

2024:PHHC:001802
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- I.

CRA-S-588-2019 (O&M)

Surender s/o Surat Singh

.....Petitioner

Vs.

State of Haryana

.....Respondent
- II.

CRA-S-1089-2019 (O&M)

Saleem s/o Sahid

.....Petitioner

Vs.

State of Haryana

.....Respondent
- III.

CRA-S-997-2019 (O&M)

Khalid s/o Hanif

.....Petitioner

Vs.

State of Haryana

.....Respondent
- IV.

CRA-S-911-2019 (O&M)

Aabid s/o Musa

.....Petitioner

Vs.

State of Haryana

.....Respondent
- V.

CRA-S-523-2019 (O&M)

Islamuddin s/o Sadiq Ahmad

.....Petitioner

Vs.

State of Haryana

.....Respondent

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VI. CRA-S-1387-2019 (O&M)

Khalid s/o Shahid AhmadPetitioner

Vs.

State of HaryanaRespondent

Reserved On: 08.12.2023
Pronounced On: 08.01.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Sarfraj Hussain, Advocate for the
appellant in CRA-S-588-2019.

Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai & Mr. Saurav Dogra, Advocates
for the appellant in CRA-S-523-2019.

Mr. Balraj Gujjar, Advocate for the appellant(s) in
CRA-S-911-2019, CRA-S-997-2019 & CRA-S-1387-2019.

Mr. Gautam Dutt, Advocate with
Mr. Vishal Sharda, Advocate for the
appellant in CRA-S-1089-2019.

Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

All the six criminal appeals, as titled above, are directed against
the same judgment dated 08.02.2019 passed by the Court of learned Additional
Sessions Judge, Gurugram, whereby the six appellants have been convicted in a
case arising out of FIR No.469 dated 01.07.2016 registered at Police Station

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DLF Sector-29, Gurugram. Whereas the conviction of appellants (1) Khalid son of Shahid Ahmad, (2) Aabid; and (3) Khalid son of Hanif has been recorded under Sections 332, 353, 365 & 186 read with Section 34 of the IPC besides Section 395 IPC; the other three appellants namely (4) Islamuddin, (5) Saleem and (6) Surrender have been convicted under Section 395 IPC. Vide separate order dated 12.02.2019, they have been sentenced as under:

Convicts - Khalid son of Shahid Ahmad, Aabid; and Khalid son of Hanif			
Offence	Imprisonment	Fine	In default of payment of fine
332/34 IPC	Rigorous Imprisonment for 3 years	₹3,000/- each	Simple imprisonment for three months.
353/34 IPC	Rigorous Imprisonment for 2 years	₹2,000/- each	Simple imprisonment for two months.
365/34 IPC	Rigorous Imprisonment for 5 years	₹5,000/- each	Simple imprisonment for five months.
186/34 IPC	Rigorous Imprisonment for one month	₹1,000/- each	Simple imprisonment for 15 days.
395 IPC	Rigorous Imprisonment 10 years each	₹25,000/- each	Simple imprisonment for one year.

Convicts - namely Islamuddin, Saleem and Surrender			
Offence	Imprisonment	Fine	In default of payment of fine
395 IPC	Rigorous Imprisonment for 10 years each	₹25,000/- each	Simple imprisonment for one year.

The substantive sentences were directed to run concurrently.

2. Trial record has been called and the same has been perused. In order to avoid any confusion, appellants shall be referred as accused as per their

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status before the trial court.

Prosecution case:

3. As per the prosecution case, on 01.07.2016, Shri Surender Singh (PW-3) came to Police Station DLF, Sector 29, Gurgaon at about 12:00 noon and got recorded his statement Ex.P4 to the police to the effect that he is posted as Insp./SHO Police Station DLF Sector-29, Gurugram. On the previous date i.e., 30.06.2016, he in his uniform was proceeding towards the office of DCP East Traffic Tower at about 11:30-12:00 noon in his private car No.HR-19F-0220 Swift VDI for official work. As he reached near the cut of Sushant Lok, A & B Block while proceeding from service lane, he noticed four boys standing in suspicious circumstances. He descended from the car and started checking them. In order to make enquiries from them, he made two of the boys to sit on the rear seat of his car. One of the boys tried to flee but another one stopped him. Then the three boys were made to sit on the rear seat and the fourth boy sat on the seat beside him. They were to be taken to the police station for necessary enquiry. After occupying the driving seat, as he (Inspector Surender Singh) tried to start the car, the boys sitting on the rear seat dragged him by his neck and put him in between rear and front seat. When he protested, they caused injuries on his eye and lips. After driving the car for about 02 hours, on reaching the jungle area, they put him in the Diggy (boot) of the car. He was

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kept in the Diggy for 5-6 hours at an abandoned place near a brick kiln and then they started from that place at about 08:00 p.m. At about 09:00 p.m. they took him in the area of Kosi, 10-12 km ahead of Hodal and dropped him. They forcefully took away his car besides two mobile phones, one make Samsung having SIM No.99999-81822 and another make Nokia having SIM No.97118-03872. On the way, the miscreants had also asked his password of ATM Card and withdrew money from his ATM. One of the miscreants was aged about 18 years and the other three were of about 25 years of age. Somehow, he reached the highway with the help of a motorcyclist and then came to home. It was further told by Surender Singh that he could identify the miscreants, if they were produced before him.

Evidence collected during investigation:

4.1 On the basis of above statement, FIR Ex.P1 was registered by P/SI Shahid Ahmad (PW5), who put his endorsement Ex.P7 on the statement Ex.P4 in this regard. He took the complainant – Inspector Surinder to Civil Hospital, Gurgaon, where he was medico-legally examined by Dr. Sarita (PW4), who prepared MLR Ex.P5/1. PW5 then took the complainant to the spot of crime, from where he was kidnapped and on his demarcation, prepared rough site plan Ex.P8.

