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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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Judgment Reserved on: 29th November, 2018
Judgement pronounced on: 17th, January 2019

+ CRL.A. 834/2016
GULSHAN

..... Appellant

Through: Mr. Amit Sharma, Mr. Aditya Bharadwaj &
Mr. Kunal Sharma Advocates.

Versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for State.
SI Sanjay Rana, P.S. Prasant Vihar

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure and is directed against the impugned judgment dated 02.06.2016 and order on sentence dated 01.07.2016 passed by Additional Sessions Judge-03/North/Rohini Courts in FIR No. 356/2012, registered under Sections 365/392/394/307/186/364-A of the Indian Penal Code (hereinafter referred to as IPC) at PS, Prashant Vihar whereby the Learned Sessions Judge has found the appellant guilty and has sentenced him as follows:

*“It is not a rarest of the rare case inviting
imposition of capital punishment. I therefore*

sentence the convict to undergo life imprisonment U/s 364-A IPC and pay a fine of Rs.10,000/-. He will undergo simple imprisonment for six months in case of default of payment of fine.

I further sentence the convict to undergo 5 years rigorous imprisonment U/s 392 IPC and pay a fine of Rs.5,000/-. He will undergo simple imprisonment for 3 months in case of default of payment of fine.

I further sentence the convict to undergo 5 years rigorous imprisonment U/s 394 IPC and pay a fine of Rs.5,000/-. He will undergo simple imprisonment for 3 months in case of default of payment of fine.

I further sentence the convict to undergo 7 years rigorous imprisonment U/s 397 IPC and pay a fine of Rs.5,000/-. He will undergo simple imprisonment for 3 months in case of default of payment of fine.

I also sentence the convict to undergo one-year rigorous imprisonment U/s 27 Arms Act and pay a fine of Rs.5,000/-. He will undergo simple imprisonment for 3 months in case of default of payment of fine.”

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under: -

(i) The case of the prosecution is that on 08.09.2012 Sumil went to Bhagwati Hospital in Santro Car bearing no.TN-24A-9373 along with his wife Pooja, mother in law Shakuntala Devi and daughters Naina and Neha.

(ii) That the car was left in a running condition and Sumil proceeded to take medicines from the chemist and the rest of the family members were

sitting in the car. Abruptly, a boy arrived on his motorcycle bearing no. DL-4SBG-2570 (black color Karizma) and parked the same at a near distance from the aforesaid Santro Car. The driver of the motorcycle came from the opposite side and pointed out a pistol on Pooja and asked her to get down from the Car and consequently sat down on the driver seat and drove the car along with his mother in law and daughters namely Neha and Naina. Therefore, on the following circumstances, she raised an alarm and after sometime information was also received by the police.

(iii) That DD no.58B was registered on receiving a PCR Call at Police Station Prashant Vihar, on 08.09.2012 at about 10.43pm; on receipt of the information that a child and lady have been kidnapped in Santro Car No.TN-24A-9373. At about 11.13pm in-charge of Libra-73, informed the district control room and as well as the PCR Delhi, that one lady along with her child have jumped from the Santro Car at Sai Baba Chowk and are taken to the BSA hospital.

(iv) Later on, at about 12.09am it was informed by Sh. Sumit (PW-13) that a Santro Car has been seen near Rithala Metro Station and the occupant of the Santro Car has left one girl namely Naina at Rithala Metro Station.

(v) PW-17 Jagmal on receipt of DD No.58B reached the main gate of the Bhagwati Hospital, Sector 13, Rohini and met Pooja and recorded her statement Ex.PW-1/A. Further the statement of Smt. Shakuntala Devi (PW-21) was also recorded by the IO, on which she stated that on 08.09.2012 she along with her son namely Sumil and daughter in law namely Pooja and grand-daughters namely Naina and Neha were at Bhagwat Hospital for purchasing medicines. Following to which the

accused pointed out a firearm and asked my daughter in law to get down from the Car and consequently sat down on the driver seat and drove off the car. Later on, the accused demanded money and PW-21 insisted on giving him, her gold chain and mala but he refused to take the following articles. Thereafter, the accused pushed her along with her grand-daughter Neha from the car and consequently they became unconscious. Based on the statement recorded of PW-1(Pooja) and PW-21(Shakuntala Devi), FIR was registered under Sections 186/307/365/392/394 IPC.

