

Neutral Citation No.2023:PHHC:150039-DB

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

1. Criminal Appeal No.D-697-DB of 2017(O&M)

Sukhdev Singh ... Appellant

Versus

Union Territory, Chandigarh ... Respondent

2. Criminal Appeal No.D-1142-DB of 2017(O&M)

Prabhjot Singh ... Appellant

Versus

State of U.T., Chandigarh ... Respondent

3. Criminal Appeal No.D-268-DB of 2017(O&M)

Sukhjinder Singh ... Appellant

Versus

State of U.T. Chandigarh ... Respondent

Date of Decision: 22.11.2023

Reserved on: 04.09.2023

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. M.S. Virk, Advocate,
Ms. Savreen Gogia, Advocate and
Ms. Puneet Kaur Sekhon, Advocate,
for the appellant in CRA-D-697-DB of 2017.

Mr. D.S. Virk, Advocate,
for the appellant in CRA-D-1142-DB of 2017.

Mr. Nandan Jindal, Advocate,
for the appellant in CRA-D-268-DB of 2017.

Mr. J.S. Toor, APP, U.T. Chandigarh with
Mr. Adhiraj Toor, Advocate and
Mr. Karandeep, Advocate.

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MANISHA BATRA, J.

1. This common order shall dispose of the aforementioned three criminal appeals preferred against a common judgment of conviction dated 21.12.2016 and order on quantum of sentence dated 23.12.2016 passed in Sessions Case No.93 of 09.06.2014 titled *State v. Sukhjinder Singh and others* arising out of FIR No.33 dated 18.01.2014 registered under Sections 365, 364-A, 120-B IPC read with Section 25 of Arms Act at Police Station Sector-39, Chandigarh, whereby the present appellants-accused had been held guilty and convicted for commission of offences punishable under Sections 364-A and 365 read with Section 120-B of IPC, 120-B of IPC and 25 of Arms Act read with Section 120-B of IPC and had been sentenced in the following manner:-

S. No.	Offence	Punishment awarded
1.	364-A read with Section 120-B IPC	To undergo rigorous imprisonment for life and to pay a fine of ₹2000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.
2.	365 read with Section 120-B IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of ₹1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 7 days.
3.	120-B IPC	To undergo rigorous imprisonment for a period of three years and to pay a fine of ₹1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 7 days.
4.	25 of Arms Act (Sukhjinder Singh)	To undergo rigorous imprisonment for a period of one year and to pay a fine of ₹1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 7 days.
	25 of Arms Act read with Section 120-B IPC (Sukhdev Singh and Prabhjot Singh)	To undergo rigorous imprisonment for a period of six months and to pay a fine of ₹500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 4 days.

2. The criminal law swung into action in this case on the basis of a written complaint submitted by the complainant Monika Sharma on

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18.01.2014 at about 5:22 PM, alleging therein that previously she used to work with one Global Link Study and Immigration situated at Sector-29, Chandigarh but the said office was now closed. On 17.01.2014, Ramnish and Harvinder who used to work in the above named office with her, came to her house in a car bearing registration No.PB-06J-4040 and asked her to return the passport of one Onkar, which had been given to some agent and was not returned. The complainant assured them that she would arrange the said passport from the agent and on this, while extending threat to see her, if the passport was not returned immediately, both of them had left. She alleged that Sukhwinder, resident of Amritsar was seen sitting downstairs her house in the above car. She further alleged that on 18.01.2014, when she was out of her house, her househelp informed her telephonically that the same two youths who had come to her house on the previous day, had forcibly taken away Karan, younger brother of Monika along with them while extending beatings to him in a white Swift car bearing No.PB-65-0202. She prayed for taking penal action against the culprits.

3. On her complaint, initially a case under Section 365 read with Section 34 of IPC was registered. The complainant received ransom calls in the meanwhile and her phone as well as some other suspected phone numbers were put on surveillance and calls made/received from those phones were ordered to be recorded by the police authorities. As per the prosecution version, the kidnappers kept on making calls from the mobile phone of victim Karan to the complainant Monika on 18.01.2014 to 20.01.2014 thereby asking her to give ransom money of Rs.25 lacs for

release of her brother. Sh. Rajinder Kumar, uncle of the complainant had

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also been joined in those conversations. The kidnappers ultimately agreed to receive an amount of Rs.2 lacs, papers regarding transfer of a Toyota car bearing registration No.CH01-AQ-2190 belonging to Rajinder Sharma, some blank cheques signed by the complainant and her uncle and 20 kgs of silver articles/jewellery. On the intervening night of 20/21.01.2014, as per the telephonic directions of the kidnappers, PW-3 Rajinder Kumar had left his car bearing No.CH01-AQ-2190 along with the ransom money and silver jewellery etc. at a particular place as told by the kidnappers in Amritsar City and within his sight, his vehicle along with ransom money/articles had been taken away by four persons. Thereafter PW-15 Inspector Ranjodh Singh along with other police officials started chasing the vehicle so taken away. PW-14 Inspector Chiranji Lal accompanied by other police officials had been following them. They had reached in the area of Preet Vihar at Amritsar Airport Road and had apprehended the car of PW-3 along with accused Prabhjot Singh. Silver ornaments and certain papers were also recovered from the same. The accused Prabhjot Singh was arrested. He was interrogated and suffered disclosure statement that the Swift car bearing No.PB02BR0202 along with certain mobile phones used by him for the purpose of kidnapping were in his custody and had got the same recovered.

