

(2006) 12 DEL CK 0127

In the Delhi High Court

Case No : Criminal Appeal No's. 439 and 489 of 2002

Sushil Kumar Nagar

APPELLANT

Vs

State (NCT of Delhi)
 Leelu Singh @ Leelu Vs State of
Delhi

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 307, 34, 363, 364A

Citation : (2007) 1 ILR Delhi 738

Hon'ble Judges : R.S. Sodhi, J;P.K. Bhasin, J

Bench : Division Bench

Advocate : D.C. Mathur and Asha Tiwari, in Criminal Appeal Nos. 439 and 503 of 2002, Ranbir Singh Kundu, in Criminal Appeal No. 466 of 2002, Rishi Maheshwari, Tarannum Ansari and R.K. Maheshwari, in Criminal Appeal No. 489 of 2002, Bankim K. Kulshreshtha and Shivanand, in Criminal Appeal No. 490 of 2002, Rishi Maheshwari, in Criminal Appeal No. 491 of 2002, Ravi Tomar, in Criminal Appeal No. 503 of 2002 and K.B. Andley and K.K. Tyagi and Iftikhar Ahmed, in Criminal Appeal No. 668 of 200, for the Appellant; Ravinder Chadha, APP and Jagdish Prasad, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The appellants above named were charge-sheeted by the police for their having kidnapped for ransom of five crores of rupees a nine years old only son of an affluent businessman of Delhi(PW-5 Virender Puri) on 22-07-97 and have been held guilty and sentenced to undergo imprisonment for life by the Additional Sessions Judge, New Delhi. Although all the appellants were tried together by the trial court but at the stage of final arguments appellant Virender Singh absconded and was declared a proclaimed offender. Other appellants were convicted vide judgment dated 15-5-2002 of the Additional Sessions Judge, New Delhi. Subsequently, appellant Virender Singh was apprehended and the proceedings qua him were revived and he was convicted vide judgment dated

5-5-2005.

2. As far as appellant Arvind @ Narender @ Vijay s/o late Balbir Singh is concerned his appeal does not survive and stands abated since we were informed during the course of hearing of these appeals that he died on 07-05-03 in an encounter with UP Police. Report dated 30-08-06 to that effect was placed before us during the course of hearing by the Additional Public Prosecutor. The remaining seven appeals are now being disposed of by this common judgment since points involved therein are common and for that reason the same were heard also analogously.

3. The facts of the case culled out from the trial Court record are like this: Accused Rajesh Singh Adhikari @ Babloo (who absconded during the trial and was declared a proclaimed offender) and appellants herein were members of a notorious gang of kidnappers. Besides these appellants there were some other members also of the gang who were also involved in the present incident of kidnapping but they could not be arrested by the police during the investigation and so they were kept in column No. 2 of the challan. It appears that most of these gangsters were from Uttar Pradesh. Since Rajesh @ Babloo was living in Delhi his co-gangsters asked him to find out some rich man of Delhi who could be abducted and then crores of rupees could be extracted from that person. The father of the accused Rajesh @ Babloo (PO) used to supply milk in the house of the complainant Virendra Puri(PW-5) and he often used to visit his house because of which he was quite aware about his affluence. Accused Rajesh @ Babloo also used to visit the house of the complainant. The complainant had only one son Tarun. He was studying in Bal Bharti Air Force School, Lodhi Road, New Delhi and was about nine years old in July, 1997(when he was kidnapped). Rajesh @ Babloo knowing that the complainant was a very rich man and had only one son passed on that information to his co-gangsters and all of them then decided to extract huge amount of money as ransom from the complainant by kidnapping his son Tarun.

4. On 21-07-97 appellants Trilok, Leelu, Brijesh, Jeetpal (who was in fact a constable in UP police but joined these gangsters) and their co-accused, Sanjay and Rajesh @ Babloo (proclaimed offenders) stayed during the night at the STD booth of accused Sushil Nagar in Delhi and on 22-07-97 they went to the house of the complainant in Golf Links in two vehicles at about 7.40 a.m. which was the time for the son of the complainant to go to school and started waiting outside the house for the son to come out. Around 7.45 a.m. the complainant Virender Puri along with his wife Smt. Meena Puri(PW-6), his son Tarun (PW-3) and their maid servant Maya(PW-7) came out of the house No. 89 and the moment they started going towards their car appellant Leelu and his co-accused Sanjay(PO) and Brijesh rushed towards them. All these three accused were having fire-arms in their hands at that time. They surrounded the complainant, his wife, son and the maid servant and started snatching Tarun and when the complainant and his wife resisted the three accused fired 5/7 shots from their weapons. The

complainant shouted but these three accused managed to take away his son Tarun in the Zen car driven by accused Trilok. Thereafter the police was informed of the incident. On receipt of that information police officials from the local police station reached the complainant's house where the complainant's statement(Ex.PW-5/A) was recorded in which he narrated the afore-said incident. On the basis of his statement an FIR(Ex. PW-32/A) u/s 364-A/34 IPC was registered at Tuglak Road police station. From the place of occurrence the police seized three fired cartridge cases. The complainant after some days of the kidnapping of his son received a telephone call on 08-08-97 from someone who disclosed his name as Vijay(who as per the prosecution was the deceased accused Arvind @ Narender @ Vijay) and demanded ransom of rupees five crores for the release of his son Tarun. The complainant had also received some letters(Ex. PW-5/C-F) before 08-08-97 demanding ransom.