(vi) During the course of the investigation the police contacted Upen Tilanga (PW-14) whose mobile number (9717858106) was used for making the ransom call, consequent to which he informed that on 08.09.2012 at 11.45pm he was taking his dog outside for a walk and subsequently a person approached him and told him that a small girl is sitting inside the car and the following girl wants to talk with her father. Accordingly, he handed over his mobile phone to the accused to talk with the father of the missing girl.

(vii) Thereafter on 09.09.2012 DD No.13-A was registered on receipt of the information that the accused Gulshan @ Sandeep @ Monu s/o Sh. Bhim Sen was arrested in a separate FIR No. 265/2012 registered under Section 25 of Arms Act at Police Station Aman Vihar and has confessed about the subsequent crime and the accused will be produced in Rohini Court Complex. Charges were framed under Sections 365/392/394/397/364A/186 of the Indian Penal Code, alternatively under Section 27 of the Arms Act.

3. To bring home the guilt of the accused the prosecution examined 24 witnesses in all. Statement of the accused was recorded under Section 313 of Code of Criminal Procedure wherein he claimed innocence and stated that he has been falsely implicated in the present case. The appellant chose not to lead any evidence in his defence.
4. Mr. Amit Sharma learned counsel for the appellant, opened his submissions by contending that the impugned judgment dated 02.06.2016 is based on conjectures and surmises and the same is against the facts and the settled proposition of law, that the learned Trial Court has ignored and omitted the material evidences and has disregarded the cogent evidences in favor of the appellant.
5. Learned counsel for the appellant further contended that learned trial court failed to take note of the fact that PW-1 and PW-21 both deposed in their initial statements that the accused was wearing a helmet and has overlooked the basic principles of criminal jurisprudence as to how the accused has been positively identified as the actual perpetrator of the crime. Learned counsel for the appellant further contended that the learned Trial Court has erred in relying on the testimonies of PW-1 and PW-21 because they are closely related to each other and are categorized as interested witnesses, hence their evidence cannot be exclusively relied on as trustworthy and reliable because there is very strong possibility of the prosecution witnesses being tutored and influenced. Learned counsel further contended that the statements of PW-3(Ct. Ajay)

and PW-4 (Ct. Haider) are not reliable and are not trustworthy as it is highly improbable that the appellant reversed the car in a narrow gali with punctured tyres and PW-3 & PW-4 failed to follow the appellant despite of having a motorcycle. Learned counsel further contended that the learned Sessions Judge erred in relying on the testimony of PW-14, Upen Tilanga in relation to the demand of ransom, as no call detail records have been produced by the prosecution.

6. Learned counsel for the appellant labored hard that the prosecution has intentionally planted the chance prints in the Santro Car and the comparison of the chance prints with the electronic retrieved prints of the appellants were not admissible as the same was not supported by a certificate under Section 65-B of the Indian Evidence Act. To substantiate his arguments on this point, the learned counsel for the appellant has placed reliance on *Mohd. Aman and Another V. State of Rajasthan* reported in (1997) 10 SCC 44
7. Learned Counsel for the appellant further contended that the learned Session Judge erred in ignoring the fact that in the matter concerning FIR No. 265/12 registered under Section 25 Arms Act, the appellant has been acquitted which establishes that the possession of the country made pistol with the appellant has not been proved by the prosecution.
8. Ms. Radhika Kolluru, Learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and submitted that the impugned judgment is based on

proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this court. Learned Counsel for the State further contended that the statements of prosecution witnesses i.e PW-1, PW-21, PW-3, PW-4 and scientific evidence are corroborative in nature and the prosecution has been able to prove their case beyond reasonable doubt.

9. Learned counsel for the State further contended that the crime team inspected the alleged Santro car at Indra enclave, Aman Vihar on 09.09.2012 and lifted 3 chance prints which were forwarded to the Finger Print Bureau and one of the Chance Prints Q-2 was matched with the thumb impression of the appellant which evidently proves the involvement of the appellant in the commission of the alleged crime.
10. We have heard learned counsel for the parties at considerable length and have also perused the entire material placed on record including the record of the Trial Court.