4. As per the further prosecution case, while tracing the location of phone used by the kidnappers, another police team had apprehended the accused Sukhjinder and Sukhdev from the area of Pehowa Road leading towards Ambala on the same night and the kidnapped boy was also recovered from them. The car bearing No.PB02BV6045 in which, they were

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identified the place wherein the victim had been kept confined for three nights. The victim and the accused were then taken to the Crime Branch, Chandigarh and custody of the kidnapped boy was handed over to his family members. On interrogation, the accused Sukhjinder suffered a disclosure statement on 21.01.2014 which led to recovery of a countrymade pistol and five live cartridges from the car bearing registration No.PB02BV6045 which was already deposited in the Malkhana. Offences under Section 365 and 364-A read with Section 120-B of IPC and Section 25 of Arms Act were added. The voice samples of the accused and of witnesses were taken and were sent to CFSL along with the conversation got recorded from the respective phone numbers of the accused and the prosecution witnesses. After completion of necessary investigation proceedings and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused Sukhjinder Singh, Sukhdev Singh and Prabhjot Singh. Three kidnappers namely, Ashu, Harvinder Singh and Maninderbir Singh could not be arrested. Proceedings under Section 82 of Cr.P.C. were initiated against them and they were declared proclaimed persons.

5. Copies of challan were supplied to the accused free of cost. The case was committed to the Courts of Sessions. On finding a prima facie case for commission of offences punishable under Sections 120-B, 364-A read with Section 120-B, 365 read with Section 120-B and 25 of Arms Act read with Section 120-B, the accused had been chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

6. To substantiate its case, the prosecution examined 21 witnesses,

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Pawan Kumar, PW-5 Monika, PW-6 HC Yashpal, PW-7 HC Harpinder Singh, PW-8 HC Jasbir Kumar, PW-9 Inspector Manju Sharma, PW-10 Munish Bindra, PW-11 ASI Harbans Singh, PW-12 Raj Kumar, PW-13 Karan, PW-14 Inspector Chiranji Lal, PW-15 Inspector Ranjodh Singh, PW-16 SI Rohit Kumar, PW-17 SI Mahipal, PW-18 DP Gangwar, PW-19 Swinder Kaur, PW-20 Jasdeep Singh and PW-21 SI Sarwan Ram, and thereafter the prosecution evidence was closed by learned Public Prosecutor.

7. The statements of the accused were recorded under Section 313 of Cr.P.C. The accused abjured their guilt and pleaded innocence. The accused Prabhjot took the plea of alibi and also that on 30.12.2013, he had filed a complaint against the complainant Monika, her brother Karan and some other persons and FIR No.296 was registered against them at Police Station Patti on 07.11.2014. He alleged that infact, he had paid a sum of Rs.6 lacs to Global Link Studies and Immigration for the purpose of securing a Visa to obtain work permit for going to Australia. The receipt regarding the said amount had been signed by complainant Monika as proprietor of M/s Global. Prior to 18.01.2014, summons had been issued by SHO PS Patti to Monika and others to join them in inquiry relating to the complaint filed by him and feeling offended, they had falsely involved him in this case. He also took a plea that on the night of 21.01.2014, he was apprehended by the police from his own house and he had no part to play in the occurrence.

8. In defence evidence, the accused examined six witnesses namely, DW-1 ASI Jaspal, DW-2 ASI Panna Lal, DW-3 Balwinder Singh,

DW-4 Sukhwinder Singh, DW-5 Amarjeet Kaur and DW-6 Dalbir Singh.

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9. On appraising the evidence produced on record by the prosecution as well as the accused and after considering the contentions raised by both the sides, the learned trial Court vide judgment dated 21.12.2016 held the accused guilty and sentenced them in the manner as indicated above.

10. Feeling aggrieved from the findings of conviction, the appellants-convicts have filed the aforementioned instant appeals.