5. Investigation and search for the kidnapped child and the kidnappers was undertaken by the anti-kidnapping/anti-extortion cell of Delhi police. During the investigation the appellants herein, the proclaimed offender Rajesh @ Babloo and the deceased appellant Arvind @ Narender were arrested on different dates. Accused Rajesh Adhikari @ Babloo was the first one to be arrested on 09-08-97. He disclosed about his co-accused and then on the same day accused Sushil Nagar, Jeet Pal and Dhanvinder Guni were arrested. The kidnapped child was confined at different places by the gangsters and was finally recovered in the wee hours on 10-08-97 from a house in village Bahadurgarh which belonged to one Karamvir Singh (who has, however, neither been prosecuted by the police nor even made a prosecution witness and instead his wife Shashi was made a prosecution witness but she did not support the prosecution regarding recovery of Tarun from her house). At the time of the recovery of the child he was found sleeping with appellants Trilok Singh and Virender Singh. They were also arrested. At the instance of the appellant Brijesh one country made pistol and one live cartridge were recovered. One 5.56 mm/.223" caliber NORINCO rifle and eleven live rifle cartridges were got recovered by the deceased appellant Arvind and when the said rifle was sent to Forensic Science Laboratory along with the three fired cartridge cases recovered from the spot it was found on examination by the ballistic expert(PW-42) that the three fired cartridge cases recovered from the spot had been fired from the afore-said rifle(Ex. PW-34/A-7) got recovered by accused Arvind @ Narender(since deceased).

6. During investigation the police arranged for a Test Identification Parade by a Magistrate in respect of appellants Brijesh, Arvind, Leelu but they refused to participate in the same. On completion of the investigation the investigating agency found that the son of the complainant was kidnapped for ransom by the surviving seven appellants herein along with their other co-gangsters who are proclaimed offenders and the deceased appellant Arvind @ Narender @ Vijay pursuant to a well planned conspiracy. Thirteen persons in all were charge-sheeted out of whom four were shown in column No. 2 of the challan since they could not be arrested. Nine accused persons including the seven surviving

appellants herein were then tried by the Court of Additional Sessions Judge for the offences under Sections 120-B IPC read with Section 364-A, 307/120-B IPC and 368/120-B IPC. Against accused-appellant Brijesh and Arvind charges under Sections 25/27 of the Arms Act were also framed. All the nine accused had pleaded not guilty and claimed to be tried. The prosecution then examined as many as 42 witnesses to prove the charges against the accused persons. Thereafter all the nine accused were examined u/s 313 Cr.P.C. and they pleaded false implication. None of them, however, adduced any evidence in defense.

7. When the trial Court was to hear final arguments accused Rajesh @ Babloo and Virender Singh absconded and were declared proclaimed offenders. The trial Court then after appreciating and analyzing the evidence of the prosecution witnesses held the appellants Trilok, Leelu and Brijesh guilty vide judgment dated 15-05-2002 for the offence u/s 364-A IPC and vide order dated 17-05-2002 sentenced them to undergo imprisonment for life and also to pay fine of Rs. 500/- each and in default of payment to undergo further simple imprisonment of three months. Other four accused were held guilty u/s 364-A read with 120-B IPC and they were also awarded the same sentence as was awarded to Brijesh, Trilok and Leelu. Brijesh was held guilty u/s 27 of the Arms Act also and sentenced to undergo rigorous imprisonment for three years and also to pay fine of Rs. 500/- , in default to undergo further simple imprisonment for three months. Arvind @ Narender @ Vijay was held guilty u/s 25 of the Arms Act also and awarded same sentence as was awarded to Brijesh for his conviction under the Arms Act. These accused were, however, acquitted of the charge u/s 307/120-B IPC and in view of the fact that charge u/s 364-A IPC stood established it was observed by the Court that when the accused had been found guilty of the major offence u/s 364-A IPC they could not be held guilty for the offence u/s 368 IPC. As far as appellant Virender Singh is concerned he was held not guilty u/s 368 IPC vide judgment dated 26-04-2005 of the Additional Sessions Judge, New Delhi and vide order dated 05-05-05 he was also sentenced to life imprisonment.

8. We have bestowed our thoughtful consideration to the rival contentions advanced at the bar by the counsel for the appellants and have ourselves also appraised the evidence of the complainant Varinder Puri(PW-5), his wife Meena Puri(PW-6), their main servant Maya(PW-7) and that of the kidnapped child Tarun(PW-3) based on which primarily the trial Court has held the appellants guilty of the offence of kidnapping for ransom. Most of the other public witnesses examined by the prosecution on certain material aspects of its case had turned hostile. We will now take up the evidence of the four eye witnesses of the kidnapping incident and the criticism of the same made by the learned Counsel for the seven appellants.