Identification of the Accused

11. In order to deal with the contentions of both the parties, it would be appropriate to examine the testimonies of material witnesses of the prosecution, more particularly the testimonies of PW-1, Pooja, PW-2, Mr. Sumil Kumar and PW-21, Shakuntala Devi, who have identified the appellant. Ms. Pooja, wife of the complainant stepped into the witness box as PW-1 and deposed that:

“On 08.09.2012 I along with my husband Sumil, mother-in-law Shakuntala, my daughters Naina and Neha at about 10.15 PM went to Bhagwati

Hospital to purchase the medicine in our Santro car No.TN24A9373 black color. My husband stopped the car outside the hospital and ignition of the car was on and he went to buy the medicines and myself, my daughters and mother-in-law remained seated in the car. In the meanwhile, one young boy came on motorcycle No. DL4SBG2570 Karizma black color and stopped his motorcycle at a little distance from our car. After parking his motorcycle that boy came near to our car and from the driver side he aimed at me pistol and threatened me to get down from the car on the point of pistol. That boy sat on the driver seat of the car. I immediately got down from seat next to the driver seat of the car and started removing my daughters and my mother-in-law from the rear seat of the car. Before that I could alight my daughters and mother in law from the car, that boy drove away the car with my daughters and mother in law. At the time when he was taking round of my car at that point of time he was wearing a helmet. When he had entered inside the car he was wearing helmet. He remained inside the car for around one minute and thereafter I had alighted from my car. When I was trying to get my kids and mother in law out accused went away with my car along with my kids and my mother in law.”

12. Smt. Shakuntala Devi, mother of the complainant was examined as PW-21 who deposed that:

“On 08.09.2012 I along with my son Sumil and daughter in law Pooja and grand-daughters namely Naina and Neha went to Bhagwati Hospital to purchase the medicine from shop of Bhagwati Hospital at about 10 PM in Santro Car.

My son stopped the Santro Car outside the hospital as ignition of the car was on and my son went to purchase the medicines at the shop of Bhagwati Hospital. I along with my daughter in law and granddaughter was sitting in the Santro Car but I do not remember its registration car. My daughter in law got down from the Santro Car. One person came there and opened the door of the driver side and the person had taken out the firearm and shown to my daughter in law who was sitting on the seat of driver and asked my daughter in law but I cannot tell whether it was a pistol or revolver. The person sat on the driver seat and he raised the speed of the Santro Car and he ran away along with the car and that person asked me to give the money. I told that person that I had no money (currency notes). I asked that person that I was having a mala and gold chain and requested him to give the said articles but he refused. Thereafter, accused pushed me from the car. I along with my grand-daughter Neha had fell down from the car and accused ran away from their along with my grand-daughter Naina in car. I became unconscious when I regained my consciousness I found that myself in the hospital.”

13. Mr. Sumil Kumar, husband of the complainant during his cross examination has deposed as under: -

“It is wrong to suggest that I have concocted a false story of ransom call at the instance of police official. My wife had told that accused was wearing helmet but his face was very much visible as it was not a full helmet.”

14. A conjoint reading of the aforesaid testimonies of the prosecution witnesses, it is evidently established that the appellant pointed out a pistol on PW-1 and threatened her to get down from the car and consequently drove away the car making the occupant of the car i.e. PW-21 Shakuntala Devi and two girls namely baby Neha and baby Naina as hostages. Testimonies of these witnesses further establishes the fact that the appellant/accused was not wearing a full helmet, therefore he was correctly identified by PW-1 and PW-21.
15. As far as the stand taken by learned counsel for the appellant that PW-1 and PW-21 are interested witnesses and closely related to each other, a survey of the judicial pronouncements of the Hon'ble Apex Court on this point leads to the inescapable conclusion that the evidence of a closely related witnesses is required to be carefully scrutinized and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. (*Ref: Anil Rai Vs. State of Bihar, (2001) 7 SCC 318; State of U.P. Vs. Jagdeo Singh, (2003) 1 SCC 456; Bhagalool Lodh & Anr. Vs. State of U.P., (2011) 13 SCC 206; Dahari & Ors. Vs. State of U. P., (2012) 10 SCC 256; Raju@Balachandran & Ors. Vs. State of Tamil Nadu, (2012) 12 SCC 701; Ganga bhavani Vs. Rayapati Venkat Reddy & Ors., (2013) 15 SCC 298; Jodhan Vs. State of M.P., (2015) 11 SCC 52*).

