

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

2024:PHHC:018093-DB

Decided on:- February 6, 2024

(1) CRA-D-512-DB-2014 (O&M)

Manoj @ Mintu

....Appellant

Versus

State of Haryana

...Respondent

(2) CRA-D-655-DB-2014 (O&M)

Dinesh @ Pawan

....Appellant

Versus

State of Haryana

...Respondent

(3) CRA-D-823-DB-2014 (O&M)

Nand Kishore

....Appellant

Versus

State of Haryana

...Respondent

(4) CRA-D-1259-DB-2015 (O&M)

Bhagat Singh

....Appellant

Versus

State of Haryana

...Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI**

**Present:- Mr. Randeep S. Dhull, Advocate
for the appellant(s) in CRA-D-512-DB-2014 and
CRA-D-823-DB-2014.**

**Mr. Balraj Gujjar, Advocate
for the appellant in CRA-D-655-DB-2014.**

Mr. Vishal Thakur, Advocate
for Mr. Keshav Pratap Singh, Advocate
for the appellant in CRA-D-1259-DB-2015.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

AMARJOT BHATTI, J.

1. All the four appeals, CRA-D-512-DB-2014, CRA-D-655-DB-2014, CRA-D-823-DB-2014 and CRA-D-1259-DB-2015 as referred above arising out of common judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Faridabad were taken up together with the consent of learned counsel for the appellants.
2. Appellants/convicts Manoj @ Mintu, Dinesh @ Pawan, Nand Kishore and Bhagat Singh have filed their respective appeals against judgment of conviction dated 21.02.2014 and order of sentence dated 25.02.2014 passed by learned Additional Sessions Judge, Faridabad in Sessions Case bearing No. 56 of 2012, titled as “State Vs. Nand Kishore and others” vide which all are sentenced as under :-

Offence U/s	Sentence of Imprisonment	Fine	In default of fine
120-B IPC	Rigorous Imprisonment for a period of two years	Rs. 5,000/- each	In default of payment of fine, to undergo rigorous imprisonment for a period of one month
364-A IPC	Rigorous Imprisonment for life	Rs. 35,000/- each	In default of payment of fine, to undergo rigorous imprisonment for a period of six months

3. Victim Aditya was granted compensation of Rs. One Lac Fifty Thousand out of fine to be realized from the convicts, as detailed therein.
4. Brief facts as per prosecution case are that on 22.01.2012, SI Satish Kumar and HC Jakir Hussain were on patrol duty at Nain Chowk, when complainant Hemant Singla came there and lodged a

written complaint to police. He stated that he was running shop of spare parts on Nangla road, Faridabad. His elder brother Ajay Singla had since expired and his widow lived with her parents at Delhi. Their two children; daughter Anjali, 11 years old and son Aditya, 8 years old were residing with him. They were studying in Karam Bhumi School, Nangla road. On 22.01.2012, Aditya did not go to school and stayed back at home. At about 01:30 pm, Aditya was riding his cycle in the street, thereafter he did not return home. They searched for him but could not find his whereabouts. Their employee Pawan age about 18-19 years used to work in his shop for the last about 1-1/2 months. He also left the shop at about 01:30 pm for lunch and thereafter, did not return to shop. Thereafter, the complainant came to know that Pawan had kidnapped Aditya on his cycle.

5. On this complaint, formal FIR No. 24 dated 22.01.2012 under Sections 363 of Indian Penal Code, 1860 (for short 'IPC') was registered. Investigation was initiated and the site plan prepared. On 23.01.2012, Sh.Bhagwat Singla uncle of the child received SMS on his mobile phone number 9313464747 raising demand of ransom of one crore rupees. Offence under Section 364-A and 120-B of IPC was accordingly added.

6. On the basis of secret information received by the Investigating Officer, raid was conducted by the police alongwith Bhagwat Singla. The child victim was recovered on 29.01.2012 from House No. 2030, GF, Sector-55, Housing Board, Faridabad. Accused namely Dinesh @ Pawan and Manoj @Mintu were apprehended at the time of recovery of minor child, whereas the other co-accused namely

Nand Kishore and Bhagat Singh were apprehended subsequently. After

completion of investigation, challan was presented in the Court of Illaqa Magistrate at Faridabad.