9. PW-5 Virendra Puri is the father of the kidnapped child and the first informant of the incident. He has deposed that on 22.7.1997 at around 7.45 a.m. when he along with his wife and maid servant came out of his house to drop his son Tarun

Puri at his school he saw a white Maruti Zen with dark glasses parked near his house without any number plate. He further deposed that when they reached near their vehicle, which was parked at some distance from the gate, three persons came out of that white Maruti Zen car while one person drove the car further ahead. Two of them were armed with country made revolvers and the third one was having a rifle and asked them "hands up" and one of them tried to snatch Tarun from him and one person had pointed a revolver at his head and fired in the air and one placed the revolver at the temple of his wife and he also fired in air. The third one started quarrelling with the maid servant and also fired in air. They resisted for a while and in the meantime the culprits fired five to seven rounds in the air. PW-5 also deposed that his son Tarun Puri was snatched from his hands and put in the Maruti Zen. He ran towards that car and pulled its door and was dragged up to some distance with the car but the culprits managed to escape. He thereafter deposed that somebody called the police who reached at the spot and he made a complaint(Ex.PW-5/A) to the police. He gave the approximate age of the culprits as also their heights. He stated that three empty cartridges were also recovered from the spot and seized by the police. PW-5 Virendra Puri further deposed that on the night of the day of incident accused Rajesh @ Babloo Adhikari came to his house and asked him not to inform the police and also said that he would try to help him in his own way. PW-5 then deposed that after 8 or 9 days he received post cards Ex. PW-5/C-F informing him that his child was with them. PW5 also deposed that he received a phone call in the morning of 08.08.1997 from the father of Sohit, one of the friends of his son Tarun Puri, that one Vijay wanted to talk to him and he would call again so he reached the residence of Sohit in Malviya Nagar and after sometime he received a phone call on telephone No. 6229545 from someone who disclosed his name as Vijay and told him that his son is in their custody and demanded a ransom of rupees five crores to release Tarun and when he asked that man to allow him to talk to his son he said that he would do that after two days and the phone was then disconnected. PW5 Virendra Puri then went on to depose that by the efforts of police his son was recovered in the night of 09.08.1997 and 10.08.1997. On 24th August the police called him at the office of Crime Branch, Chanakya Puri to identify the person who had been arrested and there he identified (that person) accused Brijesh, who had placed a weapon at the temple of his wife and fired in the air and then in the middle of September when he was again called at the Crime Branch he identified accused Leelu out of two persons who were in the police custody to be the person who had also fired in the air on the day of the incident. This witness correctly identified these two accused who were present in Court at the time of his deposition. The complainant also identified appellant Trilok to be the person who was the driver of the Maruti Zen in which his son was taken away. He also identified accused Rajesh @ Babloo (now a proclaimed offender) while deposing that he had given a photo of the father of this accused to the police vide memo Ex. PW-5/G. (This was a photo showing the complainant and father of Rajesh @ Babloo).

10. PW-6 Meena Puri is the mother of the kidnapped child. She deposed that on 22.07.1997 at around 7.45 AM she along with her husband, son and maid servant came out of their house to drop Tarun at school. She saw a white maruti Zen car parked in front of neighbour's house and before they reached near their car three persons came out of that maruti Zen while fourth one kept on sitting at the steering and one of them asked her to raise her hands after placing a revolver at her temple and then fired in the air. She further deposed that two persons started snatching her son Tarun Puri from the hands of her husband and when she tried to resist them the person who had placed revolver on her temple pushed her and her maid servant. She also deposed that three or four rounds were fired in the air and also that one of them had lifted her son Tarun Puri and pushed him in white maruti Zen car on which she and her husband ran after the car and her husband was even dragged for some distance. She further deposed that at the turning they (four persons of the car) hit her husband with some object as a result of which his hold on the car of the culprits loosened. She then deposed that police was called by neighbours which arrived after 10-15 minutes and made enquires from her and others. She thereafter deposed that in the third week of August after the recovery of Tarun by the police she was called at the office of Crime Branch at Chanakya Puri to identify a person who had been arrested and she identified that person who had placed revolver at her temple and whose name transpired to be Brijesh. She also deposed about identification of accused Leelu in the Crime Branch at Chanakya Puri when again she was called there to identify two arrested persons. In Court she identified accused Trilok to be the person who was driving the Maruti Zen Car and she also identified accused Brijesh and Leelu Singh.

11. PW-7 Maya was the maid servant in the house of the complainant. She has deposed that on 22nd July about two years back at about 7.45 a.m. when Virendra Puri and his wife were going to drop their son Tarun Puri at school they saw a maruti zen parked in front of the gate of their house. She also deposed that when they moved ahead three persons came out of the maruti zen and fired in the air while asking Virendra Puri to raise hands and she was pushed by one of them and they snatched Tarun Puri from Virender Puri. She also stated that one person had placed a revolver at the temple of wife of Virendra Puri. She further deposed that Tarun Puri was taken away by the culprits and when police came her statement was recorded by the police. PW-7 then identified accused Brijesh and Leelu to be the persons involved in the incident.

