

Gaurav Maini
v.
The State of Haryana
(Criminal Appeal No(S). 696 of 2010)
09 July 2024
[B.R. Gavai and Sandeep Mehta,* JJ.]

Issue for Consideration

Courts below, if justified in convicting and sentencing the appellants for the offences punishable u/ss. 364A, 392 and 120B IPC.

Headnotes[†]

Penal Code, 1860 – ss. 364A, 392 and 120B – Kidnapping for ransom – Robbery – Prosecution case that the appellants kidnapped a minor boy for ransom and robbed him, and on payment of ransom of Rs. One crore, the boy was released – FIR was registered by police on the basis of the secret information received by them while patrolling about such offences – Pursuant thereto, first disclosure of the incident made by the grandfather to the Investigating Officer, however, FIR was not registered regarding the alleged kidnapping of the boy – Conviction and sentence of the appellants for the offences punishable u/ss. 364A, 392 and 120B by the trial court – Upheld by the High Court – Correctness:

Held: Entire prosecution story totally concocted and does not inspire confidence – Inherent improbabilities in the versions of the two star prosecution witnesses-father of the kidnapped boy and the kidnapped boy – Prosecution failed to examine the most relevant witness-grandfather which compels the Court to draw an adverse inference against the prosecution – No convincing evidence led by the prosecution to connect the accused persons with the suspected mobile numbers – FIR could not have been registered on the basis of the secret information received by SI because the said information did not disclose the commission of any cognizable offence – If at all, the FIR had to be registered, on the basis of the statement of grandfather recorded by the police officials – However, no such steps taken by the police officials, thus, creates doubt on the bona fides of the actions of the Investigating Agency – Complainant party

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failed to offer logical explanation for failing to file an FIR even after the kidnapped boy had returned home – Delay in taking legal action creates a grave doubt on the truthfulness of the entire prosecution case – Kidnapped boy though knew accused A2 from before and claims to have identified him at the time of the incident however did not disclose his name to the police officials till the statement was recorded by the investigating officer – Also omission of the names of the accused persons in the special report – Furthermore, identification of the accused by the boy not free from doubt – Prosecution case failed to led trustworthy evidence to establish the recovery of the currency notes at the instance of the accused because the disclosure statements were not proved as per law – Currency notes were handed back to father without any order of the Court which is an act of gross misconduct on the part of the Investigating Officer – High Court as well as the trial court failed to advert to these important loopholes and shortcomings in the evidence available on record which are fatal to the prosecution case – Prosecution case is fabricated and the accused were framed in the case for ulterior motive – No iota of truth in the prosecution story – Thus, conviction of the accused appellants by the trial court and as affirmed by the High Court cannot be sustained – Judgment passed by the courts below quashed and set aside – Evidence. [Paras 30, 31, 51-55]

FIR – Registration by police officials merely based on source information – Effect:

Held: Police officials could not register the FIR merely on the basis of such source information without even verifying the fact as to whether any such incident had actually occurred – Very fact that the said FIR was registered by referring to an incident without making any verification from the aggrieved persons clearly shows that the Investigating Agency right from inception had started plotting that the case should proceed in a particular direction – This is a very suspicious circumstance which creates a grave doubt on the conduct of the Investigating Agency. [Para 34]

Code of Criminal Procedure, 1973 – ss. 451, 452 and 457 – Disposal of property – Action of the Investigating Officer in returning the mudammal currency notes to the complainant without any order of the Court – Effect:

Held: Disposal of the case property could only have been done by taking recourse to the procedure contained u/ss. 451, 452 and 457 as the case may be – Investigation Officer had no authority to release

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the currency notes without an order of the Court and his action to the contrary tantamounts to grave misconduct – Trial court causally brushed aside the plea regarding the non-production of the currency notes in the Court observing that the recovered currency notes were released on superdari by the Magistrate – However, the trial court went on to note that the currency notes were never seen after the recovery and were not produced in the Court when the prosecution witnesses were examined – No order for final disposal of the currency notes was passed by the trial court u/s. 452 which is a mandatory requirement – Sheer indifference exhibited by the courts below is shocking, to say the least – Thus, the entire process of recovery of the currency notes is clearly flawed, marked by procedural errors – Courts below erred by not pulling up the prosecution for flagrant disregard of legal procedures and failure to document key details which undermines the prosecution's case. [Para 42]

Code of Criminal Procedure, 1973 – s. 311 – Evidence Act, 1872 – s. 165 – Power to summon material witness, or examine person present – Power to put questions or order production – Ambit of:

Held: Conjoint reading of s. 311 CrPC and s. 165 of the Evidence Act makes it clear that the trial court is under an obligation not to act as a mere spectator and should proactively participate in the trial proceedings, so as to ensure that neither any extraneous material is permitted to be brought on record nor any relevant fact is left out – It is the duty of the trial court to ensure that all such evidence which is essential for the just decision of the case is brought on record irrespective of the fact that the party concerned omits to do so – On facts, grandfather of the kidnapped boy was the first person who came into contact of the police officials and he admittedly disclosed about the incident to Investigating Officer, thus, the grandfather would have been the most vital witness to unfurl the truth of the matter, however, for the reasons best known to the prosecution, he was not examined as a witness in the case – Trial court should have remained vigilant and it was absolutely essential for the Court to have exercised powers u/s. 311 CrPC read with s. 165 of the Evidence Act so as to summon and examine the grandfather in evidence because his evidence was essential for a just decision of the case – Non-examination of the said witness at the trial is a fatal lacuna to draw an adverse inference against the prosecution. [Paras 47, 48, 50]

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Witness – Non-examination of the most relevant witness at the trial – Effect:

Held: Trial court failed to perform its lawful obligation u/s. 311 CrPC rw s. 165 of the Evidence Act – Most vital witness whose deposition was imperative for arriving at the truth of the matter not produced by the prosecution and the trial court took no steps whatsoever to summon him by exercising its powers u/s. 311 CrPC and s.165 of the Evidence Act – Non-examination of the said witness at the trial is a fatal lacuna leading to an adverse inference against the prosecution – Code of Criminal Procedure, 1973 – s. 311 – Evidence Act, 1872 – s. 165. [Paras 47]

Case Law Cited

Pooja Pal v. Union of India and Others [\[2016\] 11 SCR 560](#) : (2016) 3 SCC 135; *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.* [\[2020\] 7 SCR 180](#) : (2020) 3 SCC 216 – referred to.

List of Acts

Penal Code, 1860; Evidence Act, 1872; Code of Criminal Procedure, 1973.

List of Keywords

Kidnapping for ransom; First disclosure; Inherent improbabilities; Delay; Dock identification; Trustworthy evidence; Disclosure statements; Registration of FIR by police officials based on source information; Aggrieved person; Disposal of property; Non-production of the case property; Recovery of the currency notes; Summon witness; Non-examination of witness.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 696 of 2010

From the Judgment and Order dated 19.01.2009 of the High Court of Punjab & Haryana at Chandigarh in CRLA No.779-DB of 2005

With

Criminal Appeal Nos. 695 and 1724 of 2010 and Criminal Appeal No. 584 of 2013

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Appearances for Parties

Ms. Kiran Suri, Neeraj Kumar Jain, Sr. Advs., Ms. Bharti Tyagi, Vikash Kumar, T. N. Singh, Vikas Kumar Singh, Ms. Rajshree Singh, T. Mahipal, Advs. for the Appellant.

