

(2010) 07 DEL CK 0264
In the Delhi High Court
Case No : Criminal Appeal No. 13 of 2008

Saurabh Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 120B, 34, 364A

Citation : (2011) 1 JCC 141

Hon'ble Judges : Ajit Bharihoke, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sandeep Sethi, Anurag Jain, for Criminal Appeal Nos. 13 and 70 of 2008 and Raman Sahney, for Criminal Appeal No. 62 of 2008, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision : Disposed Off

Judgement

Ajit Bharihoke, J.—Above three appeals are directed against the impugned judgment in Sessions Case No. 74/06, FIR No. 558/2000 in terms of which the Appellants Punit Suneja, Vineet Suneja, Ram Bahadur, Saurabh Gupta and Nitin Aggarwal have been convicted for the offences punishable u/s 120B IPC and Section 364A IPC read with Section 120B IPC for abducting Nidhi, daughter of Narender Jain for ransom in furtherance of their criminal conspiracy, as also against the consequent order on sentence dated 07.09.2007.

2. Briefly stated, case of the prosecution is that on 22.09.2000 at about 11:05 am, an information was received at P.S. Ashok Vihar from the police control room that a girl aged 23-24 years has been abducted in a black car from near A-1/13, Shakti Nagar Extension. This information was recorded as DD No. 25B (Ex.PW15/A) and copy of the DD report was sent to SI Satya Prakash through Constable Rajesh for necessary action.

3. On 22.09.2000 at around 11:30 am, complainant Ankur Jain (PW23) was informed by one Anupam (PW16) of STG Computer Centre on telephone that his

cousin Nidhi Jain (PW1) has been abducted by some boys. On this, he along with his uncle Narender Kumar (PW2) and his cousin Ajay Jain immediately proceeded for STG Computer Centre. On their way to the Computer Centre, Ankur Jain made a telephone call at his house and he was told that some unknown person has telephonically demanded a ransom of Rs. 30 lakhs. On hearing this, PW Narender Kumar went back to his house and he along with his cousin Ajay Jain reached at STG Computer Centre. There he came to know that when Nidhi Jain, after attending the class, was in the process of opening the lock of her car, one black coloured Cielo Car with dark window panes stopped near her and Nidhi was forcibly pushed into the car and the car was driven away.

4. SI Satya Prakash (PW26) reached at the spot of occurrence and recorded the statement of Ankur Jain Ex.PW23/A wherein he narrated the above referred facts. SI Satya Prakash appended his endorsement Ex.PW26/A on the said statement and sent it to the Police Station through Constable Rajesh, on basis of which formal FIR u/s 364A/34 IPC was registered at the Police Station.

5. SI Satya Prakash inspected the spot and prepared a rough site plan of the place of abduction. Crime Team was called at the spot but despite of the efforts, the registration number of the Cielo Car could not be found. The descriptions of the car as well as physical features of the abducted girl Nidhi were flashed to all the SH Os in Delhi.

6. On the same day, SI Satya Prakash visited the house of the prosecutor Nidhi Jain. On enquiry from her father Narender Kumar Jain, it was revealed that the kidnappers had initially demanded ransom of Rs. 30 lakhs, but they later reduced their demand from Rs. 30 lakhs to Rs. 10 lakhs. Narender Kumar Jain was making preparation to go to deliver the ransom amount. The Investigating Officer asked PW Narender Kumar Jain to disclose the details, but Narender Kumar Jain told him that, he would tell all the facts after securing the release of his daughter.

7. The Investigating Officer advised Narender Kumar Jain to append his signatures on first and last currency notes of the packets of ransom amount of Rs. 10 lakhs, which comprised of 20 packets of Rs. 500/-each. Shri Narender Kumar Jain accordingly signed first and last currency notes of each packet and left alone to deliver the ransom amount.