12. PW-3 Tarun Puri is the kidnapped child. Since he was eleven years of age when he had come to Court for evidence the trial Court in order to satisfy itself whether this child would be in a position to understand the questions and give rational answers questioned him generally and from answers given by the child felt satisfied that he was a competent witness and could give rational answers. Then the Judge proceeded to record the statement of Tarun. His part statement was recorded on 26-05-99. That day he deposed that probably on 22.07.1997 when he reached near his vehicle for going to school some persons came there in

a white Zen from behind and gave beatings to his parents and maid servant Maya and also fired in the air and took him(PW-3) away in the white Zen car to some place probably at Rajasthan where they changed his clothes and shifted him to a white Sumo. He further deposed that in the night he was taken to a big house where he was kept for 4-5 days and all the accused persons used to come to that house to meet him. Therefore, he was taken to another house where he used to play with some of the accused persons. At that stage this child witness informed the trial Judge that he was feeling afraid of the accused present in Court but also said that he would, however, still be in a position to depose. Then he went on to depose that he was asked to give phone numbers of his friends and then he gave them the numbers of Sohiti and Varun as 6859355 and 6229545. PW-3 stated that he was recovered by the police but he had forgotten the names of the persons who were present at that time. PW-3 then identified accused Trilok as the driver of the car in which he was kidnapped and regarding others involved in the incident he stated that he had forgotten their faces. At that stage additional public prosecutor sought permission to cross-examine this witness as he had not identified other accused. He was allowed to cross-examine this witness. That cross-examination was, however, deferred for the next date as the prosecutor was not feeling well. On 27-05-2000 his cross-examination by the public prosecutor was recorded. During that cross-examination this witness claimed that he could identify the persons who had taken him away and then he identified accused Leelu Singh, Trilok Singh and Brijesh to be the persons who had taken him away. In answer to a question put by the public prosecutor as to whether he could identify the persons who used to visit the house where he had been kept this witness replied that all the accused persons present in the Court used to visit that place from time to time. PW-3 also stated that he was kept in the house of accused Dhanvinder Guni (appellant in CrI. A. No. 466/2002).

13. PW-31 Shri N.K. Gupta is the Metropolitan Magistrate who was to conduct test identification parade in respect of accused Brijesh, Arvind and Leelu. He has deposed about these three accused having refused to participate in the test identification parade. He proved the TIP proceedings as Ex. PW-31/A to G.

14. PW-39 Inspector Rajender Bhatia is one of the investigating officers of the case. He has deposed that Inspector Ram Mehar who was working with him arrested accused Rajesh @ Babloo and his disclosure statement was recorded by him and that on the basis of information passed on to him by Inspector Ram Mehar he(PW-39) arrested accused Sushil Nagar who made a disclosure statement pursuant to which accused Jeet Pal was arrested and at that time he was found in possession of Tata Sumo No. 7709 which was seized vide memo Ex.PW-37/E. He further deposed that accused Jeet Pal also made a disclosure statement Ex.PW-39/A and offered to get Tarun Puri recovered who was at the house of accused Dhanvinder Guni. Thereafter he led the police party to the house of Dhanvinder Guni in village Moti Rampur but the child was not present there although accused Dhanvinder Guni was present and he was also arrested. PW-39 further deposed that accused Dhanvinder Guni made a disclosure

statement, which was not reduced into writing, that the child was with Karamvir Singh at his house in Bahadur Garh, Meerut. He further deposed that Ct. Jeetpal led the police party to the house of Karambir Singh where the kidnapped child Tarun Puri was sleeping along with accused Virender Singh and Trilok both of whom were then arrested. He further deposed that at the pointing out of accused Jeetpal Maruti Zen car No. DL-9C-1399 was recovered from the house of Karamvir which was used for kidnapping of the child and another Maruti Car No. DL-32S-0700 was got recovered by Ct. Jeetpal from the house of one Mahesh Tyagi at village Julhera Meerut. He thereafter went on to depose about the arrest of accused Brijesh and recovery of one country made revolver and a live cartridge at his instance. He also deposed about the arrest of the deceased accused Arvind and Leelu Singh on 18-09-97 and stated that in the personal search of accused Leelu three visiting cards of Nagar Tele Communications were recovered and on one of the cards mobile No. No. 98110-58098 was mentioned. One driving license in the name of Vijay having the photo of Arvind was also recovered from Arvind besides two slips on which phone Nos. of Ayush and Sohit were mentioned. PW-39 then deposed that accused Arvind got recovered one rifle and 11 live rounds pursuant to his disclosure statement. PW-39 also proved various seizure memos prepared by him.

15. These were the only witnesses whose evidence was referred to during the course of hearing of these appeals. Out of the remaining witnesses some were public witnesses most of whom did not support the prosecution while others were police officials who took some part or the other during the investigation. As noticed already, the trial Court found accused Leelu, Sushil Nagar, Jeetpal, Dhanvinder Guni, Trilok, Brijesh and the deceased accused Arvind @ Narender @ Vijay guilty on the basis of evidence of the witnesses whose evidence we have narrated above. We shall now take up the case of each of the seven appellants whose appeals are to be decided now(eighth one having abated) to find out whether the judgment of the trial Court holding them guilty is liable to be set aside or not. We shall first take up the case of appellants Brijesh, Leelu Singh @ Leelu and Trilok Singh. These appellants, according to the testimony of the complainant Virender Puri(PW-5), his wife Meena Puri(PW-6) and the maid Maya(PW-7), had come to their house in a Zen car and Brijesh and Leelu had used revolvers in the incident of kidnapping while Trilok Singh had driven away the Zen car in which Tarun was pushed after being snatched from his father. The main argument advanced on behalf of the appellants was that since the trial Court itself has held in the impugned judgment that the prosecution has failed to establish the first meeting of the gangsters for hatching the conspiracy at the house of proclaimed offender Pradip Tyagi the very foundation of the prosecution case gets demolished. We, however, do not find any substance in this argument. There is no doubt that it has been held by the learned Additional Sessions Judge in his judgment dated 15-05-2002 that the initial meeting of the culprits allegedly held at Meerut at the house of one Pradeep Tyagi(who was kept in column No. 2 of the challan) for chalking out the kidnapping plan has not been