16. In the present case nothing has brought on record to prove that the evidence of PW-1 & PW-21 cannot be believed and they have falsely implicated the appellant due to some personal vengeance or have been implicated in the present case at the instance of the prosecution. Therefore, aforesaid testimonies cannot be rejected on the mere ground of their relationship because the relationship by itself is not a sufficient ground to discard the evidence of the witnesses and specify it as inappropriate for credence and hence the argument of the counsel for the appellant with regard to interested witness hold no ground.

Police Witness

17. Other significant prosecution witnesses are Ct. Ajay (PW-3) and Ct. Haider (PW-4), from Police Station - Aman Vihar. Both the witnesses who were on the night patrolling duty on the intervening night of 08/09.09.2012 testified the presence of appellant in the aforesaid Santro car on the date of the incident. PW-3 Ct. Ajay during his examination in chief deposed as under: -

“On the intervening night of 08/09.09.2012, I was posted at PS Aman Vihar and was on night patrolling duty and was present in the area in patrolling. On wireless set message was received to the effect that from the area of PS Prashant Vihar Santro black color car No DL 24A 9393 has been looted and in the car women and children were kidnapped. On this I along with Ct. Haider started patrolling and checking in the area. During patrolling we had seen in one gali of Sharma colony Aman Vihar, the aforesaid Santro car parked. We immediately rushed there then the

driver of the car immediately started the Santro car and on its ignition. I along with Ct. Haider tried to stop the Santro car and when driver did not stop the car Ct. Haider had hit the front windshield glass of the car with the danda and the glass was broken down. I also moved towards the conductor side of the car and hit the left window pan of the door of the car with my pistol and tried to stop the car. Besides this driver of the car did not stop and attempted to run over the car over us and to hit us with the car. I fired on the left side tyre of the Santro car with my service pistol. On this driver of the car immediately back the car in a fast speed and then I came to the front side of the car and fired. But driver of the car backed the car fastly and made to run away from there. Both left side tyres of the car started flatting (air started coming out). We chased the Santro car and the driver but we could not met us. I had fired and used four cartridges of service pistol in order to stop the accused and to save ourselves, on the Santro. I had produced the empty four rounds to SI Arvind Kumar, PS Prashant Vihar.”

18. PW-4 Ct. Haider during his examination in chief deposed as under: -

“On the intervening night of 08/09.09.2012, I was posted at PS Aman Vihar and was on night patrolling duty and was present in the area in patrolling. On wireless set message was received to the effect that from the area of PS Prashant Vihar Santro black colour car No. DL 24 A 9393 has been looted and in the car women and children were kidnapped. On this I alongwith Ct. Ajay started patrolling and checking in the area. During patrolling we had seen in one gali of Sharma Colony Aman Vihar, the aforesaid Santro car parked. We immediately rushed there then the

driver of the car immediately started the Santro car and on its ignition. I alongwith Ct. Ajay tried to stop the Santro car and when driver did not stop the car I had hit the front windshield glass of the car with the danda which was carried by me and the glass was broken down. Ct. Ajay also moved towards the conductor side of the car and hit the left window pan of the door of the car with my pistol and tried to stop the car. Besides the driver of the car did not stop and attempted to run over the car over us and to hit us with the car. Ct. Ajay fired on the left side tyre of the Santro car with my service pistol. On this driver of the car immediately back the car in a fast speed and then Ct. Ajay came to the front side of the car and fired. But driver of the car backed the car fastly and made to run away from there. Both left side tyres of the car started flatting (air started coming out). We chased the Santro car and the driver but we could not met us.”