7. All the accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 364-A of IPC is exclusively triable by the Court of Sessions, learned Magistrate, Faridabad committed the case to the Court of learned Sessions Judge, Faridabad for trial, vide commitment order dated 27.07.2012.

8. Learned Additional Sessions Judge, Faridabad, after hearing the arguments, framed charge-sheet against all the accused under Section 120-B and Section 363 read with Section 364-A IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

9. In order to prove the facts of the case, prosecution examined Aditya as PW-1, Hemant Singla as PW-2, Naveen Kumar as PW-3, Khalil Ullah as PW-4, Hari Shankar as PW-5, Sarwan Kumar, Draftsman as PW-6, Deepak, Nodal Officer, Vodaphone Mobile Services Ltd. as PW-7, Pawan Singh, Nodal Officer, IDEA Cellular Ltd. as PW-8, Ct. Mohd. Saleem as PW-9, Hukam Chand grandfather of the victim as PW-10, Satish Kumar SI (Retired) as PW-11, Rohtash Kumar, Photographer as PW-12, Surender Kumar, Asstt. Nodal Officer, IDEA Cellular Ltd. as PW-13, Raiyazudin as PW-14, Ved Parkash as PW-15, Bhagwat Singla uncle of the victim as PW-16, ASI Jakir Hussain as PW-17, ASI Ram Ban as PW-18, Ved Parkash, SI (retired) as PW-19, HC Ilyas Khan as PW-20, Inspector Hemant Kumar as PW-21 and Mahender Kumar as PW-22.

10. Statements of all the accused were recorded under Section

313 Cr.P.C. While denying all incriminating evidence put to them, they pleaded innocence and false implication.

11. The accused persons closed their evidence on 17.02.2014 without examining any witness in defence.

12. After hearing arguments advanced by learned Public Prosecutor for the State, learned counsel for complainant and learned counsel representing the accused persons, all accused were convicted and sentenced under Sections 120-B and 364-A of IPC vide judgment of conviction dated 21.02.2014 and order of sentence dated 25.02.2014 passed by learned Additional Sessions Judge, Faridabad in Sessions Case bearing No. 56 of 2012. Feeling aggrieved of this judgment of conviction and order of sentence, present appeals have been filed by the convicts.

13. Learned counsel for appellant/convict Dinesh @ Pawan in CRA-D-655-DB-2014 argued that evidence led by prosecution was not rightly appreciated by learned Additional Sessions Judge, Faridabad and learned trial Court has totally ignored the material contradictions and improvements in the deposition of prosecution witnesses. In-fact, the prosecution failed to bring home the guilt of appellant/convict beyond the shadows of reasonable doubt. Learned trial Court placed uncalled for reliance on the testimony of child witness examined as PW-1 who was in-fact a tutored witness. Learned counsel argued that appellant Dinesh @ Pawan, who was an employee of the complainant, working with him for the last one/one and a half month was falsely implicated. Evidence on record does not connect him to the crime in question. There is no call detail record to connect the present appellant/convict with the said crime.

None of the appellants were identified in a test identification parade.

Learned trial Court has given undue importance to the disclosure statements recorded before the Investigating Officer. In-fact, there was no convincing evidence on record to connect the appellant/convict Dinesh @ Pawan with the said crime. Therefore, the judgment of conviction dated 21.02.2014 and order of sentence dated 25.02.2014 passed by learned Additional Sessions Judge, Faridabad is liable to be set aside by accepting the present appeal.

