

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 14th August, 2012

DECIDED ON : 31st August, 2012

+ CRL.A. 506/2011 & Crl.M.(Bail) 666/2011

RAJENDER KUMAR @ RAJU Appellant

Through : Mr.L.S.Saini, Advocate.

CRL.A. 858/2011 & Crl.M.(Bail)1218/2011, 548/12

RIAZUDDIN @ RIYAZ Appellant

Through : Mr.Deepak Vohra, Advocate.

CRL.A. 865/2011 & Crl.M.(Bail) 1226/2011

SANJEEV @ BAHUA Appellant

Through : Ms.Anu Narula, Advocate.

Versus

THE STATE (GNCT OF DELHI) Respondent

Through : Mr.Sanjay Lao, APP for the State.

CORAM:

MR. JUSTICE SANJIV KHANNA

MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Rajender Kumar @ Raju (A-1), Riazuddin @ Riyaz (A-2) and Sanjeev @ Bahua (A-3) impugn the judgement dated 29.01.2011 and order on sentence dated 31.01.2011 of learned Additional Sessions Judge in Sessions Case No.67/2008 by which they were convicted for committing offences punishable under Section 364A/307/34 IPC and sentenced to undergo imprisonment for life with fine of ₹25,000/- each

under Section 364A/34 IPC. They were further sentenced to undergo rigorous imprisonment for a period of seven years with fine of ₹5,000/- each under Section 307/34 IPC. Both these sentences were to operate concurrently. The factual matrix of the case is as under:-

2. Daily Dairy (DD) No.67B (Ex.PW-7/A) was recorded on 04.03.2003 at 10:20 P.M. at police station Sultan Puri to the effect that Mohit R/o D-2/103, Sector-20, Rohini, Delhi was missing since 5:00 P.M. This DD was marked to ASI Rajender Singh who with Constable T.S.Tiwari reached the spot and recorded the statement of Ram Chander- father of the victim. He (PW-5- Ram Chander) disclosed that at about 5:00 P.M. his son Mohit had gone out to play and did not return. He remain untraced despite search. He suspected kidnapping. ASI Rajender Singh made an endorsement and sent the rukka for lodging First Information Report under Section 363 IPC. Efforts were made to find out the missing child but in vain.

3. On 05.05.2003 Ram Chander received telephone call at his residence and the caller informed that his son Mohit was in his custody. He asked to arrange ₹4,00,000/- for the release of his son. Ram Chander also found a ransom letter (Ex.J-1) lying at the gate of the house. He and Vijay, his neighbour, went to the police station and handed over the

ransom letter to ASI Rajender Singh who seized it vide seizure memo (Ex.PW-4/A). Section 364A IPC was added in the FIR.

4. On 05.03.2003 DD No.45/B (Ex.PW-1/A) was recorded at 11:05 P.M. at police station Keshav Puram to the effect that a male child aged 7-8 years was lying abandoned near Shiv Mandir, Lawrence Road, Keshav Puram. ASI Suman Lal with Constable Balbir reached there and met Anil and Sakal Dev Yadav who had informed PCR at number 100 about the child after hearing his cries from the drain near the temple. They also told them that PCR van had taken the child to police station Keshav Puram. ASI Suman Lal Gora and Constable Balbir found PCR van standing near Britania Red Light Chowk. They took the child in the PCR van to Babu Jag Jivan Ram Memorial hospital, Jahangir Puri, Delhi and got him medically examined. The child disclosed his name as Mohit @ Abhishek s/o Ram Chander R/o D-2/103, Sector-20, Rohini, Delhi. ASI Suman Lal Gora contacted Ram Chander-father of the victim on phone No.25968066 given by the child. The Complainant with Head Constable Rajender Singh reached police station Keshav Puram and custody of the child Mohit was handed over to Head Constable Rajender Singh. DD No.45-B was recorded at police station Keshav Puram.

Section 308 was added in the FIR. Statements of witnesses were recorded. Further investigation was assigned to SI Kailash Chander.

5. On 08.03.2003, A-1 to A-3 were arrested at the pointing out of the complainant at Mangol Puri Bus Terminal. Motorcycle No.DL-1SH-2410 was also taken into custody. Pursuant to disclosure statements, the accused led the police to the spots from where they had kidnapped the child and had abandoned him. They also led the police to House no.465B, Block No.21, Trilok Puri belonging to Kishan Lal where the child was kept. The investigating officer prepared necessary pointing out memos.