11. At the outset, we would consider the question as to whether the victim Karan was proved to have been kidnapped/abducted on 18.01.2014 at all or not? Admittedly and evidently, the victim Karan was a minor as on the date of occurrence. The offence of kidnapping is defined under Section 361 of IPC as per which any person who takes or entices any minor, without the consent of his guardian, is said to kidnap such minor or person from lawful guardianship. Section 363 provides punishment for kidnapping. PW-5 Monika, sister of the victim Karan had lodged a written complaint Ex.P-7 to the police on 18.01.2014 alleging that her minor brother had been kidnapped from her house in the same morning when she was away from her house and that this fact was informed to her by PW-1 Pooja who was working as a domestic help in her house. PW-1 Pooja though resiled from her statement on the point as to who had kidnapped the victim Karan, nonetheless supported the prosecution version to the extent to which it was alleged that the victim Karan had been taken away from his house in the fateful morning as she stated that in the same morning, while doing the cleaning work in the house of the victim, she had heard someone calling the name of victim

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Karan. Her testimony on this point remained unshattered. Then the victim Karan while appearing as PW-13 also deposed about his being kidnapped by four persons on 18.04.2014 and his statement on this point also remained uncontroverted and unchallenged. Therefore, the statements of PW-1 Pooja and PW-5 Monika and PW-13 Karan can certainly be acted and relied upon to prove that PW-13 had been kidnapped in the morning of 18.01.2014.

12. Now the question that arises for consideration is as to whether the appellants-accused were the persons who had kidnapped/abducted the victim PW-13 and further that he was kidnapped for ransom. The offence of kidnapping for ransom is defined under Section 364-A of IPC. The essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:-

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction and;
- (ii) Threat to cause death or hurt to any such person, and by conduct of the kidnapper giving rise to a reasonable apprehension that such person may be put to death or hurt or;
- (iii) Causing hurt or death to such person in order to compel any other person to do or abstain from doing any act or to pay a ransom.

13. So far as Section 365 of IPC is concerned, the gravamen of the offence punishable under this section is the kidnapping/abduction of any person with intent to cause that person to be secretly and wrongfully confined. In order to make out an offence under this section, it must be

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secretly and in order to fulfill such intention, the whereabouts of the victim were concealed from others by them.

14. Let us now firstly examine the case of appellant-convict Prabhjot Singh who has been held guilty and convicted for commission of offences punishable under Sections 364-A, 365 read with Section 120-B of IPC, 120-B of IPC and Section 25 of Arms Act read with Section 120-B of IPC.

15. As per the prosecution version, appellant Prabhjot Singh was one of the kidnappers of the victim and was also one amongst them who had received by way of ransom, the car bearing registration No.CH01-AQ-2190 belonging to PW-3 Rajinder Kumar, some blank cheques signed by the complainant and PW-3, a sum of Rs.2 lacs and 20 kgs of silver articles/jewellery on the intervening night of 20/21.01.2014 from PW-3 Rajinder Kumar in Amritsar area in pursuance of the ransom demand as raised by all the kidnappers and in pursuance of criminal conspiracy with them.

16. Learned counsel for the appellant Prabhjot Singh strenuously argued that the case of prosecution suffered from several infirmities with regard to his involvement in the subject crime. The appellant-Prabhjot Singh was neither named in the FIR nor PW-3 Rajinder Kumar who was the alleged witness to receipt of the car bearing No.CH01-AQ-2190 along with money and silver jewellery as ransom by the kidnappers had identified him as such. The evidence produced on record did not establish that the appellant Prabhjot Singh had either entered into any conspiracy with the co-accused

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ransom money/articles. The testimony of the victim PW-13 Karan with regard to complicity of this appellant was highly unnatural, improbable and self-contradiction. On the other hand, the plea of alibi as taken by this appellant stood fully established from cogent and convincing defence evidence produced by him on record.

17. Learned counsel for the appellant Prabhjot Singh further argued that though as per the prosecution case, the mobile phone of the appellant Prabhjot Singh had also been kept under surveillance during the period from 18.01.2014 to 20.01.2014 but the call detail record did not prove that he had either made any demand for ransom or had conversation with the other convicts qua hatching of conspiracy for kidnapping of the victim. He further argued that the recovery of the car bearing CH01-AQ-2190 which was alleged to be given by PW-3 to the kidnappers, as part of ransom, was not proved to have been effected at the instance of the appellant Prabhjot Singh. The prosecution had also failed to prove that it was car of this appellant that was used for abducting the victim. The defence evidence proved that he was arrested from his house and no ransom money/article was recovered from him.

18. Learned counsel for the appellant Prabhjot Singh further argued that the learned trial Court committed a grave error in convicting the appellant Prabhjot Singh under Section 25 of Arms Act with the aid of Section 120-B of IPC as not even an iota of evidence had been produced by the prosecution on record to prove that either this appellant had entered into any conspiracy with the other convicts to retain any firearm in possession or

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concluding, learned counsel for the appellant Prabhjot Singh argued that in view of lacunas as pointed above, his conviction either under Section 120-B of IPC or under Sections 364-A and 365 read with Section 120-B of IPC or under Section 25 of Arms Act read with Section 120-B of IPC was not at all sustainable and he had become entitled to be acquitted.