14. Learned counsel for appellant Manoj @ Mintu in CRA-D-512-DB-2014 and for appellant Nand Kishore in CRA-D-823-DB-2014 in their respective appeals consistently raised the issue that their conviction under Section 364-A and 120-B of IPC is not on sound footing. The child witness examined as PW-1 had wrongly named appellant/convict Manoj @ Mintu as Rohit. His testimony cannot be safely relied upon. There was no test identification parade organized by the Investigating Officer. The prosecution had failed to link mobile phones of convicts and there is no evidence led by the prosecution to prove any demand for ransom. Discrepancies in the statements of prosecution witnesses have been totally ignored. It was prayed that appellants/convicts should be acquitted of the charge framed against them, by accepting the present appeal.

15. Learned counsel for appellant Bhagat Singh in CRA-D-1259-DB-2015 argued that as per the facts narrated by complainant Hemant Singla, he had suspected his employee Pawan who was working at their shop for the last about one/one and a half months to have abducted his nephew. The prosecution failed to lead any evidence on record to connect the present appellant with the commission of said offence. Present appellant, it was contended was not named by the child

victim examined as PW-1 nor any role was attributed to him. Even after his arrest, no recovery was effected from the present appellant/convict. The prosecution further failed to connect the present appellant with the help of any call detail record. In the absence of any evidence on record regarding kidnapping of the child or demand of any ransom on the part of present appellant/convict, he has been wrongly convicted and sentenced by the learned Additional Sessions Judge, Faridabad for the commission of offence punishable under Sections 364-A and 120-B of IPC. Learned counsel for all appellants argued that mastermind of conspiracy was in fact Hemant, uncle of the victim. Reference was made to statement of PW20 HC Ilyas Khan who in his cross-examination stated so. It was contended that evidence on record is not sufficient to sustain conviction of all accused. It was thus prayed that all the appeals be allowed.

16. Learned counsel representing the State argued that prosecution had examined all material witnesses to bring home the guilt of appellants/convicts, who have filed their respective appeals. Matter was reported to the police by complainant Hemant Singla who has been examined as PW-2. Complaint filed with the police is Ex.P-1. Prosecution examined Bhagwat Singla PW16, the uncle of child who had received SMS as well as calls demanding ransom for the release of child. This fact was brought to the notice of police and accordingly supplementary statement of Bhagwat Singla was recorded by the Investigating Officer. On the basis of secret information received by the Investigating Officer, raid was conducted by the police alongwith Bhagwat Singla and the child victim was recovered on 29.01.2012 who

prosecution version and identified the accused facing trial in the case. Investigation carried out by Satish Kumar SI (retired) and Inspector Hemant Kumar was proved on record by them testifying as PW-11 and PW-21 respectively. The recovery witnesses were also examined. Conspiracy hatched by appellants was established from the testimony of Naveen Kumar, Property Dealer PW-3 through whom Nand Kishore appellant/co-convict took rental accommodation i.e. House No. 2030, GF, Sector-55, Faridabad from where the said child victim was recovered. Raiyazudin PW-14 and Ved Parkash PW-15 proved the household articles purchased by Nand Kishore to run that house where the child victim was kept by them from 21.01.2012 till the date i.e. 29.01.2012, when he was recovered from the custody of Dinesh @Pawan and Manoj @ Mintu, appellants/convicts. Prosecution has proved the charge framed against them by leading convincing evidence. Therefore, all the accused were rightly convicted and sentenced by the learned Additional Sessions Judge, Faridabad under Sections 120-B and 364-A of IPC. It was thus submitted that all the appeals preferred by the appellants/convicts deserve dismissal.

17. We heard arguments advanced by learned counsel for appellants/convicts and learned counsel representing the State and have gone through the record carefully with their able assistance.

18. As per evidence on record, FIR was registered on written complaint dated 22.01.2012 filed by Hemant Singla son of Hukam Chander Singla addressed to SHO, Police Station Saran, Faridabad Ex.P1 wherein it was informed that minor son of his deceased brother namely Aditya, aged about 8 years was cycling in the street at about 1-

searching for the child. One of their employee namely Pawan, aged about 18/19 years who was working in their shop for the last about one/one and a half months was also missing and did not return to the shop after 01:30 pm. The complainant alleged Pawan to have kidnapped the child alongwith his cycle. Ultimately, FIR No. 24 dated 22.01.2012 under Sections 363, 364-A, 120-B IPC was registered which is Ex.P-46. During the course of investigation, the child Aditya was recovered on 29.01.2012 from the possession of Dinesh @ Pawan and Manoj @ Mintu, from the premises of House No. 2030, GF, Sector 55, Faridabad. During investigation, the names of Nand Kishore and Bhagat Singh also cropped up. They were joined in investigation and after completion of investigation, the challan was presented in the Court. All the accused were charge-sheeted under Sections 364-A and 120-B of IPC.

