testimony of a child witness may be discussed at this stage. In ***Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341*** the Supreme court held:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereto. 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 a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

24. In ***Ranjeet Kumar Ram v. State of Bihar 2015 (6) SCALE 529***, it was observed:

"Evidence of the child witness and its credibility would depend upon the circumstances of each case. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one."

25. As far as PW-1 is concerned, the trial Court was satisfied 'after few questions' that PW-1 could depose to the facts of the case. He began his examination-in-chief without oath by stating that A-3, A-4 and the JCL had kidnapped him. He was able to correctly identify A-3, A-4, A-1 and A-2

present in Court and also said that JCL was facing trial before the JJB. PW-1 further stated that A-4 had abducted him by saying that he would give him juice and PW-1 will get to play with one Sia, the daughter of A-1. He then stated that A-3, A-4 and the JCL had taken him first in an auto-rickshaw and then by bus. Then the accused had taken him to a house where one Khushboo was present and A-3, A-4 and JCL were also present. He then stated that he was kept in a house in Aita, Mainpuri, UP for about 10-12 days. He stated that one day police came to this house along with his father and he came out from the house. He further states that the police had beaten accused Abhay Mishra (A-3) with a *danda* and had slapped accused Puneet (JCL). First, the police enquired about PW-1 and then his father. Thereafter, they left and reached Delhi in night.

26. On being asked by the APP, PW-1 clarified that A-1 was not present with the other accused persons when he was kidnapped. He further stated that A-2 was present with other accused persons when he was kidnapped. However, immediately thereafter on cross-examination by learned counsel for A-2, PW-1 stated that A-2 was not among the persons who had kidnapped him. He stated that he had seen him first in the jail and not prior thereto. In the cross-examination by learned counsel for A-3 and A-4, he stated that he had been kidnapped by A-4 and when A-4 put him in an auto-rickshaw, JCL and A-3 were present.

27. One criticism of the evidence of PW-1 which appears to the Court to be justified is that although he was purportedly rescued on 15th June 2010, his statement under Section 164 of Cr PC was not immediately recorded before

the Metropolitan Magistrate (MM). Even his MLC was not conducted till 1.03 pm that day. There is no valid explanation on the side of the prosecution for this delay. On 3rd February 2011, many months after his rescue, PW-1 identified the accused in the Court straightaway. By that time, the entire case had been presumably resolved and the identity of all the accused had been disclosed. This throws grave doubt on the reliability of the testimony of PW-1.

28. The evidence of PW-1 also makes an important departure from the story of the prosecution about the arrest of the accused and his own rescue. PW-1 stated that he was kept in a house in Aita, Mainpuri, UP and the police came to that house along with his father and then “I came out from the house.”

29. There is another important aspect of the evidence of PW-1. Nowhere in his deposition does he say that he himself was injured or kept under threat of any injury by any of the accused. This is an important aspect for the purposes of Section 364-A IPC. Even in the cross-examination of PW-1, nothing has emerged which can remotely suggest that he was injured. Yet, when he was taken for his medical examination at 1.03 pm on the date of his rescue, i.e. 15th June 2010, his MLC showed three injuries. This medical examination by Dr. Anil Kumar (PW-15) revealed that the injury No.3 was “a fresh injury. The bluish colour of the injury would normally change to blackish hue after about 2-3 days after injury/collection of blood”. If it was in fact a fresh injury, then it is surprising that PW-1 did not talk about any injury being caused to him at the hands of any of the accused.

30. One of the essential elements of Section 364 A IPC is that the person abducted must be under threat of being caused hurt or death or the conduct of the accused must give rise to a reasonable apprehension that the kidnapped person would be put to death or hurt. The causing of hurt or death should be to compel another person to pay ransom. The key element of Section 364 A IPC is, therefore, the threat of causing hurt or death by conduct giving rise to an apprehension by the abducted person of being put to death or hurt. This important element does not emerge from the testimony of PW-1. The trial Court appears to have completely missed this point.

Conflicting versions of events

31. The story of the police, on the other hand, is considerably different. According to them, there was a secret informer who intimated the police that A-4 was coming towards Khajuri Chowk on the night of 15th June 2010 and that he was arrested at around 1.00 am on the pointing out of the informer when spotted coming from Gamri. In fact, the arrest memo of A-4 specifically gives the place of arrest as Khajuri Khas Chowk, Delhi and the time of arrest as 2.00 am on 15th June 2010. Not surprisingly, the said arrest memo has not been witnessed by any public witness.