19. Per contra, Mr. J.S. Toor, APP, U.T. Chandigarh argued that there was sufficient, cogent, convincing and reliable evidence on record to prove that the appellant Prabhjot Singh in pursuance of a criminal conspiracy hatched with the other appellants and the co-accused (who had been declared proclaimed persons) had kidnapped/abducted the victim for ransom and had also received in ransom, not only the car belonging to PW-3 but also a sum of Rs.2 lacs, some blank cheques and 20 kgs of silver jewellery from PW-3 on the intervening night of 20/21.01.2014. Therefore, he argued that there was no substance in the arguments as raised by this appellant and the appeal filed by him was liable to be dismissed.

20. On giving due deliberations to the contentions as raised by learned counsel for the appellant Prabhjot Singh and on a careful scrutiny of the evidence available on record of the trial Court, we are of the considered opinion that the findings of guilt of the appellant Prabhjot Singh for commission of offences punishable under Section 120-B, 364-A and 365 read with Section 120-B of IPC as well as under Section 25 of Arms Act read with Section 120-B of IPC are not sustainable. The reasons for arriving at this conclusion are that it is explicit from the record that the appellant Prabhjot Singh was not named in the FIR at the first instance nor he was

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this, the testimony of PW-5 Monika complainant with regard to his involvement in kidnapping of the victim cannot be considered to be reliable enough. She simply stated that the appellant- Prabhjot Singh was also involved in the kidnapping of her brother and she had come to know about this fact later on. She, however, failed to disclose as to how and from whom she has come to know about this fact.

21. The prosecution has tried to set up a case that the car bearing registration No.PB02BR0202 owned by the appellant Prabhjot Singh was used for kidnapping of the victim. However, it is relevant to mention that in her complaint Ex.P-7, PW-5 Monika had stated that as informed by PW-1 Pooja, the kidnappers had taken away the victim in car bearing registration No.PB65-0202 (and not car bearing No.PB02BR0202). In her sworn deposition, she stated that she had been informed by PW-1 that the kidnappers came in a vehicle bearing No.0202 only without disclosing the complete details of the same. PW-1 Pooja denied that the number of car as used by kidnappers was disclosed by her as PB65-0202. Even the victim Karan did not give complete details of the car number used by kidnappers and simply stated that the said number ended with 0202. From the testimony of PW-12 Raj Kumar, a police official it stand proves that the vehicle bearing No.PB02BR0202 was owned by the appellant Prabhjot Singh. As per the prosecution version, this vehicle was recovered from the custody of the appellant Prabhjot Singh on the night of 21.01.2014. However, there could be nothing wrong or unnatural in the same, as he being owner was presumed to be having custody of the same. On the basis of statements of

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car of appellant Prabhjot Singh was used for kidnapping the victim.

22. Further, PW-1 Pooja though deposed about the factum of kidnapping of PW-13 Karan but did not say that it was either the appellant Prabhjot Singh, or any other of the present appellants or co-accused who had kidnapped the victim rather as deposed by her, she had simply heard the alarm raised to the effect that the victim had been kidnapped and did not know as to who had kidnapped her. The testimony of PWs Monika is also hearsay in nature with regard to involvement of this appellant in the crime and cannot be relied upon for the purpose of concluding that the appellant Prabhjot Singh was one of the kidnappers.

23. Then on going through the testimony of PW-3 Rajinder Kumar who had left his car bearing registration No.CH01AQ2190, cash amount of Rs.2 lacs and silver jewellery etc. in the area near Toll Barrier Amritsar, on the alleged asking of the kidnappers on the intervening night of 20/21.01.2014, also does not help the prosecution in proving that the appellant Prabhjot Singh was one amongst the persons who had received the articles/money and car etc. as demanded by way of ransom from him on the night of 20/21.01.2014 because though in his examination-in-chief, he stated that after receiving instructions on his phone from the kidnappers to leave his car and ransom money etc. on a road in the area of new Amritsar, he had found four persons coming out from another car which had overtaken his car and they took his car away but he did not utter even a single word to the effect that the appellant Prabhjot Singh was present amongst those four persons. Rather he stated that none of the four persons who had got down

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had even been declared hostile on request of learned Public Prosecutor and was subjected to pertinent questions of cross-examination by learned Public Prosecutor but nothing could be extracted from his statement on the basis of which, it could be held that the appellant Prabhjot Singh along with other kidnappers had received car bearing registration No.CH01AQ2190, Rs.2 lacs in cash and silver ornaments etc. from this witness. Therefore, the testimony of PW-3 Rajinder Kumar who was even otherwise, the most important witness to prove delivery of ransom money etc. to the kidnappers, did not help the prosecution in proving that the appellant Prabhjot Singh was one of the kidnappers.