established but that finding does not affect the prosecution case regarding hatching of the conspiracy since the same is established from other evidence adduced by the prosecution. As far as accused Brijesh, Leelu Singh and Trilok Singh are concerned their involvement pursuant to a pre-planned conspiracy gets established from the testimonies of the complainant, his wife and their maid servant. All these three witnesses could not be discredited in cross-examination on behalf of the accused. The only suggestion put to them in cross-examination was that they had identified these accused at the instance of the police which, of course, they denied. No suggestion was put to these witnesses that neither Brijesh and Leelu had come to their house nor had used any revolver as claimed by them. Similarly, no suggestion was put to the witnesses that Trilok Singh had not driven away the Zen car along with his associates and the kidnapped child. PW-6 Meena Puri was asked as to whether accused Trilok was shown to her by the police. Her answer was that she was never shown the accused before and she had seen him in Court. As far as these three appellants are concerned even the kidnapped child Tarun(PW-3) had identified them correctly in Court as his kidnappers. These appellants were, as per the prosecution witnesses, the participants in the kidnapping incident outside the house of the complainant on 22-07-97. We have no reason to discard the evidence of these witnesses.

16. It was also the argument of the counsel for the appellants that the evidence of the child witness Tarun(PW-3) should not be relied upon since he has been vacillating and changing his stand at every stage of his evidence in Court inasmuch as on the first day of his evidence on 20-05-99 he had identified only Trilok Singh and regarding others involved in the incident he had stated that he had forgotten their faces and it was only when he was cross-examined by the public prosecutor after a year that he implicated other accused and that shows that during the period of one year between his chief-examination and cross-examination he was tutored and made to identify all the accused. It was also contended by counsel for Trilok Singh that his identification in Court without a prior test identification parade during investigation is of no value at all. There is no doubt that Tarun Puri had not specifically named all the accused on 20-05-99 but for this reason evidence of Tarun cannot be rejected. The trial Court record shows that when Tarun was being examined on 20-05-99 he had stated that he was feeling afraid of the accused persons. The trial Court noticing this fear expressed by the child rejected same argument raised on behalf of the accused which has now been raised before us for discarding the evidence of Tarun. The fear of the child cannot be said to be a cooked up story. He was the victim who must have been traumatized during the long period of his confinement by his kidnappers. Seeing those people in Court he must have genuinely felt afraid to identify them all. His gathering courage to identify them on the next date of his evidence cannot at all be said to be a result of tutoring. We reject this argument.

17. The involvement of accused Brijesh and Leelu Singh in the kidnapping of Tarun gets further corroborated from their refusal to participate in the Test Identification Parade which was got arranged by the investigating agency and

which was to be conducted by Metropolitan Magistrate Shri M.K. Gupta(PW-31). He has clearly deposed that accused Leelu, Brijesh and Arvind(since deceased) were produced in muffled faces before him and they had refused to participate in the Test Identification Parade despite his having warned them that their refusal to participate in the identification parade could lead to an adverse inference being drawn against them. During their statements u/s 313 Cr.P.C. appellants Leelu Singh and Brijesh had claimed that they had refused to participate in the identification parade because they were not in muffled faces during custody and they were shown to the witnesses before TIP. However, in view of the statement made by the Metropolitan Magistrate that accused had been produced before him in muffled face and that no reason was given by the accused for refusing to join TIP this Explanation given by the accused in Court cannot be accepted. So, involvement of appellants Brijesh, Leelu Singh and Trilok Singh is clearly established. They had come to the house of the complainant together and went away together with the kidnapped child after resorting to firing. That establishes that they had already hatched a conspiracy for kidnapping the child of the complainant and it was pursuant to that conspiracy only that they kidnapped Tarun Puri(PW-3). As far as Trilok Singh is concerned there is another strong circumstance of his involvement and that is his presence with the kidnapped child at the time of recovery of the child on 10-08-97 as deposed to by the investigating officer PW-39 Rajinder Bhatia whose evidence in this regard could not be discredited and we have no reason to disbelieve him. He had no axe to grind against any of the accused. And since the kidnapped child was taken away in a car which was driven by Trilok Singh from Delhi to Rajasthan, the child must have had sufficient opportunity to see him for a fairly long time and he was visiting him also at the place where he was confined and in fact on 10-08-97 also Trilok Singh was with the kidnapped child when he was recovered there was no necessity of holding any test identification parade for this accused.