6. On 12.03.2003 Shri Raj Kapoor, the then Metropolitan Magistrate recorded the statement of Mohit under Section 164 Cr.P.C. A-1's specimen hand-writing (Ex.15/D1 to D17) was taken and sent to Forensic Science Laboratory (FSL) for examination. From statements of witnesses conversant with the facts it emerged that A-1 to A-3 had kidnapped the child for ransom and confined him in the house of Kishan Lal. When they did not receive the ransom, they hit Mohit on his head with a brick and also strangled him. After completion of the investigation, a charge-sheet was submitted against the accused. They were duly charged and brought to trial.

7. To substantiate the charge, the prosecution examined 19 witnesses in all at the trial. In their statements under Section 313 Cr.P.C. the accused denied the incriminating circumstances and pleaded false implication by the police in connivance with informant Ram Chander with whom quarrels used to take place over flow of drain water. They further pleaded that the child was sent by the informant at the residence of his relative at Trilok Puri. They examined Prem Singh as DW-1 in defence.

8. After appreciating and considering the rival contentions of the parties, the Trial Court concluded that the accused were responsible for kidnapping Mohit for ransom and attempt to murder him. Aggrieved by the said findings, the appellants have preferred the appeals.

9. Learned counsel for the appellants challenged the findings of the Trial Court and urged that it did not appreciate the evidence in its true and proper perspective and fell into grave error in relying upon the testimonies of PW-2 (Alka) PW-5 (Ram Chander) and PW-12 (Mohit) without ensuring their credibility and truthfulness. The Trial Court, urged the counsel, ignored the vital discrepancies, inconsistencies and improvements without valid reasons. The Trial Court was not justified to reject the cogent and reliable testimony of DW-1 (Prem Kumar) and it required equal weightage at par with the testimony of the prosecution

witnesses. The accused were implicated for ulterior motive by Complainant-Ram Chander as there were quarrels over flow of drain-water and on 04.03.2007 itself a quarrel took place over that issue. Conduct of PW-5 (Ram Chander) is unnatural and inconsistent as he did not inform the police that the voice of the caller was that of accused Rajender. The Investigating Officer did not collect call record to show that telephone call was received from the kidnapper by the Complainant. The IO did not seek court's permission to obtain specimen handwriting of the accused. PW-12 (Mohit) made vital variations in the deposition before the court. At the time of recording his statement under Section 164 Cr.P.C., his father was present in the court and there was every possibility of tutoring the statement to him. The injuries on the child were simple in nature and no weapon of offence i.e brick could be recovered. The accused were residing in the neighbourhood of the complainant. A-1 was never seen driving motorcycle bearing No. DL-1SH-2410. PW-4 (Vijay) is related to the Complainant and is an interested witness. Contradictory versions have been given by the witnesses regarding the time, place and manner in which the ransom letter was found. No public witness was joined at any stage of the investigation. Identity of Rajender Kumar @ Raju could not be established beyond doubt. The counsel further

contended that it was unreasonable to impose a condition that the appellant should not be granted any remission in the sentence for 35 years.

10. Supporting the judgment, the learned APP urged that it did not call for any interference. The child Mohit had no ulterior motive to name the accused for kidnapping him for ransom. He attributed specific role to the each accused in the kidnapping. PW-10 (Kishan Lal) (A-1's relative) corroborated his testimony and named him to have brought the child at the house. The child was recovered by PCR at odd hours when he was found lying abandoned at a secluded place. The accused deserve no leniency as they abandoned the child presuming him dead after inflicting injuries on his head. Minor contradictions, inconsistencies and improvements are not fatal to the prosecution case.

11. We have considered the submissions of both the parties and have examined the Trial Court record.

12. PW-12 (Mohit) is the victim who was kidnapped for ransom. He was eight years old at the time of kidnapping and 13 years on the date of examination in the Court. The Trial Court put preliminary questions to ascertain if he understood the questions and was able to give rational answers. The court was of the opinion that he was competent to testify and understood the sanctity of oath. A child of tender age can be allowed

to testify if it has intellectual capacity to understand questions and give rational answers thereto.