24. The case of prosecution with regard to involvement of appellant Prabhjot Singh mainly rests upon the testimony of PW-13 Karan i.e. victim which though inspires full confidence to prove that he was kidnapped in the morning of 18.01.2014 but on an overall assessment of the same, it clearly appears that the same is contradictory in material particulars with regard to the presence of appellant Prabhjot Singh at the time of his kidnapping and even with regard to his further participation. At the first instance, this witness stated that six persons had come to his house to kidnap him but he changed his stand at the next breath and stated that there were four persons who had entered inside his residence and kidnapped him by showing a pistol. He took names of three of them as Sukhjinder @ Billa, Sukhdev @ Baba and Sunil and stated that the abovesaid three persons had firstly taken him in a Swift car ending with No.0202 and then had shifted him to another car of I-20 Make. During the course of recording his statement in Court, he

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was amongst the persons who had kidnapped him in the Swift car along with accused Sukhjinder @ Billa and Baba @ Sukhdev Singh. He further stated that he could identify the appellant Prabhjot Singh as he had seen him while sitting in a car, one day before the incident. His statement to this effect stands falsified from the testimony of PW-5 Monika who had alleged in her complainat Ex.P7 and also deposed in the Court that it was accused Sukhjinder Singh who were seen sitting in the vehicle outside her house on 17.01.2014 and did not say anything about presence of Prabhjot.

25. Further, as deposed by PW-13 Karan, he had overheard accused Sukhjinder Singh @ Billa while asking appellant Prabhjot Singh to go and collect the ransom amount and also overheard the telephonic call received by accused Sukhjinder Singh @ Billa during his confinement while asking the caller and confirming that the ransom amount had been received by Prabhjot Singh. He was confronted with his statement Mark D5 as recorded under Section 161 of Cr.P.C., wherein no mention was made about of hearing of any such conversation between the appellant Prabhjot Singh and Sukhjinder Singh @ Billa. Therefore, it is evident that the story of hearing conversation between appellant Sukhjinder and Prabhjot with regard to nominating Prabhjot for collection of ransom money etc. and then his confirmation regarding receipt of the same, was falsely concocted by this witness and as such his statement cannot be acted and relied upon beyond doubt to that extent.

26. The further case as set up by the prosecution to connect the appellant Prabhjot Singh with the offence of kidnapping was that on the

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Rajinder who had been in regular contact with the kidnappers, from them to reach at some place in the area of Amritsar to give the ransom to them and on receipt of such information, a separate police team consisting of PW-14 Inspector Chiranji Lal, PW-15 Ranjodh Singh and some other police officials had been prepared. PW-3 Rajinder was directed to go to Amritsar on his car bearing No.CH01AQ2190 which too was agreed to be given in ransom along with money and silver jewellery etc. to the kidnappers to give the same to them whereas the police party had started chasing him from some distance. As per the prosecution case, the appellant Prabhjot Singh was one amongst the persons who had taken custody of the car and ransom money etc. left by PW-Rajinder at the particular place as directed by them, in the area of Amritsar and subsequently, the said car was recovered on the same night from a place at some distance from the house of the appellant Prabhjot Singh. The statements of PW-3 Rajinder Kumar, PW-14 Inspector Chiranji Lal and PW-15 Ranjodh Singh are however contradictory, improbable and unnatural with regard to the manner in which the ransom money/articles had been allegedly taken by the kidnappers. The testimony of PW-3 Rajinder Kumar had been recorded twice before learned trial Court. In his sworn deposition firstly recorded, he deposed that on reaching in the vicinity of new Amritsar and as per the direction telephonically given by the kidnappers to leave the car with the engine on, he had left his car along with silver jewellery/articles cash amount of Rs.2 lacs etc. and then had seen a White colour car reaching there and within his sight, four persons had come out of that car, had boarded his car and then went away. In his statement as

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persons who had taken the ransom articles and his car away. This witness denied that the appellant- Prabhjot Singh was one amongst the persons who had taken his car and the ransom money etc. away from the place where he had parked it. Rather he stated that none of the persons who had taken the car away was present in the Court. The statement of this witness is also in contradiction to the statements of PW-14 Inspector Chiranji Lal and PW-15 Inspector Ranjodh Singh. PW-14 Inspector Chiranji Lal stated that three persons had come to receive the car and ransom money whereas PW-15 stated that two persons had boarded the car of PW-3. PW-3 stated that after leaving the car at the spot he had taken an autorickshaw and then went to Beas from where he had called the police officials who had picked him up whereas PW-14 stated that they themselves had seen the kidnappers while fleeing away with the car and the ransom money. PW-3 had stated during the course of his cross-examination that one police official was driving his vehicle which was left in the night of 20/21.01.2014 as part of ransom but he did not explain as to where the said police official had gone when he left the car and ransom money etc. at the spot as told by kidnappers. Rather, as mentioned above, he deposed about picking an auto rickshaw alone from that spot. His statement about his being accompanied by one police official was not supported by PW-14 and PW-21.