S. Udaya Kumar Sagar, A.A.G., Ms. Bina Madhavan, Dr. Monika Gusain, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

1. The appellants were subjected to trial in the Court of learned Additional Sessions Judge, Panchkula(hereinafter being referred to as the ‘trial Court’) in Sessions Case No. 11 of 2003 for the offences punishable under Sections 364A, 392 and 120B of the Indian Penal Code, 1860(hereinafter being referred to as ‘IPC’). *Vide* judgment and order dated 26th September, 2005, the learned trial Court held the appellants guilty for the above mentioned offences and sentenced them as below: -

Provision under which convicted	Sentence
Section 364A IPC	Life imprisonment and a fine of Rs. 10,000/- and in default, further undergo rigorous imprisonment for one year.
Section 392 IPC	Rigorous imprisonment for five years and a fine of Rs. 5,000/- and in default, further undergo rigorous imprisonment for six months.
Section 120B IPC	Life imprisonment and a fine of Rs. 10,000/- and in default, further undergo rigorous imprisonment for one year.

2. Being aggrieved by the conviction and sentences awarded by the learned trial Court, the appellants preferred separate appeals before the Punjab and Haryana High Court. The Division Bench of the Punjab and Haryana High Court dismissed the appeals preferred by the appellants *vide* common judgment dated 19th January, 2009

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affirming the judgment passed by the learned trial Court and upholding the conviction and sentences of the appellants.

3. The aforesaid judgment rendered by the Division Bench of the Punjab and Haryana High Court is subjected to challenge in these four appeals.
4. Since all the appeals arise from common judgment dated 19th January, 2009, the same have been heard and are being decided together by this judgment.

Brief Facts: -

5. On 15th April, 2003 Jai Singh, SI(PW-27), Police Station, Sector-5, Panchkula, while being present near the market of Sector 16, Panchkula along with the police team in connection with patrol duty and crime checking, claims to have received a secret information to the effect that a gang was operating in Panchkula which was indulged in demanding ransom from parents after kidnapping the children and in case of non-payment of ransom, threats were given to eliminate the kidnapped children. It was further divulged in the information that such type of incident had already occurred in Kothi No. 81-A, Sector 17, Panchkula.
6. A *ruqa*(Exhibit-PAA) with these allegations was sent to the police station by Jai Singh, SI(PW-27) based whereupon a formal FIR No. 283 of 2003(Exhibit-PAAA/1) dated 15th April, 2003 came to be registered by Jai Raj, ASI(PW-25) for the offences punishable under Sections 387 and 507 IPC at Police Station, Sector-5, Panchkula. Investigation of the case was assigned to Surjit Kumar(Investigating Officer)(PW-37), Sub-Inspector, CIA, Panchkula. He proceeded to Kothi No. 81-A on 15th April, 2003 where one Shamlal Garg met him and informed that his grandson namely, Sachin Garg(PW-2) had been kidnapped. Shamlal Garg also alleged that they had received ransom calls from two mobile phones bearing Nos. 9815XXXXXX and 9815XXXXXX. Both the numbers were found to be of service provider Bharti Airtel Company. The Investigating Officer(PW-37) made enquires from the office of Bharti Airtel Company and received information that these mobile SIMs had been sold to Kohli Traders, Sector 26, Chandigarh. The Senior Manager of Bharti Airtel Company, Shri Rakesh Michael provided the call detail records of both the mobile

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numbers from 28th March, 2003 to 3rd April, 2003. On an inquiry made from Kohli Traders, it came to light that both the SIM cards had been sold to one Singla Traders, Sector-7, Chandigarh on 24th February, 2003. On an enquiry from the shop of Singla Traders, the Investigation Officer(PW-37) was provided information that these SIM cards had been purchased by two boys from Reena Singla, sister of the owner of Singla Traders. Based on the call data of the mobile numbers as provided by Bharti Airtel Company, it was found that mobile sets bearing IMEI(International Mobile Equipment Identity) Nos. 350179626659830, 350019563917100 and 350609807685060 had been used for operating these SIM cards. The statements of Sachin Garg[kidnapped boy(PW-2)] and Mahesh Garg[(Father of the kidnapped boy(PW-1))] were recorded by Investigating Officer(PW-37) on 20th April, 2003.

7. Mahesh Garg(PW-1) stated that on 2nd April 2003, his son Sachin Garg had gone to play badminton at the playground of Sector 7, Panchkula, in a car, but he did not return till 9:00 pm. Thereupon, he along with his family members made efforts to trace Sachin Garg out. He received calls from Mobile Nos. 9815XXXXXX and 9815XXXXXX and the caller(s) informed them that Sachin Garg(PW-2) was in their custody and demanded ransom to the tune of Rs. 1 crore for his release. The caller(s) also threatened that in case, the ransom demand was not satisfied, Sachin Garg would be eliminated. A threat was also given to eliminate the entire family in case any intimation was given to the police.
8. Fearing for the life of his son, Mahesh Garg(PW-1) arranged money from his relatives, friends and his own bank accounts. He again received calls on 3rd April, 2003 threatening him not to inform the police. He was further directed to reach a designated place with the ransom amount and to wait for further instructions. Accordingly, he took the ransom amount to the address given by the miscreants i.e. Sector 17, Chandigarh, thereafter, to Sector 8, Chandigarh and ultimately to PGI hospital. On reaching there, he received another call and was directed to leave the bag with the ransom amount in his car and to proceed to the emergency ward of the hospital and wait for further instructions. Accordingly, he left the briefcase containing the money in the car and proceeded to the emergency ward of PGI hospital. However, he did not find anyone present there. After some time, he received another call

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asking him to leave the place and wait for another call with the assurance that his son would be released along with the car after the cash amount had been counted and verified. He received another call by which he was informed that his car was parked near the *chowk* of Sector 11/15, Chandigarh. Accordingly, he took the car and proceeded to his house. At about 10:30 pm, another call was received informing him that his son Sachin Garg(PW-2) was standing near the *chowk* of Sector 20, Panchkula. He brought Sachin Garg(PW-2) back home from that place. He again received a call threatening that if any attempt was made to inform the police, then the entire family would be eliminated. Thus, out of fear, they did not approach the police.

9. Sachin Garg(PW-2) in his statement(Exhibit-DB) recorded by the Investigating Officer (PW-37) on 20th April, 2003 under Section 161 of the Code of Criminal Procedure, 1973(hereinafter being after referred to as 'CrPC') stated that on 2nd April, 2003, he had gone to Sector 7, Panchkula in his car for playing badminton. While he was returning home, and had reached near Sector 17, Panchkula, a Maruti car obstructed his path. Three persons came out of the car from which one was carrying a pistol. The said assailant placed the pistol against his head and asked him to shift to the adjoining seat. The second assailant armed with a knife occupied the rear seat. He was then directed to shift to the rear seat. His wrist watch, ATM card, school card, gold chain and some money lying in his pocket were robbed at pistol and knife point. In the meantime, the third assailant who was also armed with a knife took the driver's seat and his car was driven towards the *pulia* where Sachin Garg(PW-2) was blindfolded and shifted into the Maruti car and was taken away to some unknown location. He was kept confined in a room during the intervening night of 2nd and 3rd April, 2003. A person named Gaurav Bhalla was present in the room and he was calling out names of the other accused as Sanjay, Mintu and Gaurav. He was again blindfolded in the evening and was taken in a car and was dropped off at the market of Sector 20, Panchkula with the instruction to remove the blindfold(*patti*) after 10 minutes and stand there and wait for his father. The accused threatened to eliminate his entire family in case intimation of the incident was given to the police. On returning home, he came to know that his father had paid an amount of Rs. 1 crore for securing his release.