4.2 Investigation was then taken over by Inspector Raj Kumar (PW10),

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In Charge, Crime, Sector 39, Gurgaon. On 29.07.2016, accused Khalid son of Shahid Ahmad, Aabid and Hayyum @ Hallu @ Dana, all residents of Village Chilli (Hathin) were arrested by Insp. Raj Kumar on the basis of secret information. They were separately interrogated by Insp. Raj Kumar in presence of ASI Ajit (PW8) & Ct. Abhilash (PW9).

4.3 It was disclosed by accused Aabid (vide Ex.P43) that about 25-30 days back, on the asking of Islamuddin son of Sadiq Ahmad resident of Punhana, District Mewat, he (Aabid) along with his companions Surrender, Saleem, Khalid son of Hanif, Hayyum @ Hallu and Khalid son of Shahid had come to Gurgaon to loot vehicles, in the Scorpio car which was arranged by Surrender. They did not find any vehicle for looting in the night time and so, stayed in a guest house in Sector-56. Next day in the morning, they went towards the Gurgaon city in search of vehicle to be looted. Surrender assured him (Aabid), Khalid son of Shahid Ahmad, Hayyum @ Hallu and Khalid son of Hanif to give ₹10,000/- each for looting the vehicle. As they reached at Galleria Market near Sushant Lok, they noticed a Verna car parked in the service road. They planned to loot the said vehicle. Surrender stopped the Scorpio a little before the service road and sent him (Aabid), Khalid son of Hanif, Khalid son of Shahid Ahmad and Hayyum to loot the vehicle. All four of them went towards the Verna car; whereas, Surrender and Saleem kept sitting in the Scorpio. They were proceeding towards the Verna car, when suddenly a police

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inspector came in a Swift car and started making enquiries from them and made them to sit in his vehicle for taking them to the police station for making enquiries. Khalid son of Hanif resident of Ali Meo occupied the front seat; whereas, he (Aabid), Hayyum and Khalid son of Shahid Ahmad sat the rear seat. As the police official occupied the driving seat, Khalid resident of Ali Meo signaled three of them to drag the police official. Then, he (Aabid), Khalid son of Shahid & Hayyum dragged the police official from driver seat and put him behind the car. When that police official tried to shout, they gave him fist blows. Khalid resident of Ali Meo started driving the swift car. Said Khalid also gave signal to Surrender and Saleem, sitting in the Scorpio, to move ahead of them. The Scorpio vehicle started moving ahead. They proceeded from Faridabad Road towards Palli and then Swamika and on reaching in the jungles of Village Swamika, they put the police official in the Diggy of the car and snatched his purse. They asked password of his ATM. Then he (Aabid) along with Khalid resident of Chilli went to Hathin and withdrew ₹16,000/- from ATM. On coming back, he, Khalid resident of Ali meo, Khalid resident of Chilli and Hayyum distributed ₹4,000/- each. Then, they took the swift vehicle to village Nimka. The Scorpio vehicle was moving ahead of them. At Village Nimka, they stopped the vehicles near an abandoned brick kiln, where on the calling of Surrender, Liyakat son of Subhan Khan, Fakru son of Ashu and Islamuddin son of Sadiq Ahmad reached there. Aabid disclosed further that they

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told them (Liyakat, Fakru and Islamuddin) the incident of kidnapping the police official. They kept the police official confined at that place for 3-4 hours and then, Islamuddin suggested to snatch the vehicle of police official and drop him in the fields near Kosi. Thereafter, Khalid resident of Chillli left the place, whereas rest of them along with the Swift vehicle and Scorpio reached in the fields of Village Hathana ahead of Hodal and dropped the police official at the road near the fields. Accused Aabid told further that they had already taken away two mobile phones after removing their SIMs from the police official. Then they came to Village Nimka at the house of Fakru with the Swift vehicle, where Islamuddin assured them to give ₹5,000/- each and then took away the Swift car with him. Surender and Saleem left the place with Scorpio. The two mobile phones of police official were kept by Khalid resident of Ali Meo. All of them left for their respective places. Aabid disclosed further that out of ₹4,000/-, which had come to his share, he had already spent ₹1800/- and that he could get recovered the remaining amount of ₹2200/-. He also stated that he could identify the places, from where they had kidnapped the police official; where they had put him in the Diggy of the car in Village Swamika; the place from where money was withdrawn from ATM; the place in Village Nimka, where the police official was kept confined; and also the place, where they had dropped the police official at Village Hathana.

4.4 The aforesaid disclosure statement Ex.P43 suffered by accused

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Aabid son of Musa recorded by Insp. Raj Kumar was witnessed by ASI Ajit Singh and Constable Abhilash. On the similar lines, disclosure statements Ex.P44 and P45 were suffered by accused Khalid son of Shahid Ahmad, and Hayyum respectively. Khalid son of Shahid Ahmad stated that out of ₹4,000/-, which had come to his share, he had spent ₹1,400/- and that he could get recovered ₹2,600/- from his house and also could demarcate all the places of crime. Accused Hayyum disclosed that he could get recovered ₹2,700/- from his house as the remaining ₹1,300/- had already spent by him.

4.5 All these three accused i.e., Aabid, Khalid son of Shahid Ahmad and Hayyum identified the various places of crime, regarding which separate demarcation memos were prepared. As per their respective disclosure statements, Khalid son of Shahid Ahmad got recovered ₹2,600; accused Hayyum got recovered ₹2,700/- and Aabid got recovered ₹2,200/-, which were taken into possession on 31.07.2016 vide separate recovery memos Ex.P29, Ex.P28 & Ex.P30 respectively.

4.6 Further prosecution case is that accused Khalid son of Hanif was arrested in this case on 01.08.2016 by ASI Ajit, as he was produced on the basis of production warrant after taking permission from the Court. On interrogation by ASI Ajit, said accused Khalid son of Hanif suffered disclosure statement Ex.P14 on the similar lines, as earlier made by co-accused Khalid son of Shahid Ahmad, Aabid and Hayyum; and disclosed further that the two mobile phones

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of the police official, had come to his share, apart from ₹1,500/-, which had been conceded by him at his house in Village Hathana and that he could get them recovered. He also stated that he could demarcate all the places of crime. Said disclosure statement Ex.P-14 prepared by ASI Ajit was witnessed by Constable Saleem (PW7) and Constable Abhilash (PW9).