8. On 23.09.2000, the Investigating Officer came to know that the prosecutor had returned back home. Thus, he went to the house of the prosecutrix and recorded her statement. Thereafter, the Investigating Officer along with PW Narender Kumar Jain proceeded in search of the kidnappers. On the way, they met Inspector Jagbir Singh Malik and Special Staff Team near Britannia Chowk and they were also taken along. At about 11:15 am when the police party was present near Punjabi Bagh Club, on the pointing of PW Narender Kumar, one Maruti Car No. DL 6CC 3396 was stopped and checked. There were two boys in the Maruti Car. On enquiry, those boys disclosed their names as Nitin Aggarwal S/

o Arun Kumar R/o WZ-16, Punjabi Garden, Punjabi Bagh, Delhi and Saurabh Gupta S/o Arun Kumar R/o Jaidev Park, East Punjabi Bagh, Delhi. Narender Kumar Jain identified Nitin Aggarwal as the person who had come on Scooter No. DL 4SQ 9693 following the aforesaid Maruti Zen for collecting the amount of ransom.

9. Both Nitin Aggarwal and Saurabh Gupta were searched and a sum of Rs. 3,50,000/- out of the ransom money was recovered from Nitin Aggarwal, whereas a sum of Rs. 1 lakh out of the ransom money was recovered from the possession of Saurabh Gupta. Both of them were arrested and the money recovered from them was seized vide separate seizure memos. The Maruti Zen Car was also seized.

10. Nitin Aggarwal and Saurabh Gupta were interrogated. They both made disclosure statements. Their three accomplices, namely Vineet Suneja, Punit Suneja and Ram Bahadur @ Raj Bahadur were arrested from Punjabi Park. On search, Rs. 4 lakhs contained in a suitcase and a mobile phone was recovered from the possession of Vineet Suneja. From the search of Ram Bahadur, a bundle comprising of Rs. 50,000/- was recovered. Similarly, from the possession of accused Punit Suneja, a bundle comprising of Rs. 50,000/- was recovered.

11. The black Cielo Car No. DL 4CD 9388 which was used for kidnapping was found parked near the Punjabi Bagh Park. Crime Team was called for inspection of said car. During inspection, some strands of hair were recovered from the backseat of the car which were converted into a sealed packet and taken into possession by the police. The car was also taken into possession.

12. Punit Suneja, Vineet Suneja and Ram Bahadur were interrogated and their disclosure statements were recorded. On 23.09.2000 said three accused persons led the police party to the house of Jatin Kharab, 50/17, East Punjabi Bagh, Delhi, who was also arrested.

13. On 24.09.2000, Vineet Suneja, Punit Suneja and Ram Bahadur were produced in the court in muffled face, whereas Nitin Aggarwal, Saurabh Gupta and Jatin Kharab were produced in un-muffled face. Application for holding test identification parade of Vineet Suneja, Punit Suneja and Ram Bahadur was moved. Punit Suneja refused to participate in the TIP, whereas the other two accused participated in the TIP and they were correctly identified by the prosecutrix Nidhi Jain.

14. Statement of Nidhi Jain u/s 164 Code of Criminal Procedure was also got recorded on 30.09.2000. Accused Ganga Das was arrested and produced before the Magistrate in muffled face with a request for conducting test identification parade to fix his identity. Accused Ganga Das refused to participate in the TIP. Though police custody remand of Ganga Das was obtained to recover his share of ransom amount but nothing could be recovered.

15. Hair samples of prosecutrix Nidhi Jain were obtained. Her hair sample along

with the hair seized from the backseat of Cielo Car were sent to FSL, Malviya Nagar for comparison. Chance finger prints lifted from the Cielo Car were also sent for comparison with the specimen finger prints of the accused persons and Nidhi Jain. Reports of finger print and FSL report were collected. As per the FSL report, the hair sample of Nidhi Jain matched with the hairs recovered from the rear seat of the car. The fingerprints of Ram Bahadur and Punit Suneja also tallied with the chance fingerprints lifted from the Cielo Car. The call details of the mobile phone were also collected. On conclusion of the formalities of investigation, the Appellants as well as their co-accused Jatin Kharab and Ganga Das were challaned and sent for trial.

16. We may note that Ganga Das @ Ajay Kumar expired during pendency of the trial, as such proceedings against him stood abated. Accused Jatin Kharab was discharged by the learned Additional Sessions Judge vide order dated 24.02.2001.

17. The Appellants were charged by the learned Additional Sessions Judge for the offences punishable u/s 120B IPC as well as u/s 364A IPC read with Section 120B IPC. The Appellants pleaded not guilty to the charges and claimed to be tried.