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10. Further investigation revealed that Gaurav Maini was using Mobile No. 9814XXXXXX, Gaurav Bhalla was using Mobile No. 9814XXXXXX and Sanjay @ Sanju was using Mobile No. 9814XXXXXX.
11. Based on the statements of Mahesh Garg(PW-1) and Sachin Garg(PW-2), offences punishable under Sections 392, 342, 364A and 506 IPC were added to the case on 20th April, 2003.
12. The accused Pankaj Bansal, Gobind, Amit Verma and Gaurav Maini were arrested on 29th April, 2003. It is alleged that Gaurav Maini suffered a disclosure statement under Section 27 of the Indian Evidence Act, 1872(hereinafter being referred to as 'Evidence Act') divulging that he, along with Gaurav Bhalla, Sanjay @ Sanju and Munish Bhalla had kidnapped Sachin Garg(PW-2), who was released after collecting an amount of Rs.1 crore as ransom. The accused Gaurav Bhalla was arrested on 1st May, 2003 and he too suffered a disclosure statement under Section 27 of the Evidence Act. Likewise, the accused Munish Bhalla and Sanjay @ Sanju also made disclosures to the Investigating Officer(PW-37) under Section 27 of the Evidence Act.
13. Following items were allegedly recovered at the instance and in furtherance of the disclosures made by the accused appellants being Gaurav Maini(A1), Gaurav Bhalla(A2), Munish Bhalla(A3) and Sanjay @ Sanju(A4): -

Name of Accused	Recovered Articles
Gaurav Maini	(i) A wristwatch of Sachin. (ii) Currency notes to the tune of Rs. 17,00,000/- (iii) Cash amount to the tune of Rs. 3,50,000/- from his house (iv) A motorcycle along with papers. (v) One mobile phone marked Digital worth Rs. 7500/- (vi) One gold kara (vii) Cash amount to the tune of Rs. 3,72,500/- from his house (viii) One mobile phone Panasonic bearing IMEI No. 350179626659830

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Gaurav Bhalla	<ul style="list-style-type: none"> (i) Cash amount to the tune of Rs. 18,50,000/- from his locker at Central Bank of India, Sector 10, Panchkula. (ii) Receipt worth Rs. 27,300/- regarding the purchase of a Mobile phone. (iii) A mobile phone worth Rs. 27,000/- (iv) One L.G. Air Conditioner worth Rs. 23,500/- from Cabin No. 20, SCO No. 37, Sector 11, Panchkula (v) Cash amount to the tune of Rs. 5,80,000/- from Cabin No. 20, SCO No. 37, Sector 11, Panchkula
Munish Bhalla	<ul style="list-style-type: none"> (i) Cash amount to the tune of Rs. 20,00,000/- from his locker at Ambala Central Cooperative Bank, Ambala. (ii) An ATM card and school card of Sachin. (iii) One Motorcycle bearing registration No. HR01E-4113 (Bullet) worth Rs. 35,000/- (iv) One Panasonic mobile (v) Cash amount to the tune of Rs. 4,55,500/- from his Battery shop in Mohar Market Ambala City. (vi) His Maruti Car bearing No. HR 35A-0012 used in Kidnapping.
Sanjay @ Sanju	<ul style="list-style-type: none"> (i) Rs. 22,000/- during his personal search. (ii) Rs.20,50,000/- currency notes in denomination of Rs. 500/- from the Almirah of his house. (iii) Rs. 1,28,000/- from a shop (iv) An Air pistol used in the offence. (v) One mobile phone marked Samsung IMEI No. 350019563917100 (vi) A gold chain of Sachin (vii) Amount to the tune of Rs. 40,000/- deposited in his bank account at HDFC bank, Sector 11, Panchkula.

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14. Upon completion of the investigation, a charge sheet came to be filed against seven accused persons in the Court of learned Chief Judicial Magistrate, 1st Class, Panchkula. The offence under Section 364A IPC being exclusively sessions triable, the case was committed to the Court of learned Additional Sessions Judge, Panchkula for trial. The learned trial Court framed charges against the accused Gaurav Maini(A1), Gaurav Bhalla(A2), Munish Bhalla(A3) and Sanjay @ Sanju(A4) for offences punishable under Sections 364A, 392 and 120B IPC. They denied the charges and claimed trial. The remaining three accused namely Pankaj Bansal, Gobind and Amit Verma were discharged.
15. The prosecution examined 37 witnesses and exhibited 125 documents in order to bring home the charges. The accused were questioned under Section 313 CrPC. They denied the prosecution allegations and claimed to be innocent. Gaurav Maini(A1) made a pertinent assertion that he had no concern whatsoever with the alleged crime and the case was totally cooked up. Gaurav Bhalla(A2) stated that he was involved in a love affair with Shivani @ Kaku, daughter of Mahesh Garg(PW-1) since 3 to 4 years prior to the occurrence. Shivani @ Kaku used to send him greeting cards as an expression of love. She often used to ring him up from her mobile phone and landline numbers. On 1st April, 2003, Shivani @ Kaku approached him and pressurized him to elope with her. He tried to reason with her that it was not the right step and advised her to return home. Since, she was pressurizing him for marriage, he assured her that they would marry. He was illegally detained by the CIA officials on 26th April, 2003 and was kept confined and tortured in custody. No recovery was effected from him and all the recoveries were manipulated. The other accused also denied the prosecution allegations and claimed to be innocent. Four witnesses were examined in defence.
16. After hearing the arguments of both the sides and analysing the evidence, the learned trial Court proceeded to convict and sentence the accused appellants(A1, A2, A3 and A4) as above *vide* judgment and order dated 26th September, 2005. The appeals preferred by the appellants against the judgment rendered by the trial Court were rejected by the Division Bench of the Punjab and Haryana High Court *vide* judgment dated 19th, January, 2009 which is subjected to challenge in these four appeals by special leave.

Digital Supreme Court Reports**Submissions of learned counsel for the appellants:-**

17. Ms. Kiran Suri, learned senior counsel representing the accused appellant Gaurav Bhalla(A-2), vehemently and fervently contended that the entire case setup by the prosecution is false and fabricated. For assailing the impugned judgments, learned senior counsel advanced the following pertinent submissions: -
- (i) That the alleged incident of kidnapping and demand of ransom took place on 2nd April, 2003. Even though the kidnapped boy, i.e., Sachin Garg(PW-2) had been released on 3rd April, 2003, the family members took no steps whatsoever to report the matter to the police. This rank silence of the family members and their utter failure to report the matter to the police or the authorities casts a grave doubt on the truthfulness of the entire prosecution case.
 - (ii) That the Investigating Officer(PW-37) went to the house of the kidnapped boy on 15th April, 2003, and recorded the statement of his grandfather Shamlal Garg on the very same day. However, no effort was made by the Investigating Officer(PW-37) to record the statement of Sachin Garg(PW-2) on the same day despite he being available in the house. Sachin Garg(PW-2), categorically stated to the Investigation Officer(PW-37) on 20th April, 2003 that he had identified Gaurav Bhalla(A2) at the time of the incident. Had there been an *iota* of truth in the prosecution case, identity of Gaurav Bhalla(A2) would definitely have been disclosed by Shamlal Garg to the Investigating Officer(PW-37), when his statement was recorded on 15th April, 2003.
 - (iii) That the entire process of recovery of money and other articles at the instance of the accused is totally fabricated and remained unsubstantiated because the arrest memos of the accused were never proved by the prosecution. The accused made pertinent assertion that the police had kept them illegally confined for almost seven days and thus proving of the arrest documents was imperative to arrive at the truth of the case.
 - (iv) That the prosecution, did not tender any evidence regarding the fate of the currency notes allegedly recovered at the instance of the accused. The Investigating Officer(PW-37) candidly admitted that he handed back the currency notes to Mahesh Garg(PW-1)

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of his own accord. As per the learned senior counsel, this action of the Investigating Officer in returning the *mudammal* currency notes to the complainant(PW-1) without any order of the Court, throws grave doubt on the truthfulness of the entire process of disclosures and discovery.