19. The prosecution in order to prove the charge-sheet examined Hemant Singla as PW-2, the uncle of child victim who suspected Dinesh @ Pawan, their employee who was working in their shop for the last about one/one and a half months to have kidnapped the child. There is testimony of Hukam Chand PW-10 who is grandfather of the child victim. PW10 confirmed the prosecution version as well as the fact that when they were searching for the child he came to know from the barber shop in front of his house that he had seen Dinesh @ Pawan with his grandson Aditya near Chacha Chowk. The said barber Khalil Ullah is examined as PW-4 further confirmed that on 21.01.2012 at about 02:00-02:30 pm, when he was returning to his shop, he saw appellant Pawan going on a cycle with the child victim Aditya, who is nephew of Hemant Singla. Since the family was searching for the child

Pawan while going from Chacha Chowk towards Atal Chowk.

20. Prosecution further examined Bhagwat Singla PW-16, uncle of child victim who stated that on 23.01.2012, when he was in Delhi he received SMS on his mobile phone number 9782316910 at about 05:00 pm which he did not read and thereafter, he received telephonic call that he should read the SMS. After reading the said message, he called the SHO as it was stated therein that ransom to the tune of Rs. 1 crore be given otherwise the child would be killed. He further stated that he again received another call on 26.01.2012 raising the aforesaid demand in currency notes in denomination of Rs. 1000/- to be paid at Bharatpur, Rajasthan. Thereafter, on 29.01.2012 at about 02:00 pm, he joined the police party for conducting raid at House No. 2030, Sector 55, Faridabad on the basis of secret information received by the Investigating Officer. His nephew Aditya was recovered. Accused Dinesh @ Pawan and Manoj were arrested by the police on the spot. Therefore, from the testimony of aforesaid prosecution witnesses, it was clearly established that the minor child aged about 8 years was kidnapped for ransom by Dinesh @ Pawan and was wrongly confined till he was recovered by the police on 29.01.2012 from the custody of Dinesh @ Pawan and Manoj @ Mintu.

21. Apart from the testimony of aforesaid witnesses, statement of minor child Aditya recorded as PW-1 is extremely material. The child victim was 9 years old at the time of recording of his statement and he was declared to be a competent witness by the then learned Additional Sessions Judge, Faridabad. The child deposed that on 21.01.2012, he was cycling outside the shop when Pawan came to him and gave

him *tikki* to eat and Frooti to drink. Child victim thus left with him at about 5:00 pm. Pawan gave him *tikki* near his house upon which he felt dizzy. Pawan took the victim to a house in Sector 55 on his cycle. The child victim stated that it was Rohit's house. It was clarified that the person addressed as Rohit by PW1 was in-fact accused Manoj @ Mintu. The child further stated that during this period he was given some drug, as a result of which he would go to sleep. He wanted to go back home and used to cry upon which Pawan would beat him. The child was given meagre food to eat. Dinesh and Manoj used to stay with him in the house, whereas, *paaji* used to visit the house off and on. The said '*paaji*' identified by the child is appellant Nand Kishore. The child confirmed that he was recovered by the police in the presence of '*bade papa*' namely Bhagwat Prasad Singla. Therefore, from the testimony of child witness, kidnapping and specific role of appellants/convicts namely Dinesh @ Pawan, Manoj @ Mintu and Nand Kishore is duly established on record.