18. In order to bring home the guilt of the Appellants, prosecution has examined 34 witnesses in all.

19. On conclusion of the prosecution evidence, statements of the respective accused persons were recorded u/s 313 Code of Criminal Procedure. The Appellants, in their respective statements, denied the prosecution case in its entirety and claimed that they have been falsely implicated in this case. Appellant Nitin Aggarwal examined DW1 Shri Rajiv Chawla and DW2 Satish Sehgal in his defence. They have claimed that on 23.09.2000, 10/12 police officials came to the house of Shri S.P. Aggarwal, grandfather of Appellant Nitin Aggarwal and took him as well as his scooter to the Police Station. When they inquired from the police officials about reason for their taking Nitin Aggarwal to Police Station, they were told that he was wanted in some investigation.

20. Learned Sh. Sandeep Sethi, Sr. Advocate appearing on behalf of the Appellants Saurabh Gupta and Nitin Aggarwal in Criminal Appeals Nos. 13/2008 and 70/2008 has taken us through the impugned judgment and submitted that the learned Trial Judge has found them guilty of conspiracy for the reason that as per the testimony of PW2 N.K. Jain, they both came to collect the ransom money from him on the night intervening 22nd and 23rd September, 2000 and also for the reason that on 23.09.2000, they were found in a white Maruti Zen Car with "Sony" sticker and on search, Rs. 1 Lakh comprising of two wads of Rs. 500/- each was recovered from the possession of Appellant Saurabh Gupta and Rs. 3.5 Lakhs comprising of seven wads of Rs. 500/- each was recovered from the possession of the Appellant Nitin Aggarwal, which currency notes were identified by PW2 N.K. Jain as part of the ransom money on the basis of his signatures

being there on the first and last currency note of those wads. Learned Senior Advocate submitted that the evidence of PW2 Sh. N.K. Jain on both the counts is highly unreliable and also that the story put forth by the prosecution regarding the manner in which the ransom amount was collected and also regarding the arrest of these two Appellants and recovery of part of ransom amount from their possession is unnatural, thus, not reliable.

21. As per the version of PW2 N.K. Jain, police came at his residence on the night of 22.09.2000. On the instructions of the Investigating Officer, he signed first and last currency notes of twenty wads of Rs. 500/- each, which he carried to deliver to the abductors in a TSR at 11:00 pm in the night. Thereafter, he went to Chest Clinic, Gulabi Bagh and from there, on telephone instructions of the abductors, he kept on moving around at various places and ultimately when he reached at Raja Garden Chowk, he was instructed to move straight towards Maya Puri and when his TSR reached near Maya Puri Chowk, it was stopped by one white Maruti Zen Car and a person (Saurabh Gupta) got down from said car. In the meanwhile, one other person (Nitin Aggarwal) came on a two wheeler scooter. He also joined Saurabh Gupta and they demanded the bag containing the ransom amount from him, which he handed over to them and the bag was carried by the person who came in the Maruti Zen. PW26 SI Satya Prakash has claimed that the police party also followed the TSR in an official vehicle, but they lost track of the TSR on Punjabi Bag Road because of heavy traffic. If aforesaid version is to be believed, then it is apparent that the Investigating Officer had tried to set up a trap to catch the abductors red-handed. If that was so, under the natural course, of circumstances, the Investigating Officer was expected to note down the number of the TSR in which N.K. Jain left to deliver the ransom amount and also particulars of the TSR driver so as to ensure that there was a witness to corroborate the version of PW2 N.K. Jain. There is nothing on record to show that SI Satya Prakash took those steps which were naturally expected from an experienced Investigating Officer. This circumstance cast a doubt against the prosecution story regarding the manner of the delivery of the ransom amount to the abductors. Further, it does not appeal to reason that if Saurabh Gupta and Nitin Aggarwal were deputed to collect the ransom amount from PW2 N.K. Jain, why they would go to collect the amount on two different vehicles. Further, PW2 N.K. Jain, in his testimony, could not definitely identify either Saurabh Gupta or Nitin Aggarwal as the persons who had come to collect the ransom amount from him. In response to a court question on whether he was sure about those two persons being present in the court or not, he responded "Yes those persons are present in the court amongst six accused but I can't identify them". From this, it is apparent that PW2 N.K. Jain was not definite about the identity of the two persons who allegedly came to collect the ransom amount from him. From the above circumstances, we find it difficult to conclude that Appellants Saurabh Gupta and Nitin Aggarwal had actually gone to collect the ransom amount on the night of 22.09.2000.