- (v) That the SIM cards in question were not issued in the name of the accused. The prosecution did not lead any evidence whatsoever to show that the accused had ever acquired or were using the mobile numbers from which the ransom calls were allegedly made.
- (vi) That the secret information based whereupon FIR No. 283 of 2003(Exhibit-PAA/1) was registered was not brought on record and thus it is a clear case of concealment of vital evidence warranting adverse inference against the prosecution.
- (vii) That there is no material to show as to when the special report reached the Magistrate concerned pursuant to the registration of the formal FIR No. 283 of 2003(Exhibit- PAA/1).
- (viii) That the accused other than Gaurav Bhalla(A2) were not known to the victim Sachin Garg(PW-2) from before. The Investigation Officer(PW-37) made no effort whatsoever to subject these accused to the Test Identification Parade(TIP) and thus, the dock identification of the accused namely Gaurav Maini(A1), Munish Bhalla(A3) and Sanjay @ Sanju(A4) for the first time in the Court by Sachin Garg(PW-2) is of no value whatsoever. Attention of the Court in this regard was drawn to the deposition of Mahesh Garg(PW-1) who stated that his son was never asked to identify the accused by the police in any identification parade. Learned senior counsel also referred to the cross-examination of Sachin Garg(PW-2) wherein, he stated that once he had gone to CIA with his father and there, he saw the accused from some distance. The police did not record his statement regarding the identification of the accused. Sachin Garg(PW-2) also admitted that he had told his father Mahesh Garg(PW-1) and his grandfather Shamlal Garg that one of the accused was Gaurav Bhalla (A2) and that the other accused were calling out the names of each other. Thus, as per the learned senior counsel, the omission regarding the names of these accused in the previous statement of Sachin

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Garg(PW-2) recorded under Section 161 CrPC is fatal to the prosecution case.

- (ix) That the so-called disclosure statements of the accused as recorded by Munish Kumar, Sub-Inspector(PW-33) and Surjit Kumar, Investigating Officer(PW-37) were not proved as per law. The prosecution failed to prove that the recovered *mudammal* articles including the currency notes were kept securely at the *malkhana* of the police station. In this regard, attention of the Court was drawn to the statement of Investigating Officer(PW-37), highlighting the fact that the said witnesses did not utter a single word regarding the fate of the currency notes after the purported seizure and his failure to explain as to how the same were dealt with after the seizures were allegedly made at the instance of the accused.
 - (x) That the learned trial Court as well as the High Court failed to give due credence to the evidence of the defence witnesses. Stress was laid by the learned senior counsel to the deposition of Manav Malhotra(DW-4) who stated that he often saw Gaurav Bhalla(A2) and Shivani @ Kaku, sister of the kidnapped boy-Sachin Garg(PW-2) together. It was contended that, as a matter of fact, the family members were aware about the ongoing affair between Gaurav Bhalla(A2) and Shivani @ Kaku and were opposed to it and hence, the case of kidnapping for demand of ransom was cooked up so as to put Gaurav Bhalla(A2) and his companions behind bars and sever the relationship.
 - (xi) It was further contended that the defence witnesses, gave affirmative evidence for proving the plea of *alibi* raised by the accused. However, neither the trial Court nor the High Court gave due consideration to the evidence of the defence witnesses and brushed their testimonies aside in a totally perfunctory manner.
18. The learned counsel representing the remaining accused appellants adopted the submissions of learned senior counsel Ms. Kiran Suri.
 19. The court was apprised that accused Gaurav Maini(A1), Gaurav Bhalla(A2), Munish Bhalla(A3) and Sanjay @ Sanju(A4) were in custody for 10 years 11 months(approx.); 9 years(approx.); 7 years 2 months; 10 years 10 months(approx.), respectively.

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20. On these grounds, learned counsel for the appellants implored the Court to accept the appeals, set aside the impugned judgments, and acquit the accused appellants of the charges.

Submissions on behalf of the respondent-State: -

21. *Per contra*, learned counsel for the State, vehemently and fervently opposed the submissions advanced by learned senior counsel for the accused appellants. It was contended that the prosecution case is founded on unimpeachable testimony of the minor boy Sachin Garg(PW-2) who was kidnapped by the accused appellants for demand of ransom. The witness gave clinching evidence identifying and implicating the accused appellants for his kidnapping and release after payment of ransom. The trivial contradictions appearing in the evidence of the witness rather establish that he is a truthful witness and has given a true picture of the incident. The evidence of Sachin Garg(PW-2) finds due corroboration from the testimony of Mahesh Garg(PW-1), 161 CrPC statement of Shamlal Garg recorded by Investigating Officer(PW-37) and the incriminating recoveries effected at the instance of the accused appellants.
22. He contended that the recoveries having been effected proximate to the incident of kidnapping for ransom, the burden of explaining, as to how the incriminating articles including the huge sums of money came into their possession shifted on to the accused appellant by virtue of the presumption provided under Section 106 read with Section 114(a) of the Evidence Act. Since, the accused failed to offer any plausible explanation in this regard the prosecution is entitled to raise the statutory presumption against them.
23. Learned counsel further urged that since the accused appellants had given a grave threat of evil consequences to Mahesh Garg(PW-1), he was justified in not approaching the police for reporting the matter and his silence cannot be treated as an unnatural conduct.
24. He further urged that the trivial contradictions in the evidence of the prosecution witnesses cannot be considered sufficient so as to discard the entire prosecution case which is based on unimpeachable direct as well as circumstantial evidence. He further contended that the trial Court and the High Court have recorded concurrent findings of facts in the impugned judgments after appreciating the evidence available on record and thus this Court should not feel persuaded

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to interfere in the conviction of the accused while exercising the jurisdiction under Article 136 of the Constitution of India. On these grounds, he implored the Court to dismiss the appeals and affirm the impugned judgments.

25. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgments and the evidence placed on record.