27. Then as per the version of PW-15 Inspector Ranjodh Singh, he had chased the car No.CH01AQ2190 taken away by the kidnappers and had apprehended the said vehicle on reaching in the area of Preet Vihar, Amritsar Airport Road. He stated that there were three occupants in the car,

two of them had fled away whereas appellant Prabhjot Singh had been

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apprehended. PW-14 Inspector Chiranji Lal stated that he had been following Inspector Ranjodh Singh at some distance and on receipt of information from the latter about the kidnapper being apprehended, he had reached in Preet Vihar Colony area and had found that appellant-accused Prabhjot Singh had been apprehended with the car and silver articles/jewellery to be given in ransom. According to both these witnesses, PW-3 Rajinder Kumar was present at the spot at that time but PW-3 Rajinder Kumar did not support the version of PW-14 and PW-15 on that point and simply stated that after leaving his car at the place as informed by the kidnappers, he had hired an auto and had gone to Beas from where he had been picked up by the police and stated that after one hour, he along with some police officials had departed for new Amritsar and had found his car lying in a residential area and was told to take the keys of the car. He denied that recovery of car was effected from the appellant-accused Prabhjot Singh in his presence. In view of this fact, the version as given by PW-14 and PW-15 cannot be relied upon beyond doubt. Rather from the testimony of PW-3, it is evident that his car was recovered from some house in the residential area of new Amritsar but neither from the custody of the appellant nor any other recovery had been effected in his presence. As such, the story narrated by the prosecution that the appellant-Prabhjot Singh was one amongst the persons who had taken away the car belonging to PW-3 along with the ransom money of Rs.2 lacs and jewellery articles of 20 kgs. has not been established beyond doubt.

28. Further, it is also revealed that though the telephone of the appellant Prabhjot Singh had been kept under surveillance and the call detail

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record of the same was also obtained, but the evidence produced on record by the prosecution did not prove that the appellant Prabhjot Singh had used this phone during the period from 18.01.2014 to 20.01.2014 for making any call either to the co-accused or to the family of the victim i.e. PW-13 Karan. A Compact disc containing the record of the phone of this appellant had also been produced and the same has been heard by this Court but conversation as shown to be made by appellant Prabhjot Singh during the aforementioned period does not reveal that he had either made any call for ransom or was involved with either of the co-accused. In view of this discussion, we are inclined to hold that the learned trial Court failed to appreciate the evidence as produced by the prosecution in the right perspective and erred in recording finding of guilt of the appellant Prabhjot Singh as to commission of offences punishable under Sections 364-A, 365 or 120-B of IPC. Therefore, the findings as recorded by learned trial Court as to guilt of the appellant Prabhjot Singh qua commission of offences punishable under the aforementioned sections are not sustainable in the eyes of law. Accordingly, the same are set aside and it is held that the appellant Prabhjot Singh has become entitled to be acquitted of the charges framed under the aforementioned sections.

29. So far as the findings as recorded by learned trial Court as to guilt of appellant Sukhjinder Singh qua commission of offence punishable under Section 25 of Arms Act and qua guilt of appellant Sukhdev Singh and Prabhjot Singh qua commission of offence punishable under Section 25 of Arms Act read with Section 120-B of IPC are concerned, on going through

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deserve to be sustained. As per the prosecution case, the appellant-accused Sukhjinder Singh after his arrest on 21.01.2014 and on interrogation, had suffered a disclosure statement vide memo Ex.P-36 admitting his involvement in the kidnapping of the victim on pistol point and in pursuance of the said disclosure statement, he had got recovered one pistol Ex.PN and five live cartridges Ex.PO to Ex.PS vide memo vide Ex.P23. The evidence led on this point is highly improbable and unreliable due to the reason that it is the case of the prosecution itself that the appellants Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba were apprehended while riding a car bearing No.PB02BV6045 on the intervening night of 21.01.2014 and the victim was also recovered from their custody from the same car that was taken into custody vide memo Ex.P-32 and was deposited in the Malkhana at about 1:12 PM as on 21.01.2014 by SI Sarwan Ram. Interestingly, the pistol Ex.PN and live cartridges Ex.PO to PS had been recovered from the same vehicle at 7:51 PM while it was already lying deposited in Malkhana of Police Station Sector-39, Chandigarh. Both PW-16 SI Rohit Kumar and PW-21 SI Sarwan Ram who had taken this car in custody while apprehending the appellants Sukhjinder and Sukhdev, admitted that this car was checked before it was deposited in the Malkhana though their version was that it was casually checked and its boot was not searched. Even the Moharir Malkhana PW-11 was silent on that point. It does not appeal to reason that at the time of depositing the car bearing No.PB02BV6045, it was not thoroughly checked by these witnesses. In such circumstances, a doubt is reasonably created that a false recovery had been planted upon accused