22. Another incriminating circumstance relied upon by the prosecution to connect

the Appellants Saurabh Gupta and Nitin Aggarwal with the conspiracy to abduct Nidhi Jain for ransom is the purported recovery of the part of ransom amount from the said two Appellants when they were found in a white Maruti Zen Car near Punjabi Bag Club. It is claimed by the Investigating Officer SI Satya Prakash (PW26) that in the morning of 23.09.2000, after the return of prosecutrix Nidhi Jain, he took along PW2 N.K. Jain for the investigation of the case. When they reached at Britannia Chowk in the car of PW2 N.K. Jain, they met Inspector Jagvir Mallik and his staff, who also joined them. From Britannia Chowk, they went to Punjabi Bag Club. When they reached near the red light crossing, they saw a Maruti Zen coming from the side of Punjabi Bag. PW2 N.K. Jain identified the car and told him that it was the same car in which one of the accused had come to collect the ransom amount. Thus, the car was stopped. Appellants Saurabh Gupta and Nitin Aggarwal were travelling in that car and when they were searched, a sum of Rs. 3.5 Lakhs comprising seven bundles of Rs. 500/- denomination was recovered from the possession of the Appellant Nitin Aggarwal and Rs. 1 Lakh comprising of two bundles of Rs. 500/- denomination were recovered from the possession of the Appellant Saurabh Gupta, which money was identified by PW2 N.K. Jain from his signatures on first and last currency notes of each wad as part of the ransom amount. Though, PW2 N.K. Jain has also deposed in almost similar manner but his version is contradictory to the version of the Investigating Officer on one material aspect i.e. as per PW2, the white Maruti Zen was found parked on the road-side, whereas the Investigating Officer has stated that Maruti Zen Car was found coming from the side of Punjabi Bagh. According to PW2 N.K. Jain, he identified the Maruti Zen Car on the basis of "Sony" sticker pasted on the rear glass of the car. This version of PW2 N.K. Jain appears to be highly unnatural. It is improbable that the witness could have identified the Maruti Zen Car only on the basis of "Sony" sticker. Further, the prosecution story regarding the arrest of the Appellants and the recovery is too good to be true. It cannot be a sheer coincidence that while aimlessly moving around in Punjabi Bag area, the police party came across the said Maruti Zen and it was also identified by PW2 N.K. Jain on the basis of a sticker pasted on the same. Further, PW2 N.K. Jain has stated in his cross-examination that at the relevant time, his car was being driven by his driver. The said driver has not been cited or produced as a witness. There is no explanation on the record as to why the driver, who was the most independent person in the police party, was not made a witness to the arrest and recovery of the ransom amount from the possession of the Appellants Nitin Aggarwal and Saurabh Gupta. In view of the above circumstances, the evidence of the prosecution relating to the complicity of Appellants Nitin Aggarwal and Saurabh Gupta in the conspiracy to abduct Nidhi Jain is highly suspect. Therefore, we find it difficult to sustain the conviction of the Appellants Nitin Aggarwal and Saurabh Gupta on charges u/s 120B IPC and Section 364A IPC read with Section 120B IPC.

23. Coming to Crl.A. No. 62/2008 filed by the Appellants Punit Suneja, Vineet Suneja and Ram Bahadur, learned Shri Raman Sahney, Advocate appearing on

behalf of the above referred three Appellants has submitted that the impugned judgment holding them guilty of charges is based upon wrong appreciation of facts. He submitted that the learned Additional Sessions Judge failed to appreciate that the testimony of the star witness Nidhi Jain-PW1 and her father Shri N.K. Jain-PW2 suffers from several infirmities, making their testimony unworthy of reliance. We are not reproducing the arguments for the sake of brevity and we propose to deal with those arguments at later stage.