4.7 On 02.08.2016, abovesaid accused Khalid son of Hanif suffered supplementary disclosure statement Ex.P44/1, stating that in fact, one of the mobile phones make Nokia had been thrown by him on the way, as it was in damaged condition and that he had concealed another mobile make Samsung besides ₹1,500/-. Pursuant to said disclosure statement, accused Khalid son of Hanif got recovered a Samsung mobile belonging to the complainant besides ₹1,500/-, which were taken into possession vide recovery memo Ex.P16. IMEI numbers as mentioned on the recovered mobile phone were also noted in the recovery memo. Accused also identified the places of crime, regarding which separate demarcation memos were prepared.

4.8 As per further prosecution case, accused Islamuddin was joined in the investigation after getting his production warrants issued. He was arrested in this case on 04.10.2016. On interrogation by ASI Ajit Singh in the presence of Constable Saleem & Constable Sumer, said accused Islamuddin suffered disclosure statement Ex.P14/A on the same lines, as suffered by the earlier arrested accused in this case. He also disclosed that he had taken away the

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Swift car of the police official, which he had concealed at his house in Alinagar in District Gorakhpur (U.P.) and that he could get the same recovered. He also stated that he could demarcate the place, where the police official was kept confined in Village Nimka at a brick kiln and the place, where he was dropped in the fields near Village Hathana.

4.9 On 07.10.2016, abovesaid accused Islamuddin suffered supplementary disclosure statement Ex.P14/1, as per which he had not concealed the looted car at his house and rather, he had kept the same in a vacant plot near a closed theatre in Ali Nagar and that he could get the same recovered. Pursuant to this disclosure statement, accused Islamuddin got recovered the looted car of the complainant from the disclosed place, which was taken into possession vide recovery memo Ex.P15.

4.10 After completion of investigation, challan against 05 accused i.e., Khalid son of Shahid Ahmad, Aabid, Hayyum, Islamuddin and Khalid son of Hanif was presented in the Court. Charges against them were framed on 02.02.2017.

4.11 However, in the meantime, two other accused namely Saleem and Surender, who were lodged in Tihar Jail in another case, were joined in the investigation after obtaining their production warrants and were formally arrested in this case on 16.02.2017. On interrogation by ASI Ajit Singh in the presence of Constable Saleem & EASI Umar Mohammad (PW6), two of them

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suffered disclosure statement Ex.P9 (by accused Salim) & Ex.P10 (by accused Surinder) on the similar lines, as suffered by the earlier arrested accused in this case. They demarcated places of crime, from where the complainant was abducted, confined and dropped.

4.12 After completion of investigation, the supplementary challan *qua* both of them i.e., Surender and Saleem was presented in the Court. Accused Liyakat son of Subhan Khan; and Fakru son of Ashu are yet to be arrested.

Charges:

5. The case was committed to the Court of Sessions after making compliance of Section 207 Cr.P.C. All the seven accused were charge sheeted on 03.08.2017 under Sections 332/34, 353/34, 365/34, 394/34, 186/34 & Section 395/34 IPC, to which all of them pleaded not guilty and claimed trial.

Accused Hayyum declared PO:

6. During proceedings, accused Hayyum, who had been released on bail on 05.04.2018 absented from trial and so, his bail was cancelled on 04.07.2018. He was ultimately declared proclaimed offender on 08.10.2018, when his presence could not be procured despite issuance of warrant of arrest and proclamation against him.

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Evidence produced by prosecution:

7. In order to prove its case, prosecution examined following 10 witnesses.

S. No.	Name of Witness	
1.	Ct. Arvind	PW-1
2.	ASI Girish	PW-2
3.	Insp. Surender Singh (complainant)	PW-3
4.	Dr. Sarita	PW-4
5.	P/SI Shahid Ahmad (initial IO)	PW-5
6.	EASI Umar Mohd.	PW-6
7.	Ct. Mohd. Salim	PW-7
8.	ASI Ajit Singh (Part IO)	PW-8
9.	HC Abhilash	PW-9
10.	SI Raj Kumar (Part IO)	PW-10

8.1 PW-3 Insp. Surender, the complainant of the case deposed about the occurrence and proved his statement Ex.P4 made to the police on 01.07.2016. He also identified the accused present in the Court. Detailed version of his testimony shall be discussed in later part of this judgment, as his statement is most material in this case.

8.2 PW-5 P/SI Shahid Ahmad proved recording the statement Ex.P4 of complainant- Insp. Surender Singh and deposed that on basis of that statement, he registered FIR Ex.P1 and put his endorsement Ex.P7. He also deposed that he took Insp. Surender Singh to Civil Hospital, Gurugram and got conducted his medico-legal examination. He also proved rough site plan Ex.P8.

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8.3 PW-1 Ct. Arvind had taken the special report Ex.P1 to the Area Magistrate and other senior police officials.

8.4 PW-4 Dr. Sarita had conducted the medico-legal examination of complainant Insp. Surender Singh on 01.07.2016. She found two injuries on his person, one in the eye and other on the lips and proved medico legal report Ex.P5/1.

8.5 PW-2 ASI Girish Kumar is draftsman, who proved site plan Ex.P2 prepared on the demarcation of Insp. Surender.

8.6 PW-10 Insp. Raj Kumar proved the arrest of accused Khalid son of Shahid Ahmad, Aabid and Hayyum on 29.07.2016. He further proved disclosure statements suffered by these accused besides demarcation memos and recovery memos apart from the rough site plans. He also identified the accused except accused Hayyum, who had since been declared proclaimed offender.

8.7 PW-9 Head Constable Abhilash and PW-8 ASI Ajit corroborated his testimony regarding the arrest of the above accused, disclosure statements and recovery memos etc.

