
(2013) 01 BOM CK 0063
In the Bombay High Court
Case No : Criminal Appeal No. 1301 of 2007

Yogesh Balasaheb Ingale and Another	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Income Tax Act, 1961 — Section 112, 2, 48, 49, 50
Penal Code, 1860 (IPC) — Section 34, 364A, 417, 419

Citation : (2013) 5 ABR 471 : (2013) ALLMR(Cri) 2066 : (2014) 3 BomCR(Cri) 568

Hon'ble Judges : V.K. Tahilramani, J;Sadhana S. Jadhav, J

Bench : Division Bench

Advocate : S.A. Ingawale, for the Appellant; Shilpa Gajarre-Dhumal, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J.—The appellants/original accused Nos. 1 and 2 have filed this Appeal against the Judgment and order dated 3rd December, 2007 passed by the learned I Adhoc Additional Sessions Judge, Kolhapur in Sessions Case No. 240 of 2001. By the said Judgment and order, the learned Sessions Judge convicted the appellants u/s 364-A read with Section 34 of the Indian Penal Code (IPC). For the said offence, he sentenced each of them to imprisonment for life and to pay fine of Rs. 1,000/- each in default to suffer R.I. for one month. The prosecution case briefly stated is as under:-

The complainant PW-1 Sunil was residing at Jadhavwadi, Opposite Market Yard, Kolhapur along with his brother Anil Salokhe, wife of Anil Salokhe and two children of Anil Salokhe, who are a daughter named Nilima and a son Nilesch @ Babalu that is victim boy. At the time of the incident, Nilesch was about 9 years old and he was studying in 3rd Standard in Buds Primary School situated at Rajendranagar, Kolhapur. PW-1 Sunil and his brother Anil had business of plywood by name Salokhe Plywood in a shop situated in Janata Bazar Chowk,

Rajarampuri, Kolhapur. Both the brothers used to jointly run the business.

The incident occurred in the afternoon of 3.9.2001. On that day, Anil, father of Nilesh, had gone to their farmhouse at Gaganbavada. Nilesh went to School as usual at 7.30 a.m. and PW-1 Sunil went to his shop at about 9.00 a.m. At about 12 noon, PW-1 Sunil received a telephone call from one lady. The said lady asked him the full name of Bablu and told him that she was tuition teacher of Bablu and she needed this information in order to get information about his studies from the school. Just two days prior to the incident, Nilesh was sent to a tuition teacher at Jadhavwadi behind their bungalow, hence, the complainant gave the full name of Bablu. After about 15 to 20 minutes, he received another telephone call from one male person. He was talking in Hindi. He asked Anil Salokhe Hai Kya? The complainant replied in Hindi "Wo Nahin Hai." The persons again asked Anil "Turn Nilesh ke Chacha Ho Kya?" Anil questioned the said person "Turn Koun Bol Raha Hai?" The said person stated that "Nilesh Mere Kabjemein Hai. Mereko Pachis Peti Paisa Chahiye". The said person further stated that "If he does not get the money Nilesh will not be alive. (Paise Nahi melega to Nilesh Jinda Nahin Milega.)". Thereafter the complainant went to the School of Nilesh. On reaching, he made enquiry with the Head Mistress PW-23 Mrs. Joshi. Mrs. Joshi told him that Nilesh has been taken away by one person stating that there is a programme at the house of Nilesh. PW-1 Sunil then tried to get information from the students. At that time, one boy by name Ranjit (PW-21) told him that Nilesh was taken on Hero Honda motor cycle of black colour bearing registration No. MH-09-V-5655. Thereafter, PW-1 Sunil went to Rajarampuri Police Station and lodged complaint (Exhibit 47). The complainant received another telephone call instructing him that the money was to be kept near Sanjay Graha Nirman Sanstha, Borpadale Phata on Ratnagiri Road near bulldozer at a place where the work of culvert was going on. He was instructed to keep the money below a stone. Accordingly, the complainant gave the statement to the police.

It is the prosecution case that both the appellants kidnapped Nilesh from his School for ransom and they kept him in the hostel room of PW-18 Dr. Dipali and PW-10 Dr. Manisha. In the meanwhile, the police flashed the wireless message regarding kidnapping of the boy Nilesh. The wireless also stated where the ransom money was to be kept i.e. under a stone near bulldozer where the culvert work was going on at Sanjay Graha Nirman Sanstha, Borpadale Phata on Ratnagiri Road. PW-28 API Patil heard the wireless message. He went to the spot i.e. the place where the culvert work was going on at Sanjay Graha Nirman Sanstha Borpadale Phata on Ratnagiri Road. On reaching there, he saw the motor cycle bearing registration No. MH-09-V-5655. It was parked behind Sanjay Graha Nirman Sanstha. On searching near the motor cycle, he found two persons - one male and one female. PW-28 API Patil questioned them. On questioning, they told that the motor cycle bearing registration No. MH-09-V-5655 belongs to them. PW-28 API Patil found in the custody of the appellants one rexine bag of blue colour. On opening the bag, they found one Khanjir (big knife), Mobile phone, used clothes, cash, one Mangalsutra, four gold bangles, two silver bars

and two keys. The said articles came to be seized and he took both the appellants into his custody.