24. Learned Counsel for the State, on the other hand, argued in support of the impugned judgment. He submitted that the learned Trial Judge has rightly relied upon the evidence of PW1 Nidhi Jain as well as PW2 Shri N.K. Jain which finds corroboration from the testimony of the other, to hold the Appellants guilty of the offence of conspiracy to abduct and also for the offence of abducting the prosecutrix Nidhi Jain for ransom in furtherance of the conspiracy.

25. In view of the rival contentions made by the parties, the first question which arises for determination is whether or not prosecutrix Nidhi Jain was abducted and if so, who are the abductors?

26. The star witness of the prosecution to prove abduction is PW1 Nidhi Jain. She has deposed that on 22.09.2000, she went to attend computer class at STG Institute, Shakti Nagar in her Honda City Car. After the class was over, she proceeded towards her car, which was parked near the wall of STG Computer Centre. When she reached near the car, a black Cielo Car with damaged front number plate suddenly came and stopped near her. One person came out of the car after opening the rear door. He pushed her into the Cielo car on the rear seat and the other person sitting on the rear seat of the car pulled her in. Thereafter, said person also sat on the rear seat of the car and the car moved away. She further claimed that she was carrying a mobile phone number 9810039990, which was snatched from her. Sometime later, she was asked by the abductors to give telephone number of the phone at her residence. She gave them the number and she was asked to dial that number. She claimed that she dialled her residential phone number 39951144 and the phone was picked up by her mother. The abductors took the phone from her and they told her mother that she was in their custody and they demanded a ransom of Rs. 30 Lakhs for her release, failing which, they threatened that she would be killed. She was also asked to talk with her mother and she told her mother that those persons were asking for Rs. 30 Lakhs and if the amount was not paid, they would kill her and throw her in a "nala". She stated that from the conversation of those persons, she could make out that driver of the car was Vineet Suneja. Person sitting in the front passenger's seat was Punit Suneja. The person who had pushed her into the car was Ram Bahadur and the person who had pulled her inside the car was Ganga Das. She also claimed that she was again asked to dial her residence number from her mobile phone and this time, the call was attended by her father Narender Kumar and she told her father that the abductors were demanding a sum of Rs. 30 Lakhs. Appellant Vineet then snatched the mobile phone from her

and initially demanded ransom of Rs. 30 Lakhs, but he ultimately reduced the ransom amount to Rs. 10 Lakhs and told her father to bring that amount to Chest Clinic, Gulabi Bagh at 11:00 pm. She further stated that while the car was moving, she was blind-folded by the persons sitting on the rear seat and after some time, that car stopped. She claimed that she was able to see through the slit in the blind-fold that the car was in a drive way of a house where one other white car was also parked. She stated that she was detained in the car throughout the night till 04:00-04:30 am when she was told by the abductors that they had received the money and she would be set free. Thereafter, she was taken to Piragarhi Chowk in the same Cielo Car by the Appellants Punit and Ram Bahadur and dropped there. From there, she took a three wheeler scooter to drop her near Oberoi Maidens. From there, she rang her residence and her family members came and took her to the residence.

27. Learned Shri Raman Sahney, Advocate appearing on behalf of the Appellants Punit Suneja, Vineet Suneja and Ram Bahadur has vehemently argued that the learned trial Judge has committed an error in relying upon the testimony of PW1 Nidhi Jain regarding the abduction. He submitted that PW1 Nidhi Jain is not a reliable witness because her ocular testimony is not corroborated by the documentary evidence. Expanding on this argument, learned Counsel for the Appellants submitted that according to Nidhi Jain, she was abducted at 11:15 am, which fact is belied by the Form-1 filled in at the police control room wherein it is recorded that the information regarding abduction of the girl was received at PCR at 10:56 am and even the DD No. 25B (Ex.PW15/A) pertaining to the abduction was recorded much earlier at 11:05 am at P.S. Ashok Vihar, He also argued that as per PW1 Nidhi Jain, first ransom call was made from her mobile phone No. 9810039990 to her residential phone No. 39951144 within 10 minutes of her abduction and if this version is to be believed, then going by the time of the abduction recorded in the Form-1 filled in at PCR, the first ransom call was made by the abductors somewhere around 11:06 am. This is also belied by the call record Ex.PW19/D, according to which the first outgoing call from the mobile phone of Nidhi Jain to her residential phone No. 39951144 was made at 11:36:45 am. From these circumstances, learned Counsel for the Appellants has urged us to infer that PW1 Nidhi Jain is not a truthful witness and it is not safe to rely upon her testimony.