18. Now we come to the case of appellants Dhanvinder Guni, Jeet Pal, Sushil Nagar and Virender Singh. Against them prosecution is relying upon the evidence of the kidnapped child Tarun Puri who has testified that all the accused used to come to the house where he was kept after kidnapping him as also on the evidence of police officials. As far as appellant Virender Singh is concerned his guilt is established from the fact that when the kidnapped child was recovered on 10-08-97 he (Virender Singh) was sleeping with the child along with co-accused Trilok. It was the submission of Mr. K.B. Andley, learned Counsel for Virender Singh that evidence of two police witnesses including the investigating officer Inspector Rajender Bhatia regarding the recovery of the child while sleeping in the company of Virender Singh should not be believed as they are highly interested witnesses. However, we do not agree with this submission. Nothing has been brought on record to show that the investigating officer(PW-39) and his colleague PW-37, who was also a witness to the recovery of the kidnapped child on 10-08-97, had any motive to falsely implicate this accused or for that matter his co-accused also. PW-3 Tarun Puri was not cross-examined at all on behalf of

Virender Singh so we can safely rely upon his statement. Even the cross-examination of investigating officer on recovery of the child was mainly confined to non-joining of persons of the locality from where child was recovered as witnesses to the recovery of the child. The investigating officer stated that it was night time so nobody had come to that place. That Explanation is quite reasonable. No suggestion was put to PW-39 that Tarun Puri was not recovered from the place as stated by him or that accused Virender Singh was not found sleeping with the child. In his statement u/s 313 Cr.P.C. also he did not claim that he was not arrested from the house of Karamivir in Bahadurgarh, as is the prosecution case. We have thus no manner of doubt about the recovery of the kidnapped child from the appellants Virender Singh and Trilok Singh and their involvement stands established from the statement of the kidnapped child which gets fully corroborated by the evidence of police officials PWs 37 and 39.

19. It was also submitted by Mr. Andley that there is in any case no evidence to draw an inference that Virender Singh knew that the child was a kidnapped child. This submission is also devoid of merit. Since Virender Singh did not claim that he or his co-accused Trilok Singh knew the child it was for him to explain as to how he was sleeping with that child and that too in the house of someone else. He has not offered any Explanation. That only shows that he was aware that the child with whom he was sleeping was a kidnapped child. Since the child was found sleeping in between Virender and Trilok it can be said that Virender Singh was also wrongfully confining the child Tarun Puri knowing that he was a kidnapped child. So, we cannot accept the submission of his counsel Mr. K.B. Andley that this accused cannot be attributed the knowledge that Tarun Puri had been kidnapped. Normally it is difficult to come across another criminal case on identical facts but we have come across a case decided by the Supreme Court reported as Smt. Saroj Kumari Vs. State of U.P., wherein facts were similar as in this case, as far as appellant Virender Singh is concerned. That was a case of kidnapping of a newly born child from hospital by one woman. At the time of recovery of the child he was found lying on a cot with that woman and one more woman, who was the convicted accused before the Hon''ble Supreme Court in appeal. The kidnapper was convicted u/s 363 IPC. The other woman(appellant Saroj Kumari) was held guilty u/s 368 IPC. Her plea was that no knowledge could be attributed to her that the child with whom she was lying was a kidnapped child and also that alleged confinement of the child by her was also not established. Rejecting that plea the Hon''ble Supreme Court had observed that once kidnapping is established then whether the appellant of that case had the knowledge about kidnapping was a matter of inference to be drawn from the circumstances of the case and since the appellant and her co-accused did not claim that child to be theirs and their case was of total denial of recovery of the child from their company the only legitimate inference that could be drawn was that the appellant must have had knowledge that the child had been kidnapped and she was wrongfully concealing or confining the child. This decision applies on all fours to the case of appellant Virender Singh.

20. Now we come to the case of appellant Dhanvinder Guni. The kidnapped child Tarun Puri (PW-3) has specifically identified him to be person in whose house he was initially confined. Counsel for this appellant had submitted that the child witness had identified Dhanvinder Guni only when he was cross-examined by the public prosecutor and not before that and so no reliance can be placed on such an identification. There is no doubt that Tarun Puri specifically named Dhanvinder Guni when he was cross-examined by public prosecutor but that statement of his was not challenged in cross-examination on behalf of this accused. So, it remained unchallenged. Earlier in his chief-examination also Tarun had stated that all the accused used to meet him at the house where he was kept after being kidnapped. When his testimony has remained unchallenged there is no need of looking for corroboration of his evidence for the involvement of Dhanvinder Guni, as was the contention of the counsel for Dhanvinder Guni. Learned Counsel also had submitted that entire case becomes false since the police has let off Karamvir Singh from whose house the kidnapped child was allegedly recovered. Since the evidence adduced is that the child when recovered on 10-08-97 was sleeping in the company of accused Trilok and Virender and there is no evidence that any other person was with the kidnapped child at the time of his recovery the prosecution case cannot be rejected for this reason. The child was amongst the kidnappers including Dhanvinder Guni for so many days. So, even if no test identification parade was got conducted for Dhanvinder Guni after his arrest his identification in Court by the kidnapped child and his involvement does not become doubtful, as was also the submission of his counsel.