22. Investigation carried out by the police and recovery of kidnapped child is proved on record from the testimony of Inspector Hemant Kumar PW-21, recovery witness Satish Kumar SI (retired) PW-11, accompanied by Bhagwat Singla PW-16. On 29.01.2012, raid was conducted by the Investigating Officer Inspector Hemant Kumar PW-21 at House No. 2030, Housing Colony, Sector 55, Faridabad on the basis of secret information, from where the child victim was recovered from the rented premises which is proved to be in custody of Dinesh @ Pawan and Manoj @ Mintu. The recovery memo regarding the child is Ex.P-11 and he was handed over to his uncle Bhagwat Singla vide memo

Pawan was recorded on 30.01.2012, which is Ex.P-12 and disclosure statement of Manoj @ Mintu was also recorded on the same day, which is Ex.P-13. On the disclosure statement of Dinesh @ Pawan and on his identification of spot, the bicycle of victim was recovered. Recovery memo regarding bicycle is Ex.P-14. Similarly, on disclosure statement of Manoj @ Mintu dated 30.01.2012 Ex.P-15, mobile phone Nokia 2690 was recovered vide recovery memo Ex.P-16. During investigation, site plan of the spot from where the child was kidnapped was prepared, which is Ex.P-10 and the site plan where he was kept confined was also prepared, which is Ex.P-20. Accused Nand Kishore was arrested by the police on 23.04.2012. ASI Ram Ban, Crime Branch, DLF, Faridabad as PW-18 confirmed that he recorded the disclosure statement of Nand Kishore Ex.P-39. He demarcated the spot where he had met the other accused Dinesh and Manoj after kidnapping of child and also demarcated the spot where the child was kept after kidnapping. The said memos are Ex.P-40 and Ex.P-41. Motorcycle was recovered on the disclosure statement of Nand Kishore on 27.01.2012. The recovery memo pertaining to motorcycle bearing Registration No. HR-51Q-8927 is Ex.P-45. The fourth accused Bhagat Singh was also arrested and his disclosure statement dated 09.05.2012 is Ex.P-42 and memos regarding demarcation of spot where the other accused met him after kidnapping of the child and demarcation of spot where the child was kept are Ex.P-43 and Ex.P-44 respectively. In the case in hand, appellants/convicts Dinesh @ Pawan and Manoj @ Mintu were apprehended at the time of recovery of minor child, whereas the other appellants/convicts Nand Kishore and Bhagat Singh were apprehended subsequently.

role played by Nand Kishore in the commission of offence. There is statement of Naveen Kumar, Property Dealer PW-3 through whom Nand Kishore took House No. 2030 GF, Sector 55, Faridabad on rent. There is testimony of Raiyazudin PW-14 from whom Nand Kishore had purchased two beds, whereas, Ved Parkash PW-15 confirmed that Nand Kishore had purchased a filled gas cylinder from him. Apart from this, the minor child as PW-1 duly identified Nand Kishore as *paaji* who used to visit the said rental accommodation where he was kept confined. PW1, the victim categorically stated that he was cycling outside their cement shop on 21.01.2012 at about 5.00 p.m. when Pawan (@Dinesh) (duly identified in court), asked him to accompany as he would buy a bell for his cycle and he would also give him (the victim) '*Tikki*' to eat and 'frooty' to drink. PW1 further stated that he left with Pawan, who gave him '*Tikki*' to eat. PW1, it was stated, became dizzy after eating '*Tikki*'. Thereafter, Pawan @ Dinesh took him to a house at Sector 55 on the cycle. The house was stated to be of Rohit, who was present in court. The person identified as Rohit is appellant Manoj. PW1 categorically stated that whenever he would regain consciousness he would be given more drug in his food on account of which he would feel sleepy again. Whenever PW1 would cry asking to go home, he was beaten by Pawan @ Dinesh, who was employee in their cement shop. PW1 further deposed that there was television, double bed, a table and chair in the room. Kitchen and toilet was also stated to be there in the house. PW1 duly identified appellant Manoj and Dinesh @Pawan as two persons, who would use to stay in the house with him. He also identified appellant Nand Kishore as Paaji, who used to visit the house. PW1