19. From the perusal of their testimonies, we find that on the intervening night of 08/09.09.2012, Ct. Ajay (PW-3) and Ct. Haider (PW-4), were on the night patrolling duty and on noticing the alleged Santro car as described in wireless message received from the control room of Delhi Police, they both rushed towards the car. Consequently, on arriving at the spot, the driver of the car started the ignition of the car and attempted to run over and hit Ct. Ajay (PW-3) and Ct. Haider (PW-4). Accordingly, on the following circumstances both the police officials endeavored every segment of their resources to stop the Santro car with hitting the front windshield glass with a Danda and firing four live cartridges from

their service pistol. The statement of both the police officials i.e. Ct. Ajay (PW-3) and Ct. Haider (PW-4) were corroborative and natural. They also withhold the test of cross-examination except minor discrepancies. The aforesaid testimony of the both prosecution witnesses also finds support from the testimony of PW-7 Ct. Jagroop and PW-10 Ct. Hansraj (member of the crime team) who have deposed that when they had arrived at the alleged spot, one Santro car was found in a damaged condition. The front left side glass of the car was broken and bullet marks were present on the bonnet of the car.

20. The testimonies of the aforesaid prosecution witnesses find support from scientific evidence as three chance prints were lifted from the alleged vehicle and mark Q-2 was matched with the right thumb of the accused Gulshan @ Sandeep @ Monu. The bullet marks found on the bonnet of the car correlates with the scientific evidence and confirms that the alleged Santro car was stolen and used by the appellant and he was involved in the commission of the crime.

Demand of Ransom

21. As per prosecution the appellant had borrowed the phone of PW-14, Upen Tilenga on the pretext of making an urgent call to PW-2, Sumil Kumar father of the missing girl who was sitting in his car but instead, demanded ransom in lieu of safe custody of his daughter. PW-14 Upen Tilenga during his examination in chief deposed as under: -

“Probably on 05 or 08th September, 2012, at about 11:45PM, I was taking doggy for a walk outside our society, accused Gulshan present in the court today (correctly identified) came to me in Santro car. A small girl was also sitting in that car. Accused Gulshan told me that the small girl sitting in the car is the missing girl and that he wanted my mobile phone to talk to the father of that girl. Accordingly, I handed over my mobile phone to him to talk to father of that missing girl. Accused Gulshan talked on my telephone to somebody but I could not listen to the conversation as accused was talking in low tone. After talking on my telephone, he returned my mobile phone. The accused had talked on my mobile phone having sim number 9717858106 which is in the name of elder son of Sh. Surender Sharma namely Pulkit Sharma.”

22. PW-2 Sumil Kumar, during his examination in chief deposed as under: -

“At about 11.45 pm on my mobile phone no. 8587021012 I received phone call from mobile No. 9717858106 and the caller was demanding Rs. 20 Lacs for the release of my elder daughter Naina, aged- 7 years. My statement was recorded by the police. The aforesaid number is in my name of Vodafone. I am still using the said mobile number. Later on, I had seen the accused, present in court, correctly identified, in the custody of the police after his arrest.”

23. From the perusal of the aforesaid statements, it is clear that the appellant borrowed the mobile phone bearing no. 9717858106 from PW-14 on a false pretext and executed the ransom call on the mobile number 8587021012 of PW-2, Sumil Kumar. PW-2 Sumil

Kumar has also corroborated with the aforesaid statement of PW-14 by deposing that around 11.45 p.m., he received a phone call on his mobile number 8587021012 and the caller was demanding Rs. 20 lacs for the release of his elder daughter Naina.

24. Accordingly, from the testimony of PW-2 Sumil Kumar and PW-14, Upen Tilenga, it stood established that it was the appellant who made the ransom call from the mobile number (9717858106) of PW-14 Upen Tilenga to the mobile number (8587021012) which belonged to PW-2, Sumil Kumar.
25. Moreover, the story of the prosecution that one girl child was sitting in the car also finds support from the testimony of the PW-14 and the testimony of another independent witness being PW-13 Sumit. PW-13, Sumit, during his examination in chief deposed as under: -

*“On 08.09.2012, at about 11:45pm after dropping my friend Vinod at Kamla nagar, I was going to my house. **When I reached near the Rithala Metro Station, an unknown person stopped me and told me that a person had dropped a girl aged about 6-7 years from his vehicle there and thereafter, that the person who was on the vehicle went away.** I informed the police about that girl on the nearby police booth. After some time, PCR reached there and took that girl in the PCR vehicle.”*

26. From the evidence adduced by the prosecution, we are of the view that the failure of the prosecution to bring on record the call detail record of the mobile phone of the prosecution witnesses should not lead to an adverse inference. The prosecution has been able to establish the commission of the offence in question by the appellant

beyond the shadow of all reasonable doubt based on the other evidence produced on record. Therefore, the failure of the prosecution in not leading evidence with regard to the location chart of the mobile phone of the prosecution witnesses loses its significance and in the face of other evidence brought on record, the failure of the prosecution in bringing on record the call detail record and the location chart, cannot be said to be fatal to the case of the prosecution.