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statements of PW-11, PW-16 and PW-21 on this point as PW-11 stated that on checking the vehicle, a pistol was found lying kept in a black coloured bag beneath the stepney tyre in the boot whereas according to PW-16 and PW-21 the pistol as well as cartridges were kept lying in the boot and did not say that the same were lying in a black bag nor the said black bag had been taken into custody. In these circumstances, a shadow of reasonable doubt has been created over the truthfulness of the prosecution case qua recovery of pistol at the instance of accused Sukhjinder Singh and the benefit of the same must be given to him.

30. So far as the appellants-accused Prabhjot Singh and Sukhdev Singh are concerned, it is relevant to mention that it was not the case of the prosecution that either of them was found in illegal and conscious possession of any firearm or recovery of any firearm was effected at their instance. They have been charge-sheeted under Section 25 of Arms Act only with the aid of Section 120-B of IPC. The prosecution has, however, failed to produce any cogent, convincing and direct or indirect evidence on record to show that the appellants-Prabhjot Singh and Sukhdev Singh had entered into any conspiracy with the appellant-Sukhjinder Singh and it was in pursuance of the said conspiracy that the appellant-Sukhjinder Singh was found in possession of any pistol. Rather as discussed above, recovery of pistol even at the instance of accused Sukhjinder Singh has not been proved beyond doubt. Therefore, the findings as recorded by learned trial Court as to guilt of the appellants-Sukhdev Singh and Prabhjot Singh qua commission of offence under Section 25 of Arms Act read with Section 120-B of IPC are

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entitled to be acquitted of the charge under Section 25 of Arms Act (read with Section 120-B in case of appellants Sukhdev Singh and Prabhjot Singh) and are accordingly ordered to be acquitted of the same.

31. Now coming to the question of involvement of the appellants- Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba in the offence of kidnapping of the victim for ransom. As already discussed, it stands proved beyond doubt that PW-13 Karan had been kidnapped for ransom on 18.01.2014. The learned trial Court had observed that the evidence produced on record proved the involvement of these appellants in the kidnapping of the victim Karan for ransom. The case of the prosecution on this point mainly rests upon the testimonies of PW-5 Monika and PW-13 Karan i.e. the victim himself. So far as PW-5 Monika is concerned, she was not an eye-witness to the factum of kidnapping of her brother but her statement is relevant on the point that one day prior to the incident i.e. on 17.01.2014, accused Ramnish and Harvinder (who had been declared proclaimed persons) had come to her house while asking her to return the passport of Onkar and had threatened her to face dire consequences otherwise. Her statement that she had seen the appellant Sukhjinder Singh while sitting in the car outside her house on that day has also remained unshattered and can certainly be believed. Then PW-13 Karan deposed that appellants Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba were two amongst persons who had taken him away from his house on the fateful morning. Though his statement has remained inconsistent with regard to the names/identification of other kidnappers but the credit of his testimony with regard to the involvement of both these appellants remained unimpeachable.

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Not only he gave the details about the manner in which he had been kidnapped from his house but also narrated the story as to how he was firstly taken into a Swift car by the appellant-Sukhjinder Singh and Sukhdev Singh and others and then had been shifted to another car and after having been taken to some unknown place, was being confined there. He also deposed about the fact that the appellant-accused Sukhjinder Singh @ Billa had made calls to his sister PW-5 from the mobile phone of the victim and had demanded ransom and that he had also overheard the conversation that the ransom was subsequently settled for an amount of Rs.2 lacs cash, car and 10 kgs of silver. He also deposed that three days after his being kidnapped, he was made to sit in an I-20 vehicle by the appellants Sukhjinder Singh @ Billa, Sukhdev Singh @ Baba and Sunil and was taken somewhere. He stated that Sunil had alighted from the car on the way whereas appellant Sukhinder @ Billa and Sukhdev Singh @ Baba had proceeded further and then they had been apprehended by the police and were taken to Crime Branch, Chandigarh. He had been subjected to pertinent questions of cross-examination but the credit of his testimony remained unshaken on the aforementioned points. No doubt, the above named Sunil had neither been arrested or challaned in the case nor he has been declared a proclaimed person and the prosecution remained silent on the point as to whether the above named Sunil was infact one of the kidnappers or not? However, the benefit of that lacuna cannot be given to the appellants Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba.