28. There is no merit in the above contention. On perusal of the testimony of PW1 Nidhi Jain, we find that she had stated that after attending the class, when she was returning back at about 11:00 am a Cielo Car suddenly came and she was abducted in the car. In her cross-examination conducted on behalf of co-accused Jatin Kharab, she stated that in the institute, there was no hard and fast rule that no student could leave the class before 11:00 am. She also stated that on 22.09.2000, it was a day for Practical Class and in Practical Classes the students were free to leave earlier to 11:00 am if he or she had finished the practical assignment. From the above version of Nidhi Jain, it is apparent that she necessarily did not leave the institute after 11:00 am and the user of word

"about" by her is indicative that she had given the time of leaving the institute on the basis of her approximate assessment. Therefore, the marginal time difference pointed out by the learned Counsel for the Appellants between the ocular version of Nidhi Jain and the time regarding information of abduction recorded in PCR form and the DD report cannot be taken as a reason to suspect the testimony of PW1 Nidhi Jain.

29. Learned Sh. Raman Sahney, Advocate for the Appellants also submitted that the story of prosecution regarding abduction of PW1 Nidhi Jain is doubtful because of the fact that the FIR in this case was admittedly recorded on 22.09.2000 at 12:10 Noon. Despite of that, the parents of PW1 Nidhi Jain (prosecutrix) admittedly, were not contacted by the police/Investigating Officer till 11:00 pm and during this period of 11 hours, no effort whatsoever was done to ensure taping of the phone calls of N.K. Jain. This argument, in our opinion, is of no help to the Appellants. It is true that the aforesaid factor is indicative of the callous and non-serious approach adopted by the Investigating Officer, but his negligent conduct, by no means, can be taken as a circumstance to doubt the credibility of PW1 Nidhi Jain, whose version is consistent with the case of prosecution and who has withstood the test of cross-examination.

30. Learned Counsel for the Appellants submitted that it is admitted case of the prosecution that Nidhi Jain was abducted in the Cielo Car at around 11:00 am on 22.09.2000 and she was kept detained in the car till 4/4:30 am in the morning of 23.09.2000, when she was released. If this version is true, there ought to have been some chance fingerprints of Nidhi Jain in the Cielo Car. He submitted that though as per Nidhi Jain, her specimen fingerprints were obtained by the Investigating Officer, yet none of the chance fingerprints tallied with her specimen fingerprints. From this circumstance, learned Counsel has urged us to infer that the story of her abduction and detention in the car is false. He argued that aforesaid doubt against the correctness of the version of PW1 Nidhi Jain is further compounded by the fact that she admittedly refused to subject herself for medical examination.

31. We are not convinced with this argument. Merely because the chance fingerprints lifted from the Cielo Car did not tally with the specimen fingerprints of Nidhi Jain, it cannot be concluded that she was not abducted or detained in the said car. We may note that as per the evidence of Nidhi Jain, she was sitting in between the Appellant Ram Bahadur and his co-accused Ganga Das (since expired) on the rear seat of the car. Therefore, it is apparent that she had no occasion to touch any hard or smooth surface of the car which explains the absence of her chance prints in the Cielo Car. As regards her refusal to subject herself to medical examination, it is of no significance because the charge against the Appellants is only of abduction and ransom and it is not the case of the prosecution that anyone molested the prosecutrix. Once there was no allegation of molestation/rape, there was no occasion for conducting a medical examination during investigation.

32. It was also submitted by the learned Counsel that as per the case of the prosecution, Nidhi Jain was abducted in a black Cielo Car having black window glasses whereas Nidhi Jain during her cross-examination, admitted that the glasses of Cielo Car Ex.P2 produced as case property were plain and there was no windowpane on the driver side door of said car. From this, learned Counsel has urged us to infer that PW1 Nidhi Jain is not a reliable witness. This discrepancy pointed out by learned Counsel for the Appellants, in our considered view, is not so significant as to doubt the testimony of PW1 Nidhi Jain.