21. A common grievance made on behalf of the appellants was that the Additional Sessions Judge without applying his mind to the evidence adduced by the prosecution framed common questions for all the accused persons at the time of recording of their statements u/s 313 Cr.P.C. and not only that facts which had not been even deposed to by any of the witnesses have been put to the accused persons and that kind of recording of statements of the accused persons has prejudiced them adversely. Our attention was drawn to the questions put to the accused persons and we also find that the learned Additional Sessions Judge has prepared one set of questions and put the same to all of them without even making any consequential changes in the questions. That shows that the learned Additional Sessions Judge did not take this aspect of the matter seriously and appears to have abdicated the function of recording of the statements of the accused either to the prosecutor or to his stenographer. We deprecate this kind of practice. However, we find that due to this fault of the trial Court no prejudice has been caused to any of the accused. The Courts at the stage of recording of statements u/s 313 Cr.P.C. should carefully analyze the entire evidence and then frame the questions to be put to each of the accused by bringing to their notice the relevant incriminating circumstances brought on record by the prosecution. If in the present case that had been done questions would have been materially different in respect of each of the accused persons. We also feel that the learned Additional Sessions Judge has taken out the

material from the confessional statements of the accused and put the same to them without any witness having deposed to about those facts.

22. From the fore-going analysis of the prosecution evidence it stands established and rightly held so even by the trial Court that appellants Brijesh, Trilok Singh, Leelu Singh and Dhanvinder Guni were conspirators for the kidnapping of Tarun Puri and it was pursuant to the conspiracy hatched by them that Tarun Puri was actually kidnapped on 22-07-97 by appellants Brijesh, Leelu Singh and Trilok Singh. It is also established that after kidnapping the child was wrongfully confined by appellants Trilok Singh and Virender Singh. It was also submitted on behalf of these appellants that the prosecution case regarding demand of ransom was against the deceased appellant Arvind @ Narender @ Vijay who had allegedly gave a telephone call from Patiala at the residence of one of the friends of the kidnapped child demanding ransom when he had at that time talked to the complainant Varinder Puri on phone and that Arvind has already expired and as far as these appellants are concerned there is no evidence that they or anyone of them had also made a demand for ransom from the complainant or anyone else and, Therefore, offence u/s 364-A IPC in any case cannot be said to have been made out and consequently to that extent at least the impugned judgment is liable to be set aside and sentence also suitably reduced considering the fact that at the most it can said to be a case of simple kidnapping. This argument, however, cannot be accepted because in a case of conspiracy to commit some crime it is not necessary that each one of the conspirators must be attributed some specific overt act. Once it is established that two or more people had conspired to commit a crime then each one of the conspirators would become liable for the acts committed by the other conspirators individually in pursuance of that conspiracy. In the present case, the evidence adduced by the prosecution clearly establishes that there was a conspiracy to kidnap the complainant's son and he was actually kidnapped and thereafter the complainant did receive a demand for ransom of rupees five crores. So the ingredients of the offence punishable u/s 364-A IPC fully stand established and, Therefore, even if there is no direct evidence of demand of ransom from the complainant by any of the above four appellants that would not absolve them from the liability of punishment for the offence of kidnapping for ransom as provided u/s 364-A IPC. In the established facts of this case the only legitimate inference which could be raised was that the demand of ransom was made by any one of the appellants only pursuant to a pre-planned conspiracy and by none else. They have been rightly convicted and appropriately sentenced.

23. As far as appellant Virender Singh is concerned he has been held guilty only u/s 368 IPC. It was submitted by the learned Counsel for this appellant that since he had been acquitted of the charge of main offence u/s 364-A IPC the sentence of life imprisonment imposed upon him is quite harsh for his conviction u/s 368 IPC. u/s 368 IPC it is provided that anyone found guilty of wrongfully confining a kidnapped/abducted person with the knowledge that the person so confined had been kidnapped/abducted shall be punished in the same manner as

if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such kidnapped/abducted person in confinement. Since in this case it has been found that the kidnapping of the child was for ransom it can only be said that accused Virender Singh was confining the kidnapped child with the intention of getting ransom amount for the release of the kidnapped child and, Therefore, he can be punished in the same manner in which the actual kidnappers have been punished and there is no scope for awarding a lesser punishment to Virender Singh. We, Therefore, maintain his sentence also as awarded by the trial Court.

24. For appellants Jeet Pal and Sushil Kumar Nagar the submission made by their respective counsel was that there is no evidence against them except the bald uncorroborated omnibus statement of the child witness Tarun Puri that all the accused used to meet him during the period of his detention and that statement of the child witness is not sufficient to convict them. Learned Additional Public Prosecutor, however, had argued that the kidnapped child was , in fact, recovered pursuant to the information given by appellant Jeet Pal after his arrest and so he is also fully involved in the kidnapping for ransom as a conspirator. As far as Sushil Kumar Nagar is concerned, it was submitted by the Additional Public Prosecutor that the trial Court has rightly observed in its impugned judgment that involvement of this accused stands established from the evidence of PW-2 Mahavir Nagar, a relative of Sushil Kumar Nagar. As per the prosecution case Sushil Kumar Nagar used to run one STD booth along with PW-2 Mahavir Nagar and at that STD booth appellants Brijesh, Leelu Singh, Trilok Singh etc. had stayed during the night of 21st July, 1997 and from that place on 22nd July they had gone to the complainant's house for kidnapping his son. Sushil Kumar Nagar had allegedly provided a SIM Card to co-accused Rajesh @ Babloo (PO) and a mobile phone of PW-1 Ashok Pant(who is a hostile witness) to be in touch with other gangsters. According to the trial Court even though PW-2 has not supported the prosecution case that Sushil Kumar Nagar used to sit at the STD booth but since he had admitted that he had made a statement before the police that accused Sushil Kumar Nagar used to sit at the STD booth and he has not claimed that he had made a false statement before the police it was clear that accused Sushil Kumar Nagar had been sitting at the STD booth at Patpar Ganj, Delhi and further that since visiting cards of that STD booth were recovered from accused Leelu Singh at the time of his arrest it could be said that accused Sushil Kumar Nagar was connected with the other accused persons and he had rendered effective assistance to them to communicate with each other and to secure desired results. Additional Public Prosecutor submitted that these findings of the trial Court are well founded and warrant no interference by this Court and on these findings Sushil Kumar Nagar could very well be convicted.