8.8 PW-8 ASI Ajit, apart from corroborating the version of PW-10 SI Raj Kumar, further proved joining of the investigation by accused Khalid son of Hanif on 01.08.2016, who was arrested by him on the same day. He also proved the disclosure statement and the recovery memos prepared at the behest of said

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accused Khalid. He further proved arrest of accused Islamuddin on 04.10.2016; and that of accused Saleem and Surrender on 16.10.2017 and proved the disclosure statements and recovery memos pertaining to them.

8.9 PW-6 E/ASI Umar Mohd. and PW-7 Ct. Saleem corroborated the version of PW-8 ASI Ajit Singh.

Statement of accused under Section 313 Cr.PC.:

9. After conclusion of the investigation by the prosecution, all the incriminating circumstances appearing in the evidence were confronted to the 06 accused namely Khalid son of Shahid Ahmad, Aabid, Saleem, Khalid son of Hanif, Islamuddin and Surrender. They controverted the same and pleaded innocence. They closed the defence evidence.

10. After hearing both the sides, all the six accused as named above were convicted and sentenced by Ld. Trial court, as per the details given earlier vide judgment/orders dated 08.02.2019/12.02.2019, against which the six appeals have arisen.

11. At the outset, it may also be mentioned here that one of the accused Hayyum, who had been earlier declared proclaimed offender on 08.10.2018, was later on produced in the Court on 25.03.2021 and after holding separate trial *qua* him, said Hayyum was acquitted vide judgment dated 20.02.2023, as informed during arguments.

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12. The conviction of the six accused has led to filing of 06 separate appeals as per following details:

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CRA-S-523-2019	Islamuddin
CRA-S-911-2019	Aabid
CRA-S-1089-2019	Saleem
CRA-S-997-2019	Khalid son of Hanif
CRA-S-1387-2019	Khalid son of Shahid Ahmad

Contentions raised for the Appellants – accused :

13.1 It is contended on behalf of the appellants by learned counsels that entire story as projected by the prosecution is highly doubtful and that prosecution utterly failed to prove connection of any of the accused with the crime and that the conviction has been recorded by the Trial Court based upon conjectures, surmises and inadmissible evidence.

13.2 It is contended that though as per the prosecution version, the senior police official of the rank of Inspector, who himself was posted as SHO in Police Station Sector-29, DLF, Gurugram, was allegedly abducted in broad daylight at about 11:30-12:00 noon on 30.06.2016 but still the FIR has been lodged on the next day i.e., 01.07.2016 at about 12:30 p.m. i.e., after more than 24 hours delay. Attention is drawn towards the statements of PW-8 ASI Ajit as well as PW-10 SI Raj Kumar that they had come to know about the abduction on the same day i.e., 30.06.2016 at about 11:00-12:00 in the noon. PW-10 has

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gone to the extent that abduction of the SHO was being flashed in the media channel You Tube. Still not even a DDR was recorded regarding the alleged crime.

13.3 Learned counsels further contended that no evidence is adduced that any entry regarding his movement on 30.6.2016 from Police Station Sector-29, Gurugram was made by complainant- Insp. Surender Singh in the DDR register nor there is any evidence that any of the senior police officers took any action on 30.06.2016, when the complainant did not reach to attend the meeting and when the alleged abduction of SHO came to their notice. It is also pointed out that though complainant was freed at about 09:00 p.m. on 30.06.2016 as per his statement but he did not make any effort to contact anybody including his senior officers on that day and rather, reported the matter for the first time by appearing in his own police station at about 12:00 in the noon of 01.07.2016.

13.4 Still further, it is argued that though as per the FIR version, it is four persons, who had abducted the complainant- Insp. Surender but prosecution has built up its case against as many as 09 accused, out of whom 07 were sent for trial and 02 have not been arrested till date and that in his testimony, complainant has not disclosed, as to which of the four accused had abducted him.

13.5 Further attention is drawn towards the fact that first arrest was

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made by the police on 29.07.2016 of accused Khalid son of Shahid, Aabid and Hayyum but no effort was made to hold any Test Identification Parade or to get them identified from the complainant, as to whether these accused had participated in the crime, inasmuch as these accused were arrested simply on the basis of secret information. Not only this, even after the other accused were arrested from time to time, no Test Identification Parade was held at any stage and therefore, identification of the accused for the first time in the Court by PW-3- complainant Surender Singh is of no avail, particularly when he has not specified, as to which of the four accused out of the accused facing trial, had abducted him.

13.6 Learned counsels further contend that entire prosecution case is based on the disclosure statements suffered by the accused and the recoveries based thereon. In this regard, attention is drawn towards the fact that all the witnesses examined by the prosecution are police officials, except PW-4 Dr. Sarita, who is the medical officer. No independent witness was joined at any stage of investigation, either at the time of interrogating the accused or recording their disclosure statements or at the time of effecting recovery or at the time of preparing demarcation memos allegedly at the instance of the accused.

13.7 Still further, it is argued that recovery of some currency notes only is shown to have been effected from accused Khalid son of Shahid Ahmad,

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Hayyum and Aabid, without connecting the recovered currency notes with the notes allegedly withdrawn by the accused from the ATM from the account of the complainant. Here also, attention is drawn towards the fact that though as per the complainant, accused had withdrawn money by using his ATM card after asking his password and as per the investigation based on the disclosure statement, ₹16,000/- was withdrawn from ATM of HDFC Bank Hathin, still no effort was made to collect the bank statement pertaining to the account of the complainant or as to when the money was withdrawn and whether the money at all was withdrawn or not. It is further argued that in case money had been withdrawn from ATM of a bank, the face of the person withdrawing the money must have been captured by the CCTV installed in the ATM of the bank but there is no effort on the part of the investigating agency to collect the CCTV footage. It is argued that in these circumstances, the recovery of money from the three accused is clearly plantation.