Scientific Evidence

27. Learned Counsel for the appellant has contended that the prosecution has intentionally planted the chance prints in the *Santro Car* and the comparison of the chance prints with electronic retrieved records prints of the appellant were not admissible as the same was not supported by a certificate under Section 65-B of the Indian Evidence Act. In this context, we find from the record that crime team inspected the alleged Santro car at Indra enclave, Aman Vihar on 09.09.2012 and lifted 3 chance prints which were forwarded to the Finger Print Bureau and one of the Chance Prints Q-2 was matched with the thumb impression of the appellant, who had been previously convicted in FIR No.394/04 registered at Police Station R.K. Puram, U/s 482/471 of the Indian Penal Code. The Fingerprint Analysis report was concluded with the following datum: -

“Sub- Information regarding reprocessing of Un-Identified Chance Prints in Case DD No. 58B, dated 08/09/12, PS Prashant Vihar, Distt. Outer.

MEMO

*I want to inform you that during reprocessing of Un-Identified Chance prints available in the data-base of AFPIS on the upgraded application of matcher put on trial, the Un-Identified chance print marked Q2 (PIN-0817431LP00000039) is found **IDENTICAL** with Right Thumb impression of Gulshan @ Monu S/o Bhim Sen R/o P-52, Chhankey Palace, New Delhi (PIN-0816759TP00000122) who was previously arrested/convicted in cases whose details are given in annexure 'A'."*

28. The aforesaid Fingerprint Analysis report has been proved on record by (PW-24) ACP Rajender Kumar Vajpayi, Director, FPB, Delhi as Ex.PW-24/A1 to A4. The relevant portion from his statement recorded on 17.03.2016 read as under: -

"I am working as Director of Finger Print Bureau, Kamla Market, PS Kamla Market. The chance prints Mark Q1, Q2 and Q3 were received in our office which were sent by Crime Mobile Team of outer district whose finger print proficient lifted the said chance print from vehicle. As per record available in Automatic Finger Print Identification System and data of convicted and arrested persons, the chance print Mark Q2 was found identical with the right thumb of accused Gulshan @ Monu s/o Sh. Bhim Sen who was previously arrested in case FIR No. 63 dated 07.03.2011 u/s 379/411 IPC PS Sarojini Nagar. The said accused was arrested in other cases also and convicted in case FIR No.394/2004 u/s 482/471 IPC PS R.K. Puram convicted by Ld. MM Ms. Namita Aggarwal, Saket

Courts, Delhi. The detail report of chance print matching is prepared by Inspector Shiv Raj Singh who signature at Point A which was checked by Inspector A.P. Verma who signature at point B. The detail report of chance print matching was prepared under my supervision. I can identify the writing and signature of Inspector Shiv Raj Singh and Inspector A.P. Verma who are working as Finger Print Experts in Finger Print Bureau at PS Kamla Market. The detail report of chance print matching Ex.PW24/A1 to Ex.PW24/A4 (OSR) bearing my signature at Point C”.

29. While discussing the credibility of electronic evidence and the relevance of producing the certificate under Section 65B of the Indian Evidence Act for substantiating its admissibility, our view is forfeited by the recent judgment of the Hon'ble Apex Court, in the case of ***Shafhi Mohammad V. The State of Himachal Pradesh reported in (2018) 2 SCC 801***. The germane portion of the judgment is extracted below:

*“(7) Though in view of Three-Judge Bench judgments in ***Tomaso Bruno and Ram Singh (supra)***, it can be safely held that electronic evidence is admissible and provisions under Sections 65A and 65B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B(h).*

(8) Sections 65A and 65B of the Evidence Act, 1872 cannot be held to be a complete code on the subject. **In Anvar P.V. (supra), this Court in para 24 clarified that primary evidence of electronic record was not covered under Sections 65A and 65B of the Evidence Act.** Primary evidence is the document produced before Court and the expression “document” is defined in Section 3 of the Evidence Act to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

(9). The term **“electronic record” is defined in Section 2(t) of the Information Technology Act, 2000 as follows:**

‘Electronic record” means data, record or data generated, image or sound stored, received or sent **in an electronic form or micro film or computer generated micro fiche.**’

(10). Expression “data” is defined in **Section 2(o) of the Information Technology Act** as follows.