Discussion and Conclusion: -

26. At the outset, we are of the opinion that the very inception of the prosecution case is shrouded under a grave cloud of doubt and we shall record our reasons for the above conclusion while discussing the prosecution evidence. It is undisputed that neither the victim Sachin Garg nor his family members ever reported the incident to the police. Sachin Garg(PW-2) deposed that when he was driving on the road dividing Sectors 17 and 18, three miscreants obstructed his path. They had come in a Maruti car. One of them placed a pistol against the head of Sachin Garg and asked him to shift to the adjoining seat. The other assailant was armed with a knife and he directed Sachin Garg to shift to the rear seat of the car and snatched away his gold chain. The person holding the pistol came and sat beside him. The third assailant who too was armed with a knife, occupied the driver's seat and extended a threat. His wrist watch, ATM card, identity card and some cash amount were also snatched away by the same person who had taken the gold chain. The miscreants then put a blindfold on his eyes and drove away the car. Sachin Garg(PW-2) admitted that while being blindfolded, he could identify the driver as Gaurav Bhalla(A2). He was taken to an unknown location where they reached after driving for 45 minutes. He was kept confined in a room for the entire night with the blind-fold. He overheard the accused appellants talking to each other and, thus, he managed to catch their names. Then, he was taken in a car and accused appellants told him that they would be releasing him at a place from where, his father would pick him up. He was extended a threat that in case he disclosed about the occurrence to anyone, his entire family would be eliminated. He was dropped off after some time. He opened the blind-fold(*patti*) and found himself standing in Sector 20, Panchkula. Ten to fifteen minutes later, his father arrived and took him home. Thereafter,

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he came to know that his father had paid a sum of Rs. 1 crore as ransom for securing his release.

27. In cross examination, Sachin Garg(PW-2) admitted that the gold chain which had been snatched by the accused appellants was returned to him at Sector 20, Panchkula and the ATM card was returned to him by the police officials. The witness admitted that he was never called by the police officials to join any identification proceedings. He had randomly gone to the CIA officer with his father where he saw the accused from some distance. A pertinent admission was made by the witness that he had identified the accused appellants and had overheard them taking names of each other and that he had disclosed these facts to his father Mahesh Garg(PW-1) and grandfather Shamlal Garg. The witness also admitted that when the police officials recorded his statement, he did not give the description about the features of the accused.
28. A pertinent suggestion was given by the defence to the witness(PW-2) in cross examination that his sister Shivani @ Kaku was involved in a relationship with Gaurav Bhalla(A2) and that both of them eloped on 1st April, 2003. Shivani @ Kaku returned on 14th April, 2003, whereafter, the case was cooked up by concocting a story against Gaurav Bhalla(A2) and other accused who were his friends and relatives. However, he denied the said suggestion. The witness(PW-2) was confronted with his previous statement under Section 161 CrPC statement(Exhibit-DB) wherein he had named Gaurav Bhalla(A2) as the fourth accused. He admitted that his statement was recorded by the police officials for the first time on 20th April, 2003 and that the police officials had visited his house once or twice earlier.
29. Mahesh Garg(PW-1) testified that his son Sachin Garg(PW-2) had gone to play badminton on 2nd April, 2003 at around 6.00 pm. He did not return till 9:00 pm, on which efforts were made to trace his whereabouts, but he could not be located. At 11:00 pm, a telephone call was received by the witness(PW-2) from an unknown person who demanded a ransom of Rs. 1 crore for the safe return of his son. A threat was given that if police was informed, his son would not remain alive. Fearing for his son's life, Mahesh Garg (PW-1) did not report the matter to the police. However, he discussed the issue with his relatives and friends and collected an amount of Rs.

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1 crore from various sources. The next day, he received a second telephone call informing him the location of the car of Sachin Garg(PW-2) which he collected. He received a third telephone call on 3rd April, 2003 wherein again, the demand of ransom and the threat to kill Sachin Garg(PW-2) was repeated. On the same day at about 7:00-7:30 pm, he received a call directing him to leave his house with the ransom amount. Acting on the directions of the miscreant(s), the witness placed the ransom amount in his car and proceeded towards PGI hospital, Chandigarh. As instructed by the caller, he left the cash in the car and went to the emergency ward of the hospital. Sometime later, his car was seen lying abandoned at the crossing of Sector 11-Sector 15, Chandigarh. The suspects called and told him that Sachin Garg(PW-2) would be released after counting the ransom amount and, thus, he returned home. On the same day, at about 10:30 pm, he got a telephone call intimating that his son had been released in the market area of Sector 20, Panchkula. On receiving this information, Mahesh Garg(PW-1) proceeded to Sector 20, Panchkula and brought his son Sachin Garg(PW-2) back home. One more call was received with a threat that if the police or anyone else was informed, the entire family would be eliminated.

30. We find that there exist inherent improbabilities in the versions of these two star prosecution witnesses i.e. Mahesh Garg(PW-1) and Sachin Garg(PW-2) which go to the root of the matter.
31. Neither of the witnesses stated that the kidnappers allowed Sachin Garg(PW-2) to talk to his family members so as to lend assurance about his safety. In this background, it is hard to believe that Mahesh Garg(PW-1) would rely upon such an unverified telephone conversation and proceed to collect a huge sum of Rs. 1 crore and thereafter, leave it in an unsecured condition inside his car without having any assurance whatsoever regarding the safety of Sachin Garg(PW-2) for whose purported release the ransom amount had been demanded. This is a grave lacuna which brings the entire prosecution case under a cloud of doubt. In the natural course of human conduct, the family members of the kidnapped person would expect and require some kind of assurance about the victim's safety before agreeing to part with a huge sum of money as ransom.

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32. Admittedly, the police had visited the house of Mahesh Garg(PW-1) on two to three occasions before 20th April, 2003, but he never informed them about the incident. Inspite of the statement of Shamlal Garg having been recorded by the police, the FIR was not registered regarding the alleged kidnapping of Sachin Garg(PW-2) and his release after payment of ransom. The FIR(Exhibit-PAA/1) was admittedly registered on the basis of the so-called secret information received by Jai Singh, SI(PW-27) which was also not brought on record.
33. A perusal of the deposition of Mahesh Garg(PW-1) would reveal that he admitted that from the very ransom amount paid by him, he received back a sum of Rs. 95,08,000/- from the Court, but he could not remember the date of receiving the amount. It is however an admitted position as emerging from record that no such order was ever sought for or procured from the Court. Mahesh Garg(PW-1) also admitted that his son Sachin Garg(PW-2) was never asked to identify the accused by the police in any identification parade.
34. Jai Singh, SI(PW-27) deposed that he was on patrolling duty at the market of Sector-16, Panchkula when he received a secret information about a gang operating in Panchkula which was indulged in kidnapping children for ransom and if the amount was not paid, they would kill the victims and that such an incident had occurred in Kothi No. 81-A, Sector 17, Panchkula. The witness(PW-27) recorded a *ruqa*(Exhibit-PAA) dated 15th April, 2003 on the basis of this information and forwarded the same to the Police Station, Sector 5, Panchkula for registration of a case. Acting on the *ruqa*(Exhibit-PAA) forwarded by Jai Singh(PW-27), FIR(Exhibit-PAA/1) came to be registered for the offences punishable under Sections 387 and 507 IPC by Jai Raj, ASI(PW-25). Indisputably, the *ruqa*(Exhibit-PAA) was merely based on a source information and it is totally unacceptable that the police officials could register the FIR merely on the basis of such source information without even verifying the fact as to whether any such incident had actually occurred. The very fact that this FIR(Exhibit-PAA/1) was registered by referring to an incident which took place in Kothi No. 81-A, Sector 17, Panchkula without making any verification from the aggrieved person/s clearly shows that the Investigating Agency right from inception had started plotting that the case should proceed in a

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particular direction. This is a very suspicious circumstance that creates a grave doubt on the conduct of the Investigating Agency.