13. In his deposition, PW-12 stated that on the day of incident he was studying in 3rd standard in Sarvodaya Bal Vidyalaya. On 04.03.2003 at about 4-5 P.M. when he was in the back side of his house, A-1 and A-2 came and told him that his mother was calling. They took him forcibly on a motorcycle and kept in a room where Sanjeev (not the accused) was present. After leaving him, they both left and he remained in the said room throughout the night. On the next day A-1 and A-3 came and took him to Zoo. When they were coming back, the motorcycle broke down and they (A-1 and A-3) called A-2. A-2 was asked to stand near the motorcycle and they (A-1 and A-3) took him to a dark place and started talking that his father had refused to pay ransom and had also informed the police. Thereafter, they (A-1 and A-3) strangled him. He started losing his consciousness. In the meantime, A-3 hit him on head with a brick and he became unconscious. He was produced before the Metropolitan Magistrate and his statement under Section 164 Cr.P.C. (Ex.PW11/B) was recorded. The witness identified motorcycle (Ex.P-1) used in the incident.

14. In the cross-examination, he disclosed that he used to go to school at about 7 A.M. and return by 1:15 P.M. On that day, when he had gone out of the house, he did not find the children with whom he used to play daily. He repeatedly requested the accused to take him to his mother. He elaborated that when he reached the room, it was dark. Sanjeev and his aunt also slept in the room in which he was kept overnight. There were two rooms in the said house. The accused were their neighbours. He denied the suggestion that a quarrel took place between the accused and his parents on the issue of flow of drain-water. He further disclosed that on 5.03.2003 he woke up in the morning and requested A-1 and A-2 to take him to his mother. They remained in the Zoo till evening. He expressed inability to pin-point the place where he was beaten and the motorcycle broke down. He fairly admitted that when his statement under Section 164 Cr.P.C. was recorded, his father had accompanied him. He denied the suggestion that his father had tutored him. He volunteered to add that he narrated before the learned Metropolitan Magistrate what had happened with him. The witness was confronted with the statement (Ex.PW-11/B) to show improvements in his deposition. He emphatically denied the suggestion that he never became unconscious or that his father had sent him at Trilok Puri to implicate the accused.

15. Analysing the entire testimony of the child victim, it transpires that he described the scenario implicating the accused to be the authors of the crime. The accused failed to elicit any material or relevant discrepancies or inconsistencies despite searching cross-examination. The witness has made some improvements and deposed certain facts which were not stated in the statement under Section 161 Cr.P.C. (Ex.PW-11/B). However, those facts deposed by him do not affect his credibility as these are mere details of the incident which the witness could not reasonably disclose in the statement (Ex.PW11/B). In fact, so called improvements are the ‘clarifications’ or ‘elaboration’ of facts in response to the questions put to him which he was not supposed to state in statements under Section 161 Cr.P.C. or 164 Cr.P.C. The core facts about the kidnapping and the role attributed to the accused remained identical. In the case of *A.Shankar v. State of Karnataka* (2011) 6 SCC 279 the Supreme Court held:

“The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statements made by the witness earlier. “Irrelevant details

which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” The omissions which amount to contradictions in material particulars i.e. materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. [Vide State v.Saravanan : (2010) 4 SCC (Cri) 580:, Arumugam v.State (2009) 3 SCC (Cri) 1130: , Mahendra Pratap Singh v.State of U.P. (2009) 3 SCC (Cri) 1352, Sunil Kumar Sambhudayal gupta (Dr.) v.State of Maharashtra (2011) 2 SCC (Cri) 375:, Vijay v.State of M.P. (2010) 3 SCC (Cri) 639, State of U.P.v.Naresh (2011) 2 SCC (Cri) 216 and Brahm Swaroop v.State of U.P. (2011) 6 SCC 288]”

16. The statement under Section 164 Cr.P.C. (Ex.PW-11/C) was recorded on 12.03.2003 on the application moved on 07.03.2003. PW-12 disclosed that when he was playing behind his house, A-1 came and took him for outing. It was an evening time. A-1 took him to a house where there were two boys and one girl. On the way, A-1 strangled him. Sanjeev @ Bauya (A-3) hit him with a brick on head and he sustained injuries. When A-1 took him, A-2 was also with him and he was taken on a motorcycle. Thereafter, A-1 left for some party leaving him in the said house.