13.8 Learned counsels further contend that though two mobile phones of complainant are alleged to have been taken away by the abductors, out of which recovery of one of the mobile is shown from accused Khalid son of Hanif but there is no corroborative evidence as to whether the mobile phone of make Samsung allegedly recovered from accused Khalid son of Hanif is the same mobile, which was taken away from the complainant, as no call detail records have been collected to show that the mobile of the complainant and the

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recovered mobile had the same International Mobile Equipment Identity i.e. IMEI number.

13.9 Learned counsel representing accused Saleem and Surrender also made specific mention of the fact that no recovery whatsoever has been effected from these two accused and that case against them is built up by the prosecution only on the basis of their alleged disclosure statements or the disclosure statement of co-accused, all of which were recorded during police custody.

13.10 Regarding the role of accused Islamuddin, learned senior advocate representing the said accused points out towards the statement of PW-8 ASI Ajit, who admitted that as per his investigation, said accused did not participate in the abduction of the complainant. Recovery of the Swift car of the complainant is shown from the said accused. In this regard, learned senior counsel has drawn attention towards the testimony of recovery witnesses to the effect that car was recovered from an open place in the parking of a theatre, which was accessible to all and therefore, it cannot be stated that recovery place was to the exclusive knowledge to the accused. Further attention is drawn towards the fact that though the recovery of car from this accused has been projected from Alipur (U.P.), which as per PW-8 ASI Ajit Singh is at a distance of 800 Kms from Gurugram but still no official from the local police station was joined in the recovery nor was informed about the recovery nor any

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photograph of the place of recovery was taken nor any person from the locality was joined at the time of effecting recovery nor any receipt of any toll plaza falling on way from Alipur to Gurugram is produced and therefore, recovery is a complete plantation.

13.11 With all the above submissions, learned counsels appearing for all the six appellants, have prayed for their acquittal by allowing these appeals.

Contentions by State:

14. Learned State counsel, opposing all the appeals, has defended the impugned judgment of conviction. Learned State counsel points out that at no stage, occurrence has been denied by any of the accused- appellants. The statement of PW-3 complainant- Inspector Surender Singh finds corroboration from the medical evidence, inasmuch as two injuries were found on his person, one on the eye and other on the lips, as was stated by him. Still further, it is argued that there was no reason for the complainant- Insp. Surender Singh to falsely implicate any of the accused, in the absence of any animosity. It is further argued that if any omissions or lapses had been left by the investigating agency, that cannot be a reason to disbelieve the statement of the complainant. Learned State counsel argues that learned Trial Court has considered all the points in detail and has rightly recorded the conviction. Attention is also drawn towards the fact that all the accused have criminal antecedents. With these submissions, prayer is made for dismissal of all the appeals.

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15. I have considered submissions of both the sides in depth and have appraised the entire record.

Analysis by this court & Finding:

16. In his initial statement Ex.P4 made to the police on 01.07.2016, on which FIR Ex.P2 is based; as well as in his testimony as PW-3 during trial, complainant- Insp. Surender Singh has disclosed about the participation of four miscreants only, who abducted him in his own car, caused injuries to him, kept him in their confinement, withdrew money through his ATM card, took away his two mobile phones and then released him at about 09:00 p.m. At no stage, PW-3 Insp. Surender Singh disclosed about the participation of more than 04 persons in the crime. However, prosecution has built up its case against as many as 09 accused, out of which 07 were sent for trial, whereas 02 namely Faku son of Ashu, and Liyakat son of Subhan Khan both residents of Nimka (Nuh) are yet to be arrested. Since complainant stated about the role of 04 miscreants only, so it becomes very important to know as to whether those 04 miscreants are included within the 09 accused against whom the prosecution has built up its case and if so, which are those four miscreants.

17. Basing its investigation largely upon the disclosure statements of the 07 arrested accused, prosecution has projected that it is accused Aabid, Hayyum, Khalid son of Shahid Ahmad, and Khalid son of Hanif, who had

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abducted the complainant, gave injuries to him, took him to the jungles, put him in the Diggy of the car and kept him in their confinement. It is further projected by the prosecution that accused Saleem and Surender were leading the Swift car in which the abduction had taken place by moving their Scorpio vehicle ahead of the Swift car. It is further projected that it is on the direction of accused Islamuddin that all these six accused had come to Gurugram to commit the looting incident, though accused Islamuddin himself did not come to Gurugram to participate in the crime. It is further projected that when the above-named six accused (two in the Scorpio vehicle and four in the Swift car along with the complainant) reached at an abandoned brick kiln in Village Nimka, then on the calling of accused Surender, accused Liyakat son of Subhan Khan, Faku son of Ashu and Islamuddin had reached there, to whom the entire story of abduction of police official was told and then, Islamuddin had taken away the Swift car belonging to the complainant.

18. It is in light of aforesaid projection of prosecution case that is required to be seen as to whether prosecution has been able to establish the case against all or any of the accused and if so to what extent.

19. Although there are certain material lapses/omissions in collecting the evidence regarding reporting to the police about the abduction of PW-3 Insp. Surender as pointed out by counsels for the appellants but still the statement of the said PW-3, as far as occurrence is concerned, cannot be

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disbelieved. The material issue to be considered is about the connection of the accused with incident. In other words, whether the prosecution has been able to link all or any of the accused with the crime.

20. As per statement of PW-3 Insp. Surender, he was going to the office of DSP East at about 12:00 noon on 30.06.2016 in his private car bearing No.HR-19F-0220 (Swift VDI), when on the service lane towards Galleria market, he noticed four suspected youths. As admitted by PW-3, he is unable to tell as to whether any entry in the Daily Diary register was made regarding his departure from the police station on 30.06.2016. PW-5 P/SI Shahid Ahmad, who took up the initial investigation by recording the statement Ex.P4 of the complainant, lodging of the FIR Ex.P1, taking the complainant to the hospital for his medico-legal examination and also prepared rough site plan Ex.P8 of the place from where abduction took place, admitted in his cross-examination that if any police official makes movement from the police station, an entry is recorded in the DDR. PW-10 Insp. Raj Kumar, who carried forward the investigation after PW-5, admitted that he did not collect any DDR of the Police Station Sector-29 regarding movement of SHO Surender Singh.