35. After the FIR(Exhibit-PAA/1) had been registered on the basis of *ruqa*(Exhibit-PAA) received from Jai Singh, SI(PW-27), the investigation of the case was assigned to Surjit Kumar, Investigating Officer(PW-37). The Investigating Officer(PW-37) testified on oath that he proceeded to Kothi No. 81-A, Sector-17, Panchkula where Shamlal Garg met him and gave him two mobile Nos. being 9815XXXXXX and 9815XXXXXX alleging that these mobile numbers were of the kidnappers. The Investigating Officer(PW-37) then proceeded to the Bharti Airtel Company, Mohali to verify the ownership of these two mobile numbers. The administrative official of the Company informed the Investigating Officer(PW-37) that the mobile numbers had been sold to Kohli Traders, Sector-26, Chandigarh on which he proceeded to Kohli Traders and met the proprietor Yogesh Kohli who in turn provided information that the mobile numbers(SIM cards) had been sold to Singla Traders, Sector-8, Chandigarh. He thereupon went to Singla Traders, but could not find anyone there. He again went to Singla Traders on 17th April, 2003, where Niranjana Singla and Reena Singla met him and gave him the details of the persons to whom the SIM cards had been sold. However, no record of this sale was maintained at Singla Traders. Pawan Kumar, Head Constable procured the call details of these two mobile numbers *vide* memo(Exhibit-PV). However, the Investigating Officer(PW-37) did not divulge anything about the identity of the person/s to whom the SIM Cards had been sold by Singla Traders.
36. It is important to note here that as per the version of Investigating Officer(PW-37), Shamlal Garg's statement was recorded on 15th April, 2003 wherein he gave details of the two mobile numbers alleging that these were the mobile numbers of the kidnappers. The Investing Officer(PW-37) did not state that Shamlal Garg complained to him that his grandson Sachin Garg(PW-2) had been kidnapped or that ransom money had been paid to the kidnappers for securing his release. It is not in dispute that Shamlal Garg was not examined as a witness in the case and that Section 161 CrPC statements of Mahesh Garg(PW-1) and Sachin Garg(PW-2) were recorded as late as on 20th April, 2003. Thus, there is a glaring omission manifest from the

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evidence of the Investigating Officer(PW-37) which shows that even after the police officials had contacted the family members of the kidnapped boy on 15th April, 2003, no details were provided by them regarding the alleged incident of kidnapping of Sachin Garg(PW-2) on 2nd April, 2003 or that he was got released after paying ransom to the tune of Rs. 1 crore. This manifest lacuna in the prosecution story is another indication that the entire case is nothing but a cock and bull story.

37. The decision of Investigating Officer(PW-37) in abruptly proceeding to the Bharti Airtel Company, Mohali for verifying the mobile numbers without even requiring Shamlal Garg to file a formal complaint regarding the alleged incident of kidnapping and without recording the statement of the kidnapped boy-Sachin Garg(PW-2), brings the conduct of the Investigating Officer(PW-37) under a cloud of doubt. Shamlal Garg's statement should have put the Investigating Officer(PW-37) on a high degree of alert and his first reaction and lawful obligation would have been to immediately make enquiry from the allegedly kidnapped boy Sachin Garg(PW-2). However, the Investigating Officer(PW-37) delayed recording his statement for almost five days.
38. The Investigating Officer(PW-37) stated that he again went to Kothi No. 81-A, Panchkula on 20th April, 2003 and on that day, he recorded the statements of Mahesh Garg(PW-1) and Sachin Garg(PW-2) under Section 161 CrPC whereafter, offences punishable under Sections 342, 364A, 392 and 506 IPC were added to the case. This gross delay on part of the police officials in collecting tangible evidence regarding the so-called kidnapping and release of Sachin Garg(PW-2) after paying ransom amount is a grave indication of unnatural conduct which has to be kept in mind while appreciating the evidence of the star prosecution witness. In the later part of his examination-in-chief, the Investigating Officer(PW-37) stated about the further steps of investigation including the arrest of the accused, recording of their disclosure statements, recovery of currency notes and other incriminating articles in the sequence which have been narrated *supra* at Para No.13 of this judgment.
39. In cross-examination, the Investigating Officer(PW-37) stated that after the investigation of the case was entrusted to him, he went to the house of Mahesh Garg(PW-1) on 15th April, 2003. A *zimni*

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was recorded in the case file to the effect that Jai Singh, SI(PW-27) had visited the house of Mahesh Garg(PW-1) on 15th April 2003 at about 8:00 pm to make enquiry about the case from Mahesh Garg(PW-1). Admittedly, the statement of Mahesh Garg(PW-1) was never recorded by Jai Singh(PW-27) under Section 161 CrPC. The Investigating Officer(PW-37) further stated that he reached the house of Mahesh Garg(PW-1) at about 10:00 pm on the very same day, the investigation of the case was assigned to him, but Mahesh Garg(PW-1) was not available at that time. Shamlal Garg, father of Mahesh Garg(PW-1) was found present and he made an enquiry about the incident from him. However, the witness did not record the statement of Shamlal Garg under Section 161 CrPC on the premise that Shamlal Garg seemed to be apprehensive and frightened because of old age. However, this seems to be nothing but a lame excuse. The Investigating Officer(PW-37) stated that he had recorded the statement of Shamlal Garg under Section 161 CrPC at a later date. He recorded the statements of Sachin Garg(PW-2) and Mahesh Garg(PW-1) on 20th April, 2003 at about 12:00 noon. Mahesh Garg(PW-1), divulged the names of accused as Gaurav, Sanjay, Munish @ Mintu and Gaurav Maini in his statement under Section 161 CrPC. Subsequently, the Investigating Officer(PW-37) resiled from this version and stated that names of the accused were not disclosed by Mahesh Garg(PW-1), but rather the same were stated by Sachin Garg(PW-2). The Investigating Officer(PW-37) was confronted with the special report(Exhibit-PEEE) prepared by the SHO of Police Station, Sector 5, Chandigarh under Section 173 CrPC wherein, neither the names of the accused nor the title of the case were mentioned. The Investigating Officer explained that in spite of the statements of Mahesh Garg(PW-1) and Sachin Garg(PW-2), being available on the case file, he did not consider it essential to mention the names of the accused in the special report. This omission is again an indication of suspicious conduct of the Investigating Officer(PW-37). The Investigating Officer(PW-37) further admitted that on making enquiry from Niranjana Singla and Reena Singla, he could not gather any information regarding the identity of the person(s) to whom the SIM cards had been sold. The Investigating Officer(PW-37) also admitted that the cash amount recovered from the accused was not available in the Court. The recovered currency notes were deposited with CIA staff, i.e. Male

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Head Constable, Panchkula(hereinafter being referred to as 'MHC'). These currency notes were not in a sealed condition when they were deposited. The currency notes recovered at the instance of the accused were not produced before the Court as the same already been taken on *superdari* by the *Superdar*. He did not remember the name of the MHC. He also could not state whether the MHC had been cited as a witness in the case. A pertinent suggestion was given to the witness(PW-37) that he was deliberately concealing the name of the MHC because amount recovered from Munish Bhalla and Gaurav Bhalla was never deposited with him.