33. PW1 Nidhi Jain in her testimony has claimed that she was abducted from inside STG Computer Centre, Shakti Nagar at around 11:00 am. Form-1 of PCR referred to above by the learned Counsels for the Appellants records the information about the abduction of a girl from Shakti Nagar Extension at 10:56 am Ex.PW15/A i.e. DD No. 25B dated 22.09.2000 also records about abduction of a girl in a black colour car from near A-1/13, Shakti Nagar Extension at 11:05 am. These two documents tend to corroborate the version of PW1 Nidhi Jain. Not only this, as per PW1 Nidhi Jain, she was dragged on the rear seat of the Cielo Car and she was made to sit there till early morning when she was released. According to the Investigating Officer, Cielo Car was seized on 23.09.2000 and on inspection of the car, some strands of hair were found on the rear seat of the car. It has also come in evidence that hair samples of Nidhi Jain were obtained and said samples were sent to CFSL along with the hairs recovered from the rear seat of Cielo Car to CFSL for analysis. As per the testimony of Sh. D.S. Chakutra (PW33) and his report Ex.PW33/A, the aforesaid hair samples on examination matched with the hair seized from the rear seat of Cielo Car. Though, this evidence is not conclusive, yet it tends to corroborate the version of PW1 Nidhi Jain. From the above, it can be safely concluded that Nidhi Jain is telling the truth. Otherwise also, there is nothing on record to suggest any enmity or motive on the part of the prosecutrix or her family members which could have impelled them to falsely implicate the Appellants. In our view, it is highly improbable that a Hindu unmarried girl without any motive would make false allegation of her abduction against someone at the stake of her honour and reputation. Thus, we find that the learned Additions Sessions Judge has rightly concluded that Nidhi Jain was actually abducted on the fateful day.

34. Next question which arises for determination is who were the abductors? In this regard, PW1 Nidhi Jain has categorically stated that before she was blind-folded by the abductors, she was able to see their faces. She also stated that from their conversation, she could make out that driver of the Cielo Car was Vineet and the person sitting on the front seat with the driver was Punit. Other two persons on the rear seat were Appellants Ram Bahadur and Ganga Das (since expired). She identified the Appellants Punit Suneja, Vineet Suneja and Ram Bahadur as the abductors. Her testimony regarding identification cannot be doubted because after the arrest of the Appellants, Test Identification Parade was conducted to fix their identity. As per the evidence, PW32 M.S. Datir, Metropolitan Magistrate conducted the Test Identification Parade for fixing the

identity of the Appellants Vineet Suneja and Ram Bahadur as abductors on 30.09.2000 and the witness Nidhi Jain correctly identified them as the abductors. As regards Appellant Punit Suneja, learned Metropolitan Magistrate deposed that when he was produced before him in Central Jail No. 5 by Deputy Superintendent (Jail) for holding of Test Identification Parade, Punit Suneja refused to participate in the TIP, despite of warning that his refusal may be taken as a circumstance against him during the trial. Perusal of relevant proceedings Ex.PW32/C relating to refusal to participate in the TIP by Punit Suneja, explanation given by him for refusal was that he had been shown by the police to the witnesses. There is nothing on record to substantiate aforesaid explanation for refusal to participate in TIP by the accused Punit Suneja; therefore, we are inclined to draw an adverse presumption that had this Appellant participated in TIP, he would have been identified by PW1 Nidhi Jain. Further, as per the prosecution as well as testimony of PW1 Nidhi Jain, she was abducted in a black Cielo Car. Said Cielo Car was seized by the police on 23.09.2000. As per PW11 Narender Singh, finger print experts, on 23.09.2000 on the request of SI Satya Prakash, he had lifted 20 chance prints from the aforesaid Cielo Car number DL-4CD-9388. PW21 Gyanender Singh, Senior Finger Print Expert, FSL, Malviya Nagar has stated that on 08,11.2000, he had compared the chance finger prints developed by PW11 Narender Singh with the specimen finger prints of five persons and on comparison, he found that chance finger prints Q.19 tallied with the specimen finger prints mark X6 of the left ring finger of the accused Ram Bahadur. Similarly, chance finger print Q7 tallied with the specimen finger print S10 of Punit Suneja. However, the specimen finger prints of other three persons namely Vineet Suneja, Ganga Das and the prosecutrix Nidhi Jain did not match with any of the chance prints. This evidence also establishes the presence of Appellant Punit Suneja as well as Ram Bahadur in the Cielo Car. In view of the above, we find no reason to suspect the testimony of PW-1 Nidhi Jain regarding the identity of the Appellants Vineet Suneja, Punit Suneja and Ram Bahadur as abductors. Moreso, because of the fact that neither of the aforesaid three Appellants in their statement u/s 313 Code of Criminal Procedure have come out with any explanation as to why PW1 Nidhi Jain would falsely implicate them at the cost of her reputation.