21. Apart from the absence of any DDR coming on record regarding the movement of Insp. Surender Singh from Sector-29 police station on 30.06.2016, there are contradictions as to when the said abduction came to the notice of the police. PW-5 P/SI Shahid Ahmad says that he came to know about

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the abduction of complainant only on 01.07.2018, when complainant came to the police station at about 12:00 noon and got recorded his statement. Quite contrary to this, PW-8 ASI Ajit, the later Investigating Officer says that they had come to know about the abduction of SHO on 30.06.2016 itself at about 11:00-12:00 noon, as the VT messages were being flashed on the police wireless set and whole police of District Gurugram was searching for the SHO. PW-10 SI Raj Kumar also says that he had come to know about the abduction on the same day. He has gone to the extent that the news of abduction of the SHO was being even flashed on You Tube. Despite all this, not even any Daily Diary entry was made in the relevant register regarding the abduction of Insp. Surender Singh on 30.06.2016 and thus, the first version on the police record came only on 01.07.2016, when complainant got recorded his statement Ex.P4 at about 12:00 noon on that day.

22. As per PW-3, he was released at about 09:00 p.m. at a lonely place, 10-12 Kms ahead of the Hodal city towards Kosi Kalan area and that by taking a lift from a motorcycle, he reached National Highway, Mathura Road and then with the help of private vehicles, came to Gurgaon in the late night. Though, considering the trauma which he had faced on 30.06.2016, the statement of PW-3 may be accepted by this Court with a pinch of salt but considering the fact that complainant himself is a senior police official of the Inspector rank and at the time of his release, he was in police uniform & having only two simple

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injuries, one on the eye and other on the lips, there is no evidence that he made any attempt whatsoever to contact his family members or any police officials of the police station or any senior police officer after his release by the miscreants, when he reached the National Highway with the help of a motorcyclist. Though his two mobiles had been taken away by the miscreants as stated by him, but he could have made efforts to take the help of either the motorcyclist or by going to a petrol pump on the highway or of the person on whose private vehicle he reached Gurgaon, to contact any of the family member or police officer.

23. Despite the aforesaid lapses, let the statement of PW-3 Insp. Surender Singh be taken at its face value, as far as the incident of his abduction is concerned, by ignoring the factors that no DDR regarding his movement was made in the register, nor any DDR was recorded regarding his abduction despite the said fact having coming to the notice of police on 30.06.2016 itself and that he did not inform anybody after being released.

24. Proceeding further, crime took place on 30.06.2016. FIR was lodged on 01.07.2016. The first arrest was made by the investigating agency on 29.07.2016, when three accused namely Khalid son of Shahid Ahmad, Aabid and Hayyum were arrested by Insp. Raj Kumar PW-10 on the basis of secret information. As has come in the cross-examination of PW-10, he did not know any of these accused nor they were figured in the investigation till 29.07.2016. He also says that these accused were apprehended at about 04:00 p.m. At the

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same time, he further says that these accused were arrested on the basis of footage installed at ATM machine, Hathin.

25. The abovesaid statement of PW-10 Insp. Raj Kumar implies that when these three accused were arrested by him, he had seen them in the footage at ATM machine, Hathin. By that time, neither the disclosure statements of any of these three accused had been recorded, nor they had disclosed anything regarding withdrawal of any amount from any ATM machine at Hathin. In these circumstances, it is not explained by the prosecution, as to how on the basis of appearance in the CCTV footage at ATM machine, the three accused were connected with the crime, prior to recording their disclosure statement.

26. The abovesaid statement of PW-10 Insp. Raj Kumar has another implication. The disclosure statements by accused Khalid son of Shahid Ahmad, Aabid and Hayyum (Ex.P43, Ex.P44 & Ex.P45) were suffered on 29.07.2016, in which it was disclosed by them that after reaching the Village Swamika, they had put the police official in the Diggy of the car, snatched his purse, asked the password of ATM card and then Khalid son of Shahid Ahmad & Aabid went to ATM at Hathin and withdrew ₹16,000/-. Meaning thereby, it is for the first time that police come to know on account of these disclosure statements that money of ₹16,000/- was withdrawn by using the ATM card of complainant at Hathin. However, it is on 31.07.2016 that accused Aabid and Hayyum identified the ATM, from where they had withdrawn the money as is

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evident from demarcation memo Ex.P26 and the site plan of that place as Ex.P36. So, it remains a mystery as to how PW10 came to know about ATM footage on 29.7.2016, on the basis of which he arrested the three accused.

27. Still further, once the investigating agency came to know that ATM card of the complainant was used so as to withdraw the amount of ₹16,000/- by two of the accused, whether any effort was made to corroborate this version of the accused. The answer to this question is a big NO. Firstly, there is no evidence at all that any official from HDFC Bank, Hathin was associated in the investigation. There is no effort to collect the bank statement of the complainant Insp. Surender Singh as to whether ₹16,000/- or any other amount had been withdrawn from his bank account through ATM on 30.06.2016 and if so, at what point of time. There is no evidence to show any effort on the part of the investigating agency to collect the CCTV footage of the ATM, which must have captured the faces of the persons, who had withdrawn the money by using the ATM card of the complainant.

28. In fact, except for the disclosure statement made by the accused, there is absolutely no corroboration that any amount was even withdrawn from the bank account of the complainant through any ATM card. This is a big lapse and omission on the part of the investigating agency, which is fatal to the prosecution. In the absence of any material, corroborating the facts disclosed in disclosure statements of the accused, that portion of disclosure statements

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becomes inadmissible. Simply because a new fact has been disclosed by the accused in his disclosure statement is not sufficient to make that disclosure admissible unless that discovery of fact is corroborated by some evidence. In this case, the fact disclosed by the accused that they had withdrawn ₹16,000/- from the ATM of HDFC Bank at Hathin is not at all corroborated. In the aforesaid circumstances, the statement of PW-10 Insp. Raj Kumar to the effect that accused Aabid, Hayyum and Khalid son of Shahid Ahmad were arrested on the basis of footage of the CCTV of ATM, is absolutely not reliable.