40. At this stage, it would be relevant to mention that the Investigating Officer(PW-37) claimed that the recovered currency notes had been handed over to the *Superdar*, but no order of the Court concerned directing/permitting handing over of the currency notes to anyone is available on record. Admittedly, the recovered currency notes were neither sealed at the time of recovery nor did the prosecution led any evidence to show that the currency notes allegedly seized from the accused were ever deposited in the *malkhana* of the police station. As a matter of fact, on going through the entire record and the evidence of the material prosecution witnesses *viz.* Mahesh Garg(PW-1) and the Investigating Officer(PW-37), we find that the prosecution has not given any evidence whatsoever to explain the fate of the currency notes allegedly recovered at the instance of the accused other than the bald version of Investigating Officer(PW-37) referred to above. No proceedings to prove the purported release of the currency notes on *superdari* were brought on record.
41. Mahesh Garg(PW-1) in his examination-in-chief did not state that he had received the recovered currency notes on *superdari*. Only during cross-examination, did he admit that he had received back an amount of Rs. 95,08,000/- from the Court but could not divulge the date of such receipt.
42. Since the prosecution alleged demand of ransom amount of around Rs. 1 crore and the recovery thereof from the accused without any doubt, the recovered currency notes were in the nature of case property/*mudammal*. The disposal of the case property could only have been done by taking recourse to the procedure contained under Sections 451, 452 and 457 CrPC as the case may be. The Investigation Officer(PW-37) had no authority to release the currency

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notes without an order of the Court and his action to the contrary tantamounts to grave misconduct. At Para 96 of its judgment, the trial Court causally brushed aside the contention of the defence counsel regarding the non-production of the case property(currency notes) in the Court observing that the recovered currency notes were released on *superdari* by the learned Magistrate. However, in the same para, the trial Court went on to note that the currency notes were never seen after the recovery and were not produced in the Court when the prosecution witnesses were examined. The fact remains that there is no indication in the judgment of the trial Court or for that matter of the High Court regarding the date of the order whereby, the currency notes were directed to be returned to Mahesh Garg(PW-1). We further find that no order for final disposal of the currency notes was passed by the trial Court under Section 452 CrPC which is a mandatory requirement. The sheer indifference exhibited by the trial Court and the High Court to this extremely important aspect of the case is shocking, to say the least. Therefore, the entire process of recovery of the currency notes is clearly flawed, marked by procedural errors and grave lacuna which goes to the root of the matter. The trial Court and High Court fell in grave error by not pulling up the prosecution for flagrant disregard of legal procedures and failure to document key details which undermines the prosecution's case.

43. The defence has come up with a pertinent theory that Gaurav Bhalla(A2) and Shivani @ Kaku, daughter of Mahesh Garg(PW-1) and sister of Sachin Garg(PW-2) were involved in a love affair and that Shivani had eloped from her house on 1st April, 2003. Immediately, thereafter, the complainant took steps to get caller IDs installed on the landline numbers operational in his house. In this regard the trial Court recorded its findings at Para 95 of the judgment dated 26th September, 2005 which are reproduced hereinbelow for the sake of ready reference: -

“95. No doubt, the FIR in the present case was recorded on 15.4.2003 on ruqa Ex. PAA sent by PW 27 Jai Singh SI whereas the occurrence took place on 2.4.2003. Ex. DD is a letter dated 9.4.2003 written by S.P. Panchkula to the Spice Tele. Com. Mohali. Document Ex. DE is also a copy of same letter dated 9.4.2003. Ex. DF is also a letter dated 9.4.2003 written by S.P. Panchkula to Bharti

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Mobile Ltd. Mohali. Letter Ex. DG is a letter written by Surjit Kumar SI to the Commercial Officer. Telephone, Panchkula for providing I.D. Caller facility on telephone nos. 566403 and 572139. Even if it is presumed that the above referred letters were issued by the police to the Mobile companies and telephone department prior to the lodging of FIR, even then the prosecution case cannot be dislodged reason being that his delay in lodging the FIR has been explained by the prosecution. It has also been explained why the FIR was not got lodged by the family members of Sachin Garg. PW 1 Mahesh Kumar Garg father of Sachin Garg has stated that the kidnappers after kidnapping his son gave threatening on the telephone repeatedly that in case ransom amount is not paid or police is informed, his son would be killed and due to this reason, he did not report the matter to the police. When a person under threat of life has paid ransom for release of his kidnapped son and if he does not report the matter to the police under constant fear of his and his family life, if the FIR was lodged by the police official, does not amount that it has created suspicion in the present case but in such a case, role of agency must be appreciated. It has also been proved in this case that from the call details of mobile No. 9815475291 and 9815475360 that these were used for demanding ransom amount and calls were given on telephone nos. of Mahesh Garg 2562954 and Mobile no. 9817208181. It has also proved from the record of Airtel Company that three mobile sets bearing IMEI nos. 3501796266-59830, 350019563917100 and 35060980768-5060 were used for these two SIM Cards. From the evidence of PW 33 Manish Kumar SI, it is established from the record of Spice Communication Ltd. that other mobile Nos. 9814783373, 9814688843 and 9814735976 were also registered on the above referred IMEI numbers and it was found that the above referred mobile numbers were pertaining to accused Gaurav Maini, Gaurav Bhalla and accused Sanjay @Sanju respectively. When there is cogent and convincing evidence of the prosecution on record to prove the complicity of the accused persons

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in the commission of offence, then this delay in lodging the FIR and letters Ex. DD. Ex. DE and Ex. DF reflecting the date prior to the FIR do not create such doubt going in favour of the accused but indicting the serious efforts of the police agency to check the crime in the society. Even the name of the accused has not been mentioned in special report Ex. PEEE sent on 20.04.2003, does not make any difference because this special report was sent when offence under section 364-A IPC was added and this was only the purpose for recording the special report. In judgment Ravindra @ Ravi Banshi Gohan's case (Supra), it was held by the Apex Court that FIR should not be on the basis of investigation but should be outcome of investigation. In the present case, FIR is not on the basis of investigation as it was only first information report given by PW 27 Jai Singh ASI when he was on patrolling duty and hence, this judgment does not help the accused in any manner."

44. We find that the aforesaid reasonings assigned by the trial Court are absolutely fanciful and unconvincing. The trial Court held that steps had been taken by the police to install Caller ID facilities on the telephone numbers installed at the house of Mahesh Garg(PW-1) on 9th April, 2003 in order to check the crime. It is not in dispute that the kidnapped boy had returned home on 3rd April, 2003 itself and thus, there was no logical reason whatsoever for Mahesh Garg(PW-1) to have initiated steps for installing Caller ID facilities on the landline numbers thereafter.
45. The delay in lodging of the FIR was sought to be overlooked by both the Courts with a bald observation that the complainant party was under the fear of the threats given by the accused. Indisputably, Sachin Garg had returned home on 3rd April, 2003. Consequently, the complainant party could not be labouring under the fear of threats allegedly given by the accused after the victim had returned home.
46. The Investigating Officer(PW-37) stated that Mahesh Garg (PW-1) was not present in the house on 15th April, 2003. However, it is not the case of the prosecution that even Sachin Garg(PW-2) was not present in the house when the Investigating Officer(PW-37) visited

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Kothi No. 81-A and recorded the statement of Shamlal Garg. Hence, a further doubt is created on the truthfulness of the prosecution case on account of non-examination of Sachin Garg (PW-2) by the police, on the date on which the incident of kidnapping came into the knowledge of the police officials. Thus, the very core of the prosecution case is shaken to its foundation on account of the complainant party failing to inform the police about the incident, in spite of ample opportunities.