In the meanwhile PW-18 Dr. Dipali came back to the hostel room. Prior to this, appellant No. 1 had asked her whether he can keep his son in her hostel room for some time. PW-18 Dr. Dipali knew the appellants because she had met them when she had gone for a trip to Barki along with PW-13 Ravindra Zavare and some other persons. She allowed appellant No. 1 to keep the boy in her hostel room. However, on returning back to her hostel room at 1.45 p.m., she saw one boy in the room. She realized that the boy was not the son of the appellant No. 1 and appellant No. 2. She and her roommate PW-10 Dr. Manisha waited for some time, but nobody came to take the boy. She then checked the school bag of the said boy and she found the name and address written on his progress card in the school bag. There was no contact number written on the progress card. Hence, PW-18 Dr. Dipali contacted PW-13 Ravindra Zavare, who also knew the accused persons and both decided that the boy should be left at the address stated on the progress card. Accordingly, they went to the said address. They found mother of the boy at the address. She asked them how the boy is with them. PW-18 Dr. Dipali then disclosed that the appellants Yogesh and Shilpa had left the boy at her room and did not come back to take the boy for a long time. Hence, she brought the said boy. Meanwhile, some male persons arrived including PW-1 Sunil, uncle of the boy. The uncle of the boy informed them that the boy was taken from the school directly without intimating him and money was demanded.

2. Both the appellants came to be arrested on the very same day. Thereafter, test identification parade was held. In the said test identification parade, the victim boy PW-22 Nilesh identified both the appellants as the persons who took him from the school and kept him in one room. The appellant No. 1 has been identified by PW-23 Mrs. Joshi, the Principal of the School as the man who had approached her telling her that he had come to take away the boy, namely, Babalu. Then she sent Nilesh with the man i.e. appellant No. 1. Appellant No. 1 took Nilesh on his motor cycle. Besides the victim PW-22 Nilesh, and P.W. 23 the Principal Mrs. Joshi, PW-21 Ranjit who was a student in the school has also identified appellant No. 1 in the test identification parade. He identified the appellant No. 1 as the man who came to the school at about 12.30 p.m. and took away the boy with him on a Hero Honda Motor cycle bearing registration No. MH-09-V-5655. After completion of investigation, charge sheet came to be filed and the case was committed to the Court of Sessions.

3. Charge came to be framed against both the appellants u/s 364A read with Section 34 of IPC or in the alternative u/s 364A simplicitor, u/s 417 read with Sec. 34 of IPC and u/s 419 read with Sec. 34 of IPC. The appellants pleaded not guilty to the said charges and claimed to be tried. Their defence is that of total denial and false implication. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellants as

stated in paragraph 1 above. Hence, this appeal.

4. We have heard Mr. Ingawale, the learned Advocate for the appellants and the learned APP for the State. We have carefully considered the arguments of both sides, the Judgment and order passed by the learned Sessions Judge and the evidence in this case. After carefully considering the matter, we are of the opinion that the learned Sessions Judge has rightly convicted both the appellants u/s 364A of IPC.

5. The conviction is mainly founded on the evidence of PW-22 the victim boy Nilesh who was kidnapped and the evidence of PW-1 Sunil the complainant in this case, who has stated about the demand for ransom. Nilesh has stated that in the year 2001, he was studying in 3rd Std. Buds Play and Primary School, Kolhapur, situated at Rajendranagar, Kolhapur. PW-23 Mrs. Pratibha Joshi was the Principal of the School. The timing of the school was from 8 a.m. to 2 p.m. On 3.9.2001, he went to the school as usual. When PW-15 Dipak Shelar was teaching Marathi a boy came to the class and asked where is Nilesh. He told that Nilesh was called by the principal Mrs. Joshi. Then Nilesh went to the Principal. One man was standing near the Principal. The Principal Mrs. Joshi asked him whether he knows that person. Nilesh replied in the negative. Joshi Madam told him in Hindi that a phone call was received from his mother and that this person was sent to take him. Accordingly, Nilesh left with the man. The said person took him on his Hero Honda Splendor motor cycle. Its registration number was MH-09-V-5655. The said person took him out of the school compound. One lady was standing there. The said lady sat on the motor cycle. He has identified appellant No. 2 as the lady and he has identified appellant No. 1 as the man who took him away on the motor cycle. Thereafter they took Nilesh to CPR Hospital, Kolhapur. Then appellant No. 1 went inside the hospital. Appellant No. 1 came out of the hospital and asked Nilesh whether he wants to have Thums-up. Nilesh said yes. Then appellant No. 1 gave him a bottle of Thums-up. Thereafter, all of them went to one house on motor-cycle. The appellant No. 1 waited near the motor-cycle and the appellant No. 2 Shilpa took him to the second floor of the building. One girl was studying in the room. The appellant No. 2 handed over the bottle of Thums-up to Nilesh. She told him that they will bring Nilesh's car and will leave their motor-cycle. Then both the appellant Nos. 1 and 2 left the said place. Nilesh has said that two lady doctors came there. They asked his name and also asked him where he resides. The two lady doctors called one person. Thereafter, one lady doctor and said person left him at his house at about 3 p.m. On 11.9.2001, he had been to sub-jail Bindu Chowk, Kolhapur and in the said jail, he identified both the appellant Nos. 1 and 2.