32. It will be relevant to mention here that the case of the prosecution was that since ransom call had been received on the phone of

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PW-5 Monika from the phone of PW-13 Karan who was in custody of the kidnappers and the kidnappers, therefore, their phones were put on surveillance. Both PW-16 SI Rohit Kumar and PW-21 SI Sarwan Ram deposed that on the intervening night of 20/21.01.2014, they had received information about the location of the suspected kidnappers and had formed a naka at Matredi Chowk, District Ambala. They deposed about stopping the vehicle bearing registration No.PB02BV6045 and about recovering the victim and apprehending the appellants Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba as kidnappers of the victim from that vehicle. They were cross-examined in detail. However, nothing could be extracted from their statements on the basis of which it could be stated that they were deposing falsely or that the victim was not recovered from their custody or that they were not apprehended from the spot. The statements of PW-16 and PW-21 inspired full confidence in proving the allegation that the victim was recovered from the custody of these two appellants and their statements coupled with the testimony of the victim himself go a long way to prove that infact the appellants-Sukhjinder Singh @ Billa and Sukhdev Singh @ Baba were amongst the persons who had kidnapped the victim in the morning of 18.01.2014.

33. With regard to the question as to whether the kidnapping of the victim Karan was done for the purpose of receiving ransom or not, the case of the prosecution is that the accused persons had done it for ransom. It is proved from the testimony of PW-9 Inspector Manju Sharma that as on 18.01.2014 itself after receiving ransom call by PW-5 from the kidnappers,

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parallel lines in respect of certain phone numbers which included the phone No.8556940942 used by the victim and the phone of PW-5 Monika. From the mobile phone of PW-13 Karan, the accused Sukhjinder Singh had also made certain conversation with PW-5 Monika for the purpose of settling the ransom amount. The conversation script had been produced in evidence by the appellants themselves as Ex.D4. PW-18 DP Gangwar, Senior Scientific Officer, CFSL, Chandigarh deposed about comparing the specimen voice samples of appellant-accused Sukhjinder Singh with the conversation as recorded in the Compact disc Ex.C/1 which was containing the questioned conversation and opined that the voice sample of Sukhjinder Singh was similar with the voice sample of one of the speakers from the mobile phone of Karan which contained the questioned conversation during the relevant period. The statement of this witness also remained unshattered. Though the prosecution failed to produce any convincing evidence on record to prove that the phone No.8556940942 was issued in the name of Karan Pw-13 and he was the user of the same, however, since the appellants themselves had not disputed this fact and had not controverted the plea taken by the prosecution to that effect, therefore, it can certainly be presumed that this phone number was used by the victim. The transcribed conversation script Ex.D4 clearly shows demand of money/ransom being made by one of the kidnappers and from the expert evidence produced on record in the form of testimony of PW-18, it stands proved that the appellant-accused Sukhjinder Singh was one of the persons who had been making conversations with regard to receipt of ransom.

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recovered from the custody of appellant Sukhjinder Singh and Sukhdev Singh on the intervening night of 20/21.01.2014. Though no evidence had been produced on record by the prosecution that appellant Sukhdev Singh was also involved in any conversation regarding demand of ransom with the family of the victim but nonetheless since the recovery of the victim from his custody as well has been established, therefore, there can be stated to be no hesitation in holding that he was also one of the kidnappers and in conspiracy with the appellant Sukhjinder Singh had held the victim as captive for ransom. Though PW-13 did not say in so many words that there was any reasonable apprehension of his being put to death or being hurt at the hands of the appellants Sukhjinder Singh and Sukhdev Singh. However, since it is established on record that he was taken away from his house on pistol point and had been kept confined secretly, therefore, the act and conduct of the kidnappers certainly gave rise to a reasonable apprehension that the victim might be hurt or killed. The learned trial Court after taking all these points into consideration had held the appellants Sukhjinder Singh and Sukhdev Singh for guilty for commission of offences punishable under Sections 365 and 364-A read with Section 120-B of IPC and as well as under Section 120-B of IPC and in view of the discussion as made above, in our opinion, the findings of guilt of the appellants Sukhjinder Singh and Sukhdev Singh under these sections do not deserve to be interfered with. Accordingly, the same are upheld.

35. In view of what has been discussed above, the appeal filed by the appellant-Prabhjot Singh succeeds and is hereby allowed. The appellant-

Prabhjot Singh is hereby acquitted and he be released forthwith if in custody

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and if not required in any other case. However, the appeals filed by the appellants-Sukhjnder Singh and Sukhdev Singh are partly allowed and they are ordered to be acquitted of the charge under Section 25 of Arms Act (in case of appellant-Sukhdev Singh, Section 25 of Arms Act read with Section 120-B of IPC). However, their conviction under the remaining sections is upheld and their appeals are dismissed to that extent.

36. All the pending criminal miscellaneous application(s), if any, automatically stand disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(MANISHA BATRA)
JUDGE

22.11.2023
manju

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No