29. Further, as noticed above that initial arrest was of three accused Khalid son of Shahid Ahmad, Aabid and Hayyum on 29.07.2016 i.e., almost after one month of the incident. None of the accused had been named in the FIR. There was no certain description of the miscreants in the FIR. These accused in their disclosure statements had told about the role of nine accused including themselves. In these circumstances, it had become very essential for the investigating agency to get the three accused as arrested on 29.07.2016, identified from the complainant as to whether they were amongst abductors or not. There is no evidence at all that any Test Identification Parade was ever conducted; or any effort was made to get the three accused as initially arrested, identified from the complainant.

30. Although this Court is conscious of the fact that holding of a Test Identification Parade during investigation is not a *sine qua none* to connect an

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accused with a crime to establish identity but it depends upon facts and circumstances of each case as to whether the step of conducting TIP was necessary or not. In the present case, as the complainant specified the role of only four miscreants in his abduction, confinement, taking away the purse and mobiles etc, so it was very essential to establish the identity of those four miscreants.

31. In his entire testimony, PW-3 complainant Surender Singh has not disclosed the role of more than four miscreants in the crime. At the time, when statement of PW-3 Insp. Surender was being recorded in the Court, six accused were facing trial out of seven challaned by the police, inasmuch as accused Hayyum had been declared proclaimed offender. PW-3 in very generic terms stated in his testimony that all the accused are present in the Court, without specifying as to which of the accused had abducted him, as he had disclosed the role of only four miscreants in the crime as mentioned above.

32. Considering the above circumstances, the observation of learned Trial Court to the effect that TIP was not necessary and that identification of the accused for the first time in the Court is admissible, cannot be accepted.

33. Moving further, based on the disclosure statement of accused Khalid son of Shahid Ahmad, Hayyum and Aabid, recovery of money only has been effected from these accused vide separate recovery memos prepared on 31.07.2016. ₹2,600/- were recovered from accused Khalid son of Shahid

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Ahmad vide recovery memo Ex.P29. ₹2,700/- were recovered from accused Hayyum vide recovery memo Ex.P28 and ₹2,200/- were recovered from accused Aabid vide recovery memo Ex.P30. These recovery memos have been proved by the statements of PW-10 Insp. Raj Kumar. Statements find probabtion from PW-9 HC Abhilash, the recovery witness. However, there is no connecting evidence, as to whether the currency notes as recovered from the possession of accused Khalid son of Shahid, Hayyum and Aabid is part of the money, which was allegedly withdrawn from the bank account of the complainant by using his ATM card. So much so, even the withdrawal of money from the bank account of the complainant is not proved as has already been discussed.

34. In all the aforesaid circumstances, it is held that conviction of the accused Khalid son of Shahid Ahmad, Hayyum and Aabid based on the recovery of currency notes or on the basis of identification by PW-3, cannot be sustained.

35. Coming to the role of accused- appellant Khalid son of Hanif, he was arrested on 01.08.2016 by ASI Ajit PW-7 and on interrogation, he suffered disclosure statement Ex.P-14 on the same lines as the earlier three arrested accused and that he had taken away the two mobiles, one of make Samsung and other of make Nokia belonging to the complainant Insp. Surender which he had concealed at his house. On 02.08.2016, he suffered a supplementary disclosure

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statement Ex.P-44 to the effect that in fact, one of the mobiles being in damaged condition had been thrown by him on the way and that he had concealed only one mobile. Pursuant to that disclosure statement, recovery of a mobile phone make Samsung, apart from an amount of ₹1,500/- was effected at his behest on 02.08.2016 and the same were taken into possession vide recovery memo Ex.P-16.

36. The evidence against accused Khalid son of Hanif is different from the earlier three accused i.e., Aabid, Hayyum and Khalid son of Shahid Ahmad only to the extent that from those three accused, recoveries of currency notes only was effected; whereas, from the said accused Khalid son of Hanif, apart from currency notes of 41,500/-, a mobile phone make Samsung of complainant Surrender is also alleged to have been effected. His identification for the first time in the Court made by PW-3 Insp. Surrender is highly doubtful for the same reasons, as have been discussed above *qua* the three accused Khalid son of Shahid Ahmad, Hayyum and Aabid. Similarly, the recovery of ₹1,500/- from him cannot be stated to be connected with the crime for all the reasons as discussed earlier.

37. Coming to the recovery of mobile of make Samsung, the recovery memo Ex.P16 would reveal that it contains specific IMEI No.353508076831325101 and 383509076831323/01, which were mentioned on the recovered mobile. In order to connect the accused with the crime on the

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basis of this recovery of the mobile, it is essential for the prosecution to prove that recovered mobile is the same, which was taken away from the complainant; or in other words that the recovered mobile belongs to the complainant. However, prosecution has utterly failed to prove the said fact.

38. It is important to notice that in his statement Ex.P4, which is the basis of FIR Ex.P1, it is specifically disclosed by the complainant that the mobile phones which were taken away by the miscreants were Nokia having sim No.9711803872; and Samsung having sim No.9999981822. Neither in the FIR nor in his testimony before the Court, complainant gave unique identification numbers i.e., IMEI number of the two mobiles, which were taken away from him. There is nothing on the record to show that any effort was made during investigation to collect any bill, receipt or any other document to show that the mobile of make Samsung as recovered from the accused Khalid son of Hanif with specific IMEI Number belonged to the complainant.

39. There can be thousands and thousands of mobiles of make Samsung but every mobile has its distinct unique IMEI Number. Simply because one of the mobiles taken away from the complainant was of make Samsung and that a mobile of make Samsung has been recovered from the accused Khalid son of Hanif, it cannot be stated that recovered mobile is the same, which had been taken away from the complainant.