17. On scrutinising the testimony of the witness it transpires that he named all the three accused and attributed specific role to each of them in the kidnapping. He categorically disclosed in both the statements that all the three accused participated in the kidnapping at one stage or the

other. There was no possibility of mistaken identity as the accused resided in the neighbourhood of the victim. All the accused were identified by PW-12 in the court. His testimony regarding the identity of the accused remained unchallenged. We have no reason to discard the testimony of this crucial witness of tender age who himself was a victim and had spent a night away from his parents at the residence of a stranger against his wishes. The court can understand and feel the mental stress of the child. The child was taken at a distant place i.e. 12/13 kilo meters away from his house at Trilok Puri without any bona fide purpose. His evidence has credibility which reveals a truthful approach and has the ring of truth. Undoubtedly, some minor variations are traceable in the statement. But what the court has to see is whether these variations are material and affect the case of the prosecution substantially. The child had no prior animosity with any accused to falsely implicate them. He was found lying abandon at a deserted place at odd hours after he was hit with a brick on head. It is unbelievable that the child would enact a fake drama of kidnapping as alleged by the accused. In the absence of any inherent defect, we do not find any substance in the plea to reject his testimony being tutored. The criticism is wholly baseless and unwarranted.

18. Law relating to a testimony of a child witness is discussed in the case of '*State of Uttar Pradesh Vs. Krishna Master and Others*' (2010) 12 SCC 324 :

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“15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

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17. In the deposition of witnesses, there are always normal discrepancies, howsoever honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case, albeit foolishly. Therefore, it is the duty of the court to separate falsehood from the truth. In sifting the evidence, the court

has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eyewitnesses examined in this case proves the prosecution case.

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36.....There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father, mother, brothers, etc. he is not likely to forget the incident for his whole life and would certainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence.

37. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the specious ground on which the reliable testimony of PW 2 Madan Lal came to be disbelieved can hardly be affirmed by this Court.”

19. Another crucial witness to corroborate PW-12 (Mohit) is PW-10 (Kishan Lal) at whose house the victim was confined throughout

the night. PW-10 (Kishan Lal) is a resident of 21/435, Trilok Puri, Delhi and is related to A-1. In his cross-examination, he testified that at about 4:00/5:00 P.M., he was present at the place of his duty in Shakarpur. Two persons brought a minor child, served food to him and made him to sleep with him for about 1 and ½ hour. He identified A-1 in the court who had brought the child. He further testified that the said two persons took back the child next morning and thereafter they never came back. When the police brought A-1 at his house, he identified him as one of the persons who had brought the child. Since this witness did not fully support the prosecution, with court's permission, APP cross-examined him and he admitted that the police had made inquiries and had recorded his statement when A-1 was brought. He admitted that on that day, the police had brought three persons. A-2 and A-3 might be the other two persons. He fairly admitted that he was unable to identify them with certainty as it was 2/3 years old matter. In the cross-examination on behalf of A-1, he disclosed that he was known to him for the last about 20 years being the son of his wife's chacha. He admitted that on the next morning two persons came to take the child back when he had already left for his duty. He did not see any person except A-1 at the time the police brought him.

20. It seems that PW-10 (Kishan Lal) being related to A-1 has not presented true facts before the court. He has not fully supported the prosecution on all the material facts stated by him before the police. However, from his testimony, it stands established that at his house the kidnapped child was brought and A-1 was amongst the boys who had brought the child. The prosecution was not aware as to where the child was kept after his kidnapping. Even PW-12 did not know the exact place where he was confined. He was found lying abandoned at a deserted place in the area of police station Keshav Puram and was picked up by PCR and taken to hospital. Pursuant to the accused's disclosure statements, (Ex.PW-5/A, B and C) only, the police 'discovered' that the child was kept at the house of Kishan Lal. They came to know his name and address when they led the police to his house and pointing out memo (Ex.PW-13/B) was prepared. PW-15 (Inspector Kailash Chander) deposed that pursuant to the disclosure statements, they led the police party to house No.465, B-Block, 21 Trilok Puri and pointed out the house belonging to one Kishan Lal to be the place where Mohit was kept. In the cross-examination, he justified for not suspecting Kishan Lal's involvement as he had revealed that A-1 had introduced Mohit as son of Sanjeev's brother. The 'discovery' of a fact which was not in the

knowledge of the police prior to the disclosure statements about the place where the kidnapped child was kept is relevant under Section 27 of the Evidence Act and lends credence to the testimony of PW-12 (Mohit) and PW-10 (Kishan Lal).