32. The story of the prosecution is that after his arrest, A-4 disclosed that the kidnapped child was being held at Pavi, Loni Area, Ghaziabad and at his instance, they reached a house where the kidnapped child was kept. It is, therefore, not possible to reconcile these two totally divergent versions – one by PW-1 and the other by the police. PW-1 therefore is not a reliable witness.

Evidence of PW-2

33. Turning now to the evidence of PW-2, he too does not support the prosecution at all. He states in his examination-in-chief as under:

“On 09 or 10 or 11 June 2010 I had received a call from police of Police Station New Usmanpur, Delhi regarding recovery of my son. We left Delhi along with 10-15 police officials by three cars at about 06:30 p.m. on 11.06.2010 to recover my son and reached PP, District Etawah, UP. After, parking our two vehicles we left the by one vehicle Village Karhal, UP. On reaching there, police stopped me at some distance and went to a house and recovered my son. Police had brought my son in a hotel to show me at Agra Road, Etawah, UP. I took the custody of my son. Accused Abhay, Neeraj, Puneet present in the court (correctly identified) and one Vinay were with the police officials. Vinay is the brother of accused Neeraj. We returned to Delhi along with accused persons and my son.”

34. This is at total variance with the police version and again simply cannot be reconciled with the case of the prosecution. If, on 9th and 10th June 2010, the police had already told PW-2 that they knew where his son was; on that basis took PW-2 with them in three cars at 6.30 pm on 11th June 2010 itself and then recovered PW-1 from a house at Village Karhal, UP, the entire story of the prosecution about A-4 being arrested first and then leading them to a room in Loni, Ghaziabad to recover the kidnapped child turns out to be false. Another important aspect is that PW-2 states that when he went searching for his son, A-4 was there along with him.

Lack of proper investigation into ransom calls

35. The evidence of PW-2 contradicts also the electronic evidence in the form of the CDRs. In the impugned judgment, the trial Court has set out the entire sequence of ransom calls purportedly made from the mobile phone of

A-3 to the mobile phone of PW-2. There are purported ransom calls even on 12th, 13th and 14th June 2010, i.e. two calls on 12th June 2010; eight calls on 13th June 2010, and seven calls on 14th June 2010. If the accused were arrested on 11th June 2010 itself, the claim of the prosecution of there being ransom calls from the accused to PW-2 on these three dates thereafter stands completely falsified. How the trial Court missed this important aspect is not understood.

36. The CDR of the mobile ending with the digit 6764 is attributed by the prosecution to the ransom caller. The CDR for the period from 1st June 2010 to 15th June 2010 is available. As already noted by the trial Court, there are no CDRs available for the said number prior to 7th June 2010 because it was taken on a fake ID of one Puja as is established by the Customer Application Form ('CAF') (Ex.PW11/D). Except for three calls, all other calls were made by PW-2. The two calls made to the mobile number ending 5289 are attributed by the prosecution to A-4 and the third call made to a number ending with 1228 has not been able to be explained. In light of these facts, the trial Court came to an erroneous conclusion that "the mobile number ending with 6764 was taken only for the purposes of making ransom calls".

37. It has come in the evidence of PW-2 that, "It is correct that I handed over CDs to the police on 29th August 2010 which was seized vide seizure memo Ex.PW2/A. Vol. I had handed over memory card having voices of the kidnappers to the police in the month of June, 2010, later on I got prepared CD after taking back memory card from police and thereafter I had handed over that memory card to police along with CD. I cannot tell any sign of

mark on CD”.

38. Despite the police having a CD containing the voices of the caller who made the ransom calls, no attempt was made to collect the specimen voice samples of A-3 and A-4 and send the CD containing the recorded conversations to the FSL for comparison of the questioned voice with the specimen voices. This was a serious lapse on the part of the investigation. The FSL results would definitely have shown whether the ransom calls were in fact made by either A-3 or A-4 to PW-2. Why the prosecution failed to do so is unable to be explained by the learned APP. From the point of view of Section 114 of the IEA Illustration (g) if this evidence had been gathered by the prosecution and it had disproved the theory put forth by the prosecution about the guilt of either A-3 or A-4, then the benefit of doubt ought to be given to the accused as it would amount to withholding evidence that would have otherwise helped the accused with their defense.