40. Let it be assumed that IMEI number of the mobile of the

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complainant was not available for any reason whatsoever, the investigating agency at least could have made an effort to collect the call detail records of the two SIM numbers, which were inserted in the two mobiles of the complainant, which had been taken away by the miscreants. Had the call detail records been collected by the investigating agency, it could have established the link, as to whether the Samsung mobile of a particular IMEI number as mentioned in the recovery memo Ex.P16 was ever used for same numbers 9711803872 or 9999981822 belonging to the complainant. In the absence of any call detail records, it cannot be stated that the two sim numbers as disclosed by the complainant in the statement Ex.P4 /FIR Ex.P1, were ever used at any point of time in the mobile, as recovered from accused Khalid son of Hanif and so, it cannot be stated that recovered mobile belonged to the complainant.

41. Apart from the fact that collection of the call detail records could have produced the link of the recovered mobile with the mobile taken away by the miscreants, the said CDR could have also shown the location of the complainant on the fateful day of 30.06.2016, as to at what point of time and at what particular place, he was kidnapped and at what places and at what times, he was taken by the miscreants. Thus, a vital piece of evidence, which could have gone a long way to establish the guilt of the accused, has not been collected by the investigating agency.

42. In the aforesaid circumstances, it is held that prosecution has not

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been able to establish its charges against accused Khalid son of Hanif, who deserves to be given strong benefit of doubt. As such, its conviction as recorded by the Trial Court cannot be sustained.

43. Coming to the role of accused Surender and Saleem, they are on the same footing. As per the case projected by the prosecution, they were moving in a Scorpio vehicle, ahead of the Swift car of the complainant, in which the complainant had been kidnapped by the four accused. As per prosecution, these two accused remained present till the place, where the complainant was released at about 09:00 p.m. However, in his entire testimony, PW-3 Insp. Surender has not stated that there were more than four miscreants in the crime, as has already been noticed. There is nothing in the testimony of PW-3, who is not a simple layman and rather, a senior police official that he noticed any Scorpio vehicle moving ahead of the Swift car, at any point of time. Although he was put in the Diggy of the Swift car but it was after moving for about 02 hours and after reaching Village Swamika as per the disclosure statement of the accused relied by the prosecution. In the FIR also, it is clearly stated by complainant that after about two hours of the movement of the car in which he was abducted, they put him in Diggy of the car after reaching in a jungle. For about two hours, when he was inside the car or when he was being shifted in the diggy or when he was taken out of the Diggy at about 08:00 p.m. at the place of his release, he must have noticed the Scorpio vehicle, in case it

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was present there occupied by accused Surender and Saleem. There is no such evidence. So much so, in the entire prosecution case, neither the registration number of the Scorpio vehicle has come on record nor there appears to be any effort whatsoever to recovery any such Scorpio vehicle.

44. Further, it is admitted case of the prosecution that no recovery whatsoever has been effected from these two accused Saleem and Surender. They were joined in the investigation after obtaining the production warrant, as they were already in custody in some other case. They were arrested in this case on 16.02.2017 and their disclosure statements Ex.P9 and Ex.P10 were recorded by PW-8 ASI Ajit Singh as deposed by him, which are supported by PW-6 ASI Umar Mohd. and PW-7 Ct. Mohd. Salim. The said disclosure statements were recorded in the Court compound, Gurugram without joining any independent witness. The facts as disclosed in the disclosure statement of the co-accused had already come to the notice of the police. The places of crime, which have been demarcated by these two accused had already come to the notice of the investigating agency. In all these circumstances, there is no evidence admissible in law against any of these two accused Saleem and Surender and as such, their conviction as recorded by the Trial Court cannot be sustained.

45. Coming to the role of accused Islamuddin, as per the own case of the prosecution, he did not participate in the crime of abduction of PW-3 Insp. Surender. It has been alleged that it is at his behest that the crime was

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committed and that after reaching at abandoned brick kiln, said Islamuddin along with Fakru and Liyakat had arrived and then said Islamuddin had taken away the Swift car belonging to the complainant, which was later on recovered on 07.02.2016. Disclosure statement of accused Islamuddin Ex.P-14/1 is proved by PW-7 ASI Ajit and his statement finds corroboration from PW-7 Constable Mohd. Salim. They have also proved recovery memo of the car as Ex.P-15. The recovery is stated to have been effected from Alipur in U.P.

46. As has come in the testimony of PW-7 EHC Mohd. Salim, one of the recovery witness, the car was lying parked in an open place near Manas Theatre, Ali Nagar (U.P.). There are many shops around that place. As per him, local police was joined but did not sign the recovery memo. He also admits that no independent witness was joined at the time of recovery. PW-8 Insp. Ajit, the IO at that time also admitted that car was lying parked in the open. He further says that the distance between Gurugram and Alinagar is 800 Kms. and that he drove the car to Gurugram. He admits that he cannot produce any receipt regarding any toll plaza falling in between. He admits that there is no evidence of any entry made in the local police station of Alinagar, from where recovery was effected. So much so, he admits that no information was given to the local police about the recovery.

47. In the aforesaid circumstances, when the recovery of the car has been effected from an open place i.e., in the parking area of a theatre, which is

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accessible to anyone, it cannot be stated that car has been recovered on account of the exclusive knowledge of accused Islamuddin. As such, conviction of accused Islamuddin based on the recovery of car, cannot be sustained.

48. On account of entire discussion as above, it is held that though occurrence as narrated by PW-3 Surrender in complaint Ex.P4/FIR Ex.P1 has been proved by the prosecution but it has utterly failed to prove connection of any of the accused- appellants with the crime by leading any cogent or admissible evidence in law. All the six accused- appellants deserved to be given the strong benefit of doubt.

49. Consequently, all the six appeals are hereby accepted. All the accused- appellants are acquitted by giving them strong benefit of doubt. The appellants, who are in custody, are directed to be released forthwith, in case they are not required in any other case.

(DEEPAK GUPTA)
JUDGE

January 08, 2024
Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No