further stated that he was kept confined in the house for nine days and

was given two slices of bread with water and he would sleep for whole day after eating the bread. PW1 was subjected to cross-examination, but nothing could be illicit in favour of the appellants therein. There is no merit in the argument that prosecution failed to prove any demand for ransom, therefore, conviction under Section 364-A IPC is not sustainable. Bogey of Hemant Kumar PW2 being the mastermind of the conspiracy is definitely not substantiated by any evidence on record. Even a suggestion to this effect has not been put this witness. Hukam Chand PW10 and Bhagwat Singla PW16 have stoutly denied the same. Intermittent calls between mobiles recovered are proved on record.

24. Therefore, the prosecution has led direct, convincing evidence on record to establish the criminal conspiracy hatched by appellants/convicts Dinesh @ Pawan, Manoj @ Mintu and Nand Kishore for kidnapping minor child Aditya for raising demand of ransom. It cannot be ignored that Dinesh @ Pawan kidnapped the minor child of the family who had employed him. He managed to allure the child and kidnap him with the help of other co-accused namely Manoj @ Mintu and Nand Kishore and ultimately, the child was recovered with the help of police on 29.01.2012. The judgment of conviction dated 21.02.2014 holding them guilty under Sections 120-B and 364-A of IPC does not require any interference. Considering the manner in which the offence has been committed and its gravity, the quantum of sentence dated 25.02.2014 imposed on the appellants/convicts Dinesh @ Pawan, Manoj @ Mintu and Nand Kishore does not require any interference. Therefore, the judgment of conviction and order of sentence dated 21.02.2014/25.02.2014 imposed qua appellants Dinesh @ Pawan, Manoj

respective appeals, as referred above.

25. Appellant Bhagat Singh was apprehended by the police and his disclosure statement was recorded on 09.05.2012, which is Ex.P-42. There is memo regarding demarcation of place from where Manoj @ Mintu and Dinesh @ Pawan met after the kidnapping of child and the other demarcation of place where the child was kept are Ex.P-43 and Ex.P-44 respectively. Apart from the aforesaid disclosure statement as well as memo regarding demarcation of spot, there is no convincing evidence on record to connect him with the said crime. No specific role is attributed to him. The testimony of minor child Aditya examined as PW-1 does not show that Bhagat Singh ever visited the premises where the child was kept confined after kidnapping nor there is any evidence to establish his active role in the commission of said offence. The minor child as PW-1 has not stated anything about this appellant/convict Bhagat Singh. The disclosure statement of Bhagat Singh alone Ex.P-42 recorded under Section 27 of the Indian Evidence Act, 1872 is not admissible in the absence of any recovery effected in pursuance of the same. Therefore, the appellant/convict Bhagat Singh cannot be connected with the said offence on the basis of said disclosure statement Ex.P-42. Learned trial Court has failed to consider this aspect. In the absence of convincing evidence on record, the prosecution has indeed failed to bring home the guilt of appellant/convict Bhagat Singh under Section 120-B and Section 364-A of IPC. He is accordingly acquitted of the charges against him by accepting his appeal. In case, the fine/compensation is deposited by him, the same be refunded in his favour, after the expiry of period of appeal or revision, as the case may

26. As referred above, the judgment of conviction and order of sentence dated 21.02.2014/25.02.2014 passed against appellants/convicts Dinesh @ Pawan, Manoj @ Mintu and Nand Kishore is upheld and appeals preferred by them as referred above, are accordingly, dismissed.

27. Whereas, the aforesaid judgment of conviction and order of sentence passed against appellant/convict Bhagat Singh is set aside and appeal preferred by him bearing CRA-D-1259-DB-2015 is accordingly, allowed. In case, he is in custody in this case, he is directed to be set free forthwith, if not required in any other case.

28. All the appeals are accordingly, disposed of.

29. Pending application(s) if any, also stands disposed of accordingly.

30. Original/photocopy of trial Court record be sent back to the concerned quarter.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

February 6, 2024
'lalit'/'om'

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