39. The Court is unable to therefore concur with the trial Court that the making of the ransom calls by A-3 to PW-2 has been proved by the prosecution. In paragraph 51 of the impugned judgment, the trial Court simply reproduces the deposition of PW-4 and wrongly concludes in paragraph 52 that, “This witness was not cross-examined on behalf of the accused”. The trial Court proceedings show that the evidence of PW-4 was recorded on a day that the lawyers were on strike, therefore, the cross-examination of the witness could not take place. On a subsequent day, the trial Court appears to have overlooked this aspect and closed his deposition. It was, therefore, not correct for the trial Court to observe that the witness

was not cross-examined on behalf of the accused. In any event, PW-4 is supposed to have proved the recovery of the mobile phones and not the CDRs which shows the actual making of calls. Why the voice samples were not taken and why the voices on the conversations given in a CD to the police purportedly of the ransom callers were not compared with the specimen voices has not been explained.

PW-5 and PW-6 turn hostile

40. PW-5 was supposedly the person who helped A-3 and A-4 find a room in Loni, Ghaziabad on rent as he was also a TSR driver and friendly with A-3. He totally failed to support the prosecution in this regard. In Court he stated, "I cannot say whether both the accused persons had taken room on rent or not. I cannot say why accused persons were arrested by the police. Vol. Police had also interrogated me in this case. I do not know the other facts of this case." Therefore, no portion of the testimony of this witness can be said to have even remotely supported the case of the prosecution. This witness actually stated that in the month of June or July, 2010, A-3 and A-4 had come to him in village Pavi and he had shown them the room on rent which belonged to PW-6. Beyond this, he does not support the prosecution at all as regards recovery of the child.

41. In his examination by the learned APP, PW-5 denied the suggestion that "I had got arranged one room on rent to accused Abhay Mishra, Neeraj and two associates in my neighbourhood." Likewise, he denied the suggestion that A-3, A-4 and their associates used the tenanted room to confine the kidnapped child and that the police recovered the child from there.

42. Likewise, PW-6 failed to support the prosecution. He only stated that PW-5 along with 3-4 associates had come to his house on 4th June 2010 to take the room on rent. A token amount for the room was paid, monthly rent was fixed and it was settled that the accompanying 2-3 associates of PW-5 would take possession of the room after 25-30 days. He further stated, “no one came at the aforesaid room to occupy and police never came at our room in the month of June, 2010. I do not know the other facts of this case”. How the trial Court could conclude that PWs 5 and 6 have supported the case of the prosecution is again not understood.

No TIP

43. No Test Identification Parade (‘TIP’) was arranged by the police for PW-1 to identify the accused. In ***Dana Yadav alias Dahu v. State of Bihar (2010) 11 SCC 296***, the Supreme Court explained the importance of a TIP as under:

"6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court.

If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence."

44. In the present case except perhaps A-4 who was a cousin of PW-2, the others were strangers as far as PW-1 was concerned. In fact, one of the co-accused, i.e. A-2, applied for T.I.P and his request was turned down by the learned MM. Therefore, the dock identification of the accused by PW-1 could not be safely relied upon to fix their culpability. When read in the context of the doubts over where PW-1 was rescued from, the absence of the TIP assumes significance.

45. There were two calls on 7th June 2010 on the phone of A-4, as is evident from the CDR of the mobile attributed to the ransom caller, but these were phone calls of 10 seconds and 3 seconds duration at 12.51 pm and 12.53 pm. This by itself cannot be said to prove any conspiracy to kidnap the child for ransom.

Conclusion

46. With there being so many infirmities in the evidence of the prosecution and with the versions of PWs 1 and 2 on the one hand and the prosecution on the other as regards the arrest of the accused persons and rescue of the child being so divergent and irreconcilable, it cannot be said that the prosecution has been able to prove the case against the accused beyond all reasonable doubts.

47. The Court is, therefore, unable to concur with the trial Court as regards

the guilt of the two accused in the present appeals. They are entitled to the benefit of doubt. They are accordingly acquitted of the offences under Section 120-B IPC and Section 364-A IPC. The impugned judgment and the order on sentence of the trial Court are hereby set aside. The Appellants shall be released forthwith unless wanted in some other case. They will fulfil the requirement under Section 437-A Cr PC to the satisfaction of the trial Court at the earliest.

48. The appeals are accordingly allowed. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 20, 2018
'anb'