35. Learned Shri Raman Sahney, Advocate also adopted the arguments advanced on behalf of other two Appellants by learned Shri Sandeep Sethi, Sr. Advocate and submitted that the prosecution story regarding the delivery of ransom amount by PW2 Shri N.K. Jain to the Appellant Saurabh Gupta and Nitin Aggarwal, their subsequent arrest on 23.9.2000 from near Punjabi Bagh Club which purportedly led to the arrest of above referred three Appellants from Punjabi Bagh Park and recovery of their respective shares of ransom amount from each of them is highly doubtful. Learned Counsel submitted that once the story of arrest and recovery is doubtful, it is not safe to rely upon the testimony of PW1 Nidhi Jain regarding her abduction and demand for ransom.

36. We have already concluded that the testimony of PW2 Shri N.K. Jain and the

police officials regarding arrest of Saurabh Gupta and Nitin Aggarwal from near Punjabi Bagh Club and recovery of part ransom amount from their respective possession is not very convincing and it is not safe to rely upon the same. Once the story of prosecution regarding the arrest of the Appellants Saurabh Gupta and Nitin Aggarwal from near Punjabi Bagh Club is found to be unreliable, we do not find it safe to rely upon the evidence of the prosecution regarding the arrest of the above referred three Appellants at the instance of Saurabh Gupta and Nitin Aggarwal leading to recovery of ransom amount from their respective possession. This, however, does not mean that PW1 Nidhi Jain is not a reliable witness. In view of the discussion above, we have already found her to be a reliable witness, therefore, just because of weakness of prosecution case pertaining to the arrest of the Appellants and recovery of ransom amount from them, testimony of PW1 Nidhi Jain cannot be ignored which is consistent with the prosecution case.

37. PW1 Nidhi Jain is categorical that while in the car, she was asked to give the telephone number of her residence and on her mobile phone, calls were made at that number and the abductors demanded ransom of Rs. 30 Lakhs from her parents and in the event of their failure to exceed to their demand, they threatened that she would be killed. Her aforesaid version stands corroborated from the call record pertaining to her mobile phone Ex.PW19/D. Therefore, it is also established on record that she was abducted for ransom and even the ransom was demanded. Thus, from the testimony of PW1 Nidhi Jain, complicity of the Appellants Vineet Suneja, Punit Suneja and Ram Bahadur in her abduction for ransom is established beyond reasonable doubt. Since all the above three Appellants were together in the car at the time of abduction and they were party to the detention of Nidhi Jain till ransom was paid, it could be safely concluded that they had entered into a conspiracy to abduct Nidhi Jain with a view to extort ransom from her parents. Thus, we do not find any infirmity in the impugned judgment so far as the conviction of the Appellants Vineet Suneja, Punit Suneja and Ram Bahadur on charges u/s 120B IPC as well as Section 364A IPC read with Section 120B IPC is concerned.

38. In view of the discussion above, we accept Criminal Appeals No. 13/2008 and 70/2008 of the Appellants Saurabh Gupta and Nitin Aggarwal respectively and set aside their conviction u/s 120B IPC as also u/s 364A IPC read with Section 120B IPC as well as the sentence awarded to them and acquit them.

39. The Appellants Saurabh Gupta and Nitin Aggarwal are in jail. They are, therefore, directed to be released forthwith, if not required in any other case.

40. As regards the Appellants Punit Suneja, Vineet Suneja and Ram Bahadur, being Criminal Appeal No. 62/2008, we do not find any reason to interfere with their conviction and consequent order on sentence. We accordingly dismiss their appeal.

41. The appeals are disposed of accordingly.