21. PW-12 (Mohit) had disclosed that he was taken to the place of his confinement on a motorcycle. Motorcycle (Ex.P-1) was identified by him in his deposition before the court. This motorcycle bearing No. DL-1SH-2410 make Yamaha was recovered from A-1 at the time of his arrest. In the cross-examination, PW-15 (Insp. Kailash Chander) volunteered to add that sale letter of the motorcycle were shown to him by Mahesh (brother-in-law of A-1). The Registration Certificate of the motorcycle was in the name of Pankaj Rana. He further deposed that on 09.04.2003, Mahesh came to police station and produced photostate of Registration Certificate Mark X-1, Pollution Control Certificate Mark X-2, photocopy of form No.30 Mark X-3 by which Mahesh had purchased the motorcycle from Pankaj Rama and Form No.29 Mark X-4 were seized vide seizure memo Ex.PW-15/G. It appears that Mahesh did not get the registration of the motorcycle transferred after its purchase. Since the motorcycle was identified by the victim on which he was taken to the place of confinement and it was recovered from the possession of A-1, we

see no valid reason to reject the recovery of the motorcycle on flimsy grounds.

22. PW-5 (Ram Chander), father of the victim, deposed that on 05.03.2003 at about 10:00 A.M. he had received a telephone call at his house from the kidnapper and he was asked to arrange ₹4,00,000/- for the release of kidnapped child Mohit or else he would be killed. He informed the Investigating Officer about the ransom demand. PW-14 (Ct.Rajender Kumar) reached the spot and waited for three hours but did not get any ransom call on phone. PW-5 (Ram Chander) testified that he had suspected that the voice on the telephone call was that of A-1. It is true that the police was not taken into confidence and he did not inform about the complicity of A-1 in the kidnapping and demand for ransom. PW-5 has explained that he did not do so as he wanted A-1 to be apprehended and arrested in this case. It was not unusual for PW-5 to conceal the identity of A-1 to avoid harm to the child. Since A-1 was residing in the neighbourhood of the witness, it was not improbable for him to suspect/recognise the voice of the caller.

23. Ransom note (Ex.J1) was found lying at the gate of the house and it contained demand of ₹4,00,000/- for the release of the child. PW-5 (Ram Chander) showed the ransom note to his neighbour PW-4 (Vijay

Kumar). Both went to the police station immediately and handed over the ransom note to the police. We have no reasons to disbelieve PWs 4 and 5 on this aspect in the absence of any glaring discrepancies. PW-4 (Vijay Kumar) was residing in the locality and had no prior ill-will against the accused. He did not identify that the handwriting in the ransom note was of any of the accused. The accused did not produce any evidence to prove that PW-4 (Vijay) was related to PW-5 (Ram Chander). Contents of the ransom note indicate that the object of the kidnapping was for ransom. The demand was clearly conveyed to the father of the victim from whom the accused expected payment.

24. During the course of investigation, A-1's specimen handwriting was obtained and the Investigating Officer sent the ransom letter with specimen handwriting to Forensic Science Laboratory for examination. PW-18 (A.K.Singh) proved report (Ex.PW-18/A) and opinion (Ex.PW-18/B). He was of the opinion that the person who wrote the specimen handwriting Mark S-1 to S-17 also wrote the red enclosed writing similarly stamped and marked Q1. The accused did not cross-examine him and his testimony remained uncontroverted. The trial court concluded that it was an incriminating circumstance against A-1 as the ransom note (Ex.J1) was found in his handwriting. However, considering

the law laid down in the latest judgment of this Court in the case of *Sapan Haldar & Anr.v.State*, (Crl.A.No.804/2001 dated 25.05.2012), we are of the opinion that this circumstance cannot be considered incriminating against A-1. The fact, however, remains that ransom note (Ex.J1) was delivered at the residence of PW-5 (Ram Chander) by the kidnappers and he was threatened to pay ransom amount of ₹4,00,000/- for the release of his child in their custody or else the child would be killed. The kidnappers were, of course, the three accused persons who participated in the crime at one stage or the other as narrated by PW-12 (Mohit) in his deposition before the court. The telephone call and the ransom letter of the kidnappers were sufficient to attract Section 364A IPC, as the intended demand was communicated to PW-5 (Ram Chander). \