“Data” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer’

(11). The applicability of procedural requirement under Section 65B(4) of the Evidence Act of

furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B(h) is not always mandatory.

*12. Accordingly, we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. **The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies.***

30. From the above extracted portion from the judgment of the Hon'ble Supreme Court, it is validated that the requirement of producing the certificate under Section 65B of the Indian Evidence Act is a procedural aspect and the requirement of its production can be relaxed whenever required and justified, in the interest of justice. Therefore, the argument raised by learned counsel for the appellant

that the comparison of the fingerprints of the appellant with the chance prints lifted from the Santro car are not admissible as the same was not verified by a certificate under Section 65B of the Indian Evidence Act, holds no ground.

Burden of Proof

31. From the above discussion and the scientific evidence produced on record, it is clear that the chance prints were lifted from the alleged Santro Car and they were matched with the right thumb of accused. Therefore, no explanation is given by the appellant as to how his fingerprints were detected from the aforesaid vehicle, which was used during the commission of the alleged offence. Accordingly, by the virtue of Section 106 of the Indian Evidence Act, the appellant ought to have explained the incriminating circumstances pointing against him.
32. It is also a settled legal position that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond any shadow of reasonable doubt. It is only, when such a burden is discharged from the onus of the prosecution and eventually shifts on to the accused to prove any fact within his special knowledge, to establish that he/she is not guilty of the aforesaid alleged offence. We may refer to the following Para, from the judgment of the Apex court in ***Sucha Singh v. State of Punjab***, reported in ***AIR 2001 SC 1436*** as under:

“We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond

reasonable doubt, but the section would apply to cases where prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to suffer any explanation which might drive the court to draw different inference.”

33. In a recent judgment in the case of ***Raj Kumar vs. State of M.P., 2014 Cri. LJ 1943***, the Apex Court reiterated the view that where the accused fails to give any explanation in his statement recorded under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him, the Court will be entitled to draw such adverse inference against the accused as maybe permissible in law. Relevant Para of the said judgment is reproduced as under: -

"The accused has a duty to furnish an explanation in his statement Under Section 313 Code of Criminal Procedure regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement Under Section 313 Code of Criminal Procedure is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law."

34. Placing reliance on the judgment of the Apex Court in the case of ***Prithpal Singh vs. State of Punjab & Ors.*** reported in (2012) 1 SCC 10, the Apex Court in the following Para has held as under:

"... if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused."

35. Keeping in view the law laid down above, it stands settled that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

Conclusion

36. From the above discussion, it is proved on record that the testimonies of the prosecution witnesses are corroborating and the alleged contradictions, if any are minor discrepancies, which do not affect the core of the prosecution case, and therefore, cannot be made a crucial ground to reject the evidence in its entirety. Further, the testimonies of the witnesses are also corroborated with the scientific evidence on record as the chance prints lifted from the alleged vehicle matched with the right thumb of the accused Gulshan @ Sandeep @ Monu which were retrieved from the electronic records maintained by the Police Department. Further, the bullet marks found on the bonnet of the car correlates with the scientific evidence and confirms that the alleged Santro car was used by the appellant in forcefully confining and kidnapping the victims and have been spotted by the prosecution witnesses at relevant time.
37. In the background of such a scenario, we are of the view that the prosecution has succeeded in establishing its case against the appellant. Hence, we find no infirmity in the judgment passed by the learned Trial Court and we see no cogent reason to interfere with the same. The conviction of the appellant under Sections 364-A/392/394/397 of the Indian Penal Code and Section 27 of Arms Act is upheld.
38. Accordingly, the appeal is dismissed.
39. Trial Court Record be sent back along with a copy of this order.

40. A copy of this order be also sent the Superintendent Jail, Tihar Jail.

SANGITA DHINGRA SEHGAL, J

SIDDHARTH MRIDUL, J

January 17 , 2019
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