25. As per the prosecution case appellant Jeet Pal was arrested pursuant to the disclosure statement of appellant Sushil Kumar Nagar on 09-08-97 and then Jeet Pal had allegedly made a disclosure statement and got recovered the kidnapped

child. PW-39 Inspector Rajender Bhatia has deposed that he had recorded the disclosure statement of accused Jeet Pal Ex. PW-39/A in which the accused had disclosed that he had kidnapped Tarun Puri and kept him at the place of accused Dhanvinder Guni and also that he could get recovered that child. However, a perusal of Ex. PW-39/A shows that there is not even a passing reference in it to accused Dhanvinder Guni or the kidnapped child having been kept at the house of Dhanvinder Guni. In cross-examination PW-39 admitted also that there was no such mention in the said disclosure statement of Jeet Pal. The investigating officer had also deposed that when pursuant to his disclosure statement Jeet Pal took the police party to the house of Dhanvinder Guni in Moti Rampur village, Meerut the kidnapped child was not found there although Dhanvinder Guni was found and he was arrested. He further deposed that when he interrogated accused Dhanvinder Guni he made a disclosure statement, which was not reduced into writing, to the effect that the kidnapped child was with Karamvir Singh at Bahadurgarh, Meerut. Thereafter the police party along with accused Jeet Pal and Dhanvinder Guni went to Bahadurgarh and from there the kidnapped child was recovered. The investigating officer then stated in his cross-examination that Dhanvinder Guni had led to the Gher of Karamvir in village Bahadurgarh and at that time Karamvir was not present. Thereafter he changed his statement and claimed that both Dhanvinder Guni and Jeet Pal had led the police party to the house of Karamvir. From this statement of the investigating officer it becomes doubtful whether the kidnapped child was recovered at the instance of accused Jeet Pal. Just because Jeet Pal was also in the party which had gone to Bahadurgarh after the arrest of Dhanvinder Guni it cannot be said that he only had led the police party to the house of Karamvir. In any case, in view of the statement of the investigating officer himself that it was accused Dhanvinder Guni who had volunteered to get the child recovered from the house of Karamvir it can be said that the kidnapped child was recovered at the instance of Dhanvinder Guni and so benefit of doubt does accrue to Jeet Pal. Admittedly there is no other incriminating piece of evidence against Jeet Pal. Although at the time of his arrest one Tata Sumo was also taken into custody and he is alleged to have got recovered one Zen car but those two vehicles have not been got connected through any evidence with the incident of kidnapping. No witness says that the said recovered Zen car was the same car in which the kidnapped child had been taken away from Golf Links. As far as the kidnapped child's evidence is concerned although he has deposed that all the accused persons used to meet him at the house where he was kept but merely on the basis of that omnibus statement which is not corroborated at all the involvement of this appellant cannot be sustained. In the facts and circumstances of this case we have felt the necessity of corroboration to the testimony of the child witness which is available regarding appellants Brijesh, Trilok Singh, Leelu Singh, Dhanvinder Guni and Virender Singh.

26. Regarding appellant Sushil Kumar Nagar also we feel that his conviction is not sustainable. We are in full agreement with the submission of his senior

counsel Shri D.C. Mathur that this accused had been convicted on conjectures and surmises by the learned trial Court without there being any incriminating evidence against him. Just because PW-2 admitted in his cross-examination by the public prosecutor that he had told the police that Sushil Nagar used to sit at the STD booth in Patpar Ganj that statement made to the police cannot be used as substantive evidence in Court and has been wrongly relied upon by the trial Court. As far as the statement of the child witness Tarun Puri that all the accused persons used to meet him at the house where he was kept after kidnapping is concerned, we are of the view that merely on the basis of this uncorroborated statement of the child the conviction of appellant Sushil Kumar Nagar cannot be sustained and he is also entitled to the benefit of doubt.

27. We, Therefore, dismiss the appeals of appellants Dhanvinder Guni (being Crl. A. 466/2002), Leelu Singh @ Leelu (being Crl. A. 489/2002), , Trilok Singh (being Crl. A. 491/2002), Brijesh (being Crl.A.503/2002) and Virender Singh (being Crl.A. 668/2005). In case any one of them is on bail he shall be taken into custody forthwith to serve out the sentence imposed by the trial Court. However, as far as appellants Sushil Kumar Nagar (appellant of Crl. A.439/2002) and Jeet Pal (appellant of Crl.A.490/2002) are concerned their appeals are allowed and consequently their convictions and sentence imposed on them stand set aside and in case these two appellants are in jail they shall be set at liberty forthwith, if not required in any other case.