25. DD No.45/B (Ex.PW1/A) was recorded at police station Keshav Puram at about 11:05 P.M. on the night intervening 05/06.03.2003 on getting information that the child aged 7/8 years was lying abandoned at Lawrence Road near Shiv Mandir PW-16 (Sugan Lal) along with Constable Balbir went to the spot. Sakal Dev Yadav and Anjil informed them that the boy was taken in the PCR van to police station Keshav Puram. The child was medically examined at BJRM hospital. PW-9 (Madan Singh), Record Clerk, has proved the MLC (Ex.PW-9/A) which

shows that Mohit was taken to BJRM hospital, Jahangir Puri on the night intervening 05.06/03.2003 at 12:40 A.M. In the 'alleged history' recorded in the MLC, it was mentioned that the child was found on road side by PCR. Injuries including three small lacerated wounds on right parietal region were found on the child. Injuries were simple caused by blunt object. PW-5 Ram Chander was informed about the recovery of his son. The circumstances in which the child was recovered strengthens the version given by PW-12 (Mohit). The assailants were known to the child. It seems that they inflicted injuries with an intention to murder him lest the child should expose them if kept alive. The prosecution case is that the accused had abandoned the child presuming him dead. Non-fulfilment of the ransom demand apparently prompted the accused to eliminate the child. The very fact that the child was strangled and hit with a brick on his head and thrown in the drain at a deserted place at odd hours shows that the accused had intended to murder him. It was good luck of the child that his cries attracted Sakaldev and Anjil who in turn informed the police at number 100 and was taken to hospital immediately.

26. The circumstances in which the child was found in the jurisdiction of the police station Keshav-puram much away from police station Sultan Puri where the case was registered, falsify the defence taken

by the accused that no incident of kidnapping occurred and the child was sent to the house of a relative by PW-5 (Ram Chander) to falsely implicate them. The accused did not specify the name of the relative at whose house the child was sent.

27. Minor contradictions, flaws in investigation, improvements made by the witnesses which do not go to the root of the case are not fatal to the prosecution case. Non-recovery of the brick with which the child was injured is inconsequential. There is no inconsistency between ocular and medical evidence. As per the medical opinion, the injuries were caused by blunt object. Non-examination of PWs Sakaldev and Anjil again is not material as they had informed PCR at telephone No.100. They were cited as witnesses to be examined by the prosecution. However, they could not be traced despite issuance of process to secure their presence. They were not witnesses to the incident of kidnapping and demand of ransom.

28. The accused did not give plausible explanation to the incriminating circumstances appearing against them. They did not examine any reliable witness to falsify the positive testimonies of the prosecution witnesses. DW-1 examined by the accused is not a reliable witness as he has narrated the facts which on the face of it are

unbelievable. He testified that on 04.03.2003, after a quarrel with the accused, Ram Chander took the child with him and came back alone at 10:00 P.M. on the same day. On 05.03.2003, he returned with the child at about 2:00 or 2:30 P.M. This story is contrary to the documentary evidence on record. The accused never put the facts deposed by DW-1 (Prem nath) in the cross-examination of prosecution witness including the complainant and victim.

29. In view of the above discussion and our appraisal and analysis of the evidence on record, we have no hesitation to hold that the prosecution has successfully established by clear, cogent and reliable evidence that the accused-appellants kidnapped the child for ransom and attempted to murder him when their demand remained unfulfilled. The findings convicting the appellants for the commission of offences punishable under Section 364A/307/34 IPC are confirmed.

30. Regarding order on sentence, the Trial Court has awarded imprisonment for life to the appellants for committing the offence punishable under Section 364A IPC. However, it has also directed that they shall not be considered for grant of remission till they undergo an actual sentence of thirty five years. In our view, considering the facts and circumstances of the case, there was no justification for imposing this

condition. The same is ordered to be modified and the sentence awarded to the appellants would be imprisonment for life with fine of ₹,25,000/- each, in default of payment of fine all the three convicts shall further undergo Simple Imprisonment for a period of three years each under Section 364A/34 IPC and RI for seven years with fine of ₹5,000/- , in default of payment of fine all the three convicts shall further undergo Simple Imprisonment for a period of one year each for the offence punishable under Section 307/34 IPC. Both the sentences shall run concurrently and the appellants shall have the benefit under Section 428 Cr.P.C.

31. The appeals filed by the appellants stand disposed of, accordingly. The Trial Court record be sent back forthwith.

32. All pending applications are also disposed of.

(S.P.GARG)
JUDGE

(SANJIV KHANNA)
JUDGE

AUGUST 31, 2012

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