47. Shamlal Garg, grandfather of the kidnapped boy-Sachin Garg(PW-2) was the first person who came into contact of the police officials on 15th April, 2003 and he admittedly disclosed about the incident to Investigating Officer(PW-37). In that background, Shamlal Garg would have been the most vital witness to unfurl the truth of the matter. However, for the reasons best known to the prosecution, Shamlal Garg was not examined as a witness in the case. As a matter of fact, the trial Court should have remained vigilant and it was absolutely essential for the Court to have exercised powers under Section 311 CrPC so as to summon and examine Shamlal Garg in evidence because his evidence was essential for a just decision of the case. Section 165 of the Evidence Act permits the Judge to ask any question as he pleases in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant or may order production of any document or thing.
48. A conjoint reading of Section 311 CrPC and Section 165 of the Evidence Act makes it clear that the trial Court is under an obligation not to act as a mere spectator and should proactively participate in the trial proceedings, so as to ensure that neither any extraneous material is permitted to be brought on record nor any relevant fact is left out. It is the duty of the trial Court to ensure that all such evidence which is essential for the just decision of the case is brought on record irrespective of the fact that the party concerned omits to do so.
49. This Court in the case of *Pooja Pal v. Union of India and Others*¹ examined the ambit of powers of the Courts under Section 311 CrPC read with Section 165 of the Evidence Act and held as below: -

1 [2016] 11 SCR 560 : (2016) 3 SCC 135

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“54. It was propounded in *Zahira Habibulla case* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158] that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as *persona non grata*. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that **a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.**

57. It was underlined in *Zahira Habibulla case* [*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158] that if ultimately the truth is to be arrived at, the eyes and ears of justice have to be protected so that the interest of justice do not get incapacitated in the sense of making the proceedings before the courts, mere mock trials. **While elucidating that a court ought to exercise its powers under Section 311 of the Code and Section 165 of the Evidence Act judicially and with circumspection, it was held that such invocation ought to be only to subserve the cause of justice and the public interest by eliciting evidence in aid of a just decision and to uphold the truth.** It was proclaimed that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is, while pronouncing judgment on the cause brought before it by enforcing the law and administer justice and not to ignore or turn the attention away from

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the truth of the cause or the lis before it, in disregard of its duty to prevent miscarriage of justice. That any indifference, inaction or lethargy displayed in protecting the right of an ordinary citizen, more particularly when a grievance is expressed against the mighty administration, would erode the public faith in the judicial system was underlined. It was highlighted that the courts exist to do justice to the persons who are affected and therefore they cannot afford to get swayed by the abstract technicalities and close their eyes to the factors which need to be positively probed and noticed. The following statement in *Jennison v. Baker* [*Jennison v. Baker*, (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)] , was recalled : (QB p. 66)

“... ‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’”

(emphasis supplied)

50. We are fully satisfied that the trial Court failed to perform its lawful obligation under Section 311 CrPC read with Section 165 of the Evidence Act inasmuch as, the most vital witness whose deposition was imperative for arriving at the truth of the matter i.e. Shamlal Garg was not produced by the prosecution and the trial Court took no steps whatsoever to summon him by exercising its powers under Section 311 CrPC and Section 165 of the Evidence Act. The fact that the FIR was not registered on the first disclosure of the incident made by Shamlal Garg to Surjit Singh, Investigating Officer(PW-37) and non-examination of the said witness at the trial is a fatal lacuna which persuades this Court to draw an adverse inference against the prosecution.
51. The trial Court as well as the High Court placed reliance upon the call detail records, concluding that the suspected mobile numbers were in use of Gaurav Maini(A1), Gaurav Bhalla(A2) and Sanjay @ Sanju(A4). However, the fact remains that no convincing evidence was led by the prosecution to connect the accused persons with the afore-mentioned mobile numbers. Furthermore, the prosecution admittedly, did not prove the call detail records in accordance with the mandate of Section 65B of the Evidence Act and hence, the call detail records cannot be read in evidence. Reference in this regard

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may be made to the judgment of this Court in the case of [Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors.](#)²

52. In wake of the discussion made hereinabove, we summarise our conclusions as below: -

- i. That the entire prosecution story is totally concocted and does not inspire confidence.
- ii. The FIR(Exhibit-PAA/1) could not have been registered on the basis of the secret information received by Jai Singh, SI(PW-27) because the said information did not disclose the commission of any cognizable offence. If at all, the FIR had to be registered, the same should have been done on the basis of the statement of Shamlal Garg recorded by the police officials on 15th April, 2003. However, no such steps were taken by the police officials, thereby, creating a grave doubt on the bona fides of the actions of the Investigating Agency.
- iii. That the complainant party failed to offer logical explanation for failing to file an FIR even after the kidnapped boy-Sachin Garg(PW-2) had returned home. It can safely be presumed that once the kidnapped boy had returned home, the threat perception at the hands of the offenders, if any, would have been diluted/disappeared. The delay in taking legal action creates a grave doubt on the truthfulness of the entire prosecution case.
- iv. That the kidnapped boy-Sachin Garg(PW-2) knew accused Gaurav Bhalla(A2) from before and claims to have identified him at the time of the incident but in spite thereof, the name of Gaurav Bhalla(A2) was not disclosed to the police officials up to 20th April, 2003 which completely demolishes the veracity of the prosecution case. The omission of the names of the accused persons in the special report forwarded by Investigating Officer(PW-37) to his superior officials is also vital and creates further doubt on the conduct of the Investigating Agency.
- v. It is an admitted fact that the accused appellants other than Gaurav Bhalla(A2) were not known to the kidnapped boy-

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Sachin Garg(PW-2) and they were identified by him for the first time in the dock during deposition in the Court. This creates a doubt on the dock identification of these accused by Sachin Garg(PW-2) who also admitted in the cross-examination that the accused persons were shown to him and his father by the officers of the CIA. This admission lends further succour to the conclusion that the identification of the accused by the witness Sachin Garg(PW-2) is not free from doubt.

- vi. That the prosecution case failed to led trustworthy evidence to establish the recovery of the currency notes at the instance of the accused because the disclosure statements were not proved as per law. Furthermore, the currency notes were handed back to Mahesh Garg(PW-1) without any order of the Court which is an act of gross misconduct on the part of the Investigating Officer(PW-37). Rather, this Court is compelled to observe that perhaps the entire exercise of recording disclosure statements and the recovery of the currency notes is totally sham and that is why, the currency notes were neither deposited in the *malkhana* of the police station/bank nor were the same produced in the Court thereby, creating strong doubt on the very factum of the recovery.
 - vii. That the prosecution failed to examine the most relevant witness, namely, Shamlal Garg which compels the Court to draw an adverse inference against the prosecution.
53. The High Court as well as the trial Court failed to advert to these important loopholes and shortcomings in the evidence available on record which are fatal and completely destroy the fabric of the prosecution case.
54. As a consequence, this Court is of the firm opinion that entire story of the prosecution is nothing but a piece of fabrication and the accused were framed in the case for ulterior motive. There is no *iota* of truth in the prosecution story what to talk of proof beyond all manner of doubt which establishes the guilt of the accused. The fabric of the prosecution case is full of holes which are impossible to mend. Thus, conviction of the accused appellants as recorded by the trial Court and affirmed by the High Court cannot be sustained. The impugned judgments do not stand to scrutiny.

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55. Resultantly, the judgment dated 26th September, 2005 passed by the trial Court and the judgment dated 19th January, 2009 passed by the High Court are hereby quashed and set aside and the appeals are accordingly allowed.
56. The appellants are acquitted of the charges. They are on bail and need not surrender. Their bail bonds are discharged.
57. Pending application(s), if any, stand(s) disposed of.

Result of the case: Appeals allowed.

[†]Headnotes prepared by: Nidhi Jain