6. The evidence of Nilesh is corroborated by the evidence of PW-23 Mrs. Joshi, Principal of the School. PW-23 Mrs. Pratibha Joshi was the Principal of the School in which Nilesh was studying. Mrs. Joshi has identified appellant No. 1 as the man who came to the School at about 12 noon telling her that he had come to take away the boy Bablu. She told him to leave the school stating that there was

no boy of such name in the school. The person was insisting that she should send the boy with him. He also told that he has recently joined service in the shop of father of the boy and the boy is to be taken to the Farm House and the motor car of the boy could not come. She then got angry. At that time, appellant No. 1 talked to somebody on mobile phone. Thereafter he left the place. At about 12.30 p.m., appellant No. 1 came back on his motor-cycle. He again approached her and insisted that he be allowed to take the boy with him. However, PW-23 the Principal disallowed him. Then the appellant No. 1 stated that a phone call of the mother of the boy would come. Then a telephone call came. One lady talked on phone and told that Nilesh should be sent with the said person. Then Mrs. Joshi sent Nilesh with the man who took him away on a motor-cycle.

7. The evidence of Nilesh is corroborated by the evidence of PW-14 Mr. Jagdish, who was a drawing teacher in the school of Nilesh. This witness has stated that on 3.9.2001 at about 12.00 to 12.15 p.m. when he was near the office a phone call was received. The caller told that she was the mother of Bablu speaking and she wants to take Bablu home. She also disclosed that she will send a person to take Bablu. Jagdish told her that he will convey the message to the Principal and she may send the person. PW-14 then sent a message through one student to the Principal that a message has been received on phone that somebody is going to take Nilesh i.e. Bablu. Corroboration is also received from the evidence of PW-15 Dipak Shelar. He was teaching Marathi to Nilesh when Nilesh was called by the Principal. He has stated that between 11.40 to 12.40 p.m. he was teaching Marathi to 3rd standard. At about 12.00 noon one boy came and told him that Nilesh has been called by the Principal PW-23 Smt. Joshi. He sent Nilesh to the Principal with the said boy. After sometime Nilesh came back and told him that somebody has come from his home to take him home and he is called with his school bag by the Principal. Accordingly, he sent him back to the Principal Mrs. Joshi. On that day, at about 1.30 p.m., he was called to the Chamber of the Principal Smt. Joshi. He found two male persons in the office. They asked him why he sent Nilesh and he told them that as per message of Smt. Joshi he had sent Nilesh.

8. PW-21 Ranjeet Khopade was studying in the same school in which Nilesh was studying. He has stated that on 3.9.2001, at about 12 noon one person came in the room and asked the Principal Mrs. Joshi as to whether a boy named Bablu is in her school. Joshi Madam asked the said person full name of Bablu. Said person told that he is serving in the shop since recently and he does not know full name of Bablu. Mrs. Joshi asked the person to give full name of the boy and then only the boy could be sent. Then the person left the room and he was talking on mobile phone. Thereafter the person left the school. At about 12.30 p.m. the said person returned back. He parked his Hero-Honda motor cycle on the ground near the basement and he came in the school. After some time, the said person came and took away Nilesh with him on a motor cycle. PW-21 Ranjit has said that the registration number of the Hero Honda motor cycle was MH-09-V-5655. PW-21 Ranjeet further stated that at about 1.30 p.m. he came to know that some

parents had been to the cabin of the Principal and the boy who had been taken from the school had been kidnapped. He approached the cabin of the principal Smt. Joshi and saw PW-23 Smt. Joshi. PW-15 teacher Dipak Shelar and two persons there in the room. He told Joshi Madam that he has seen the number of the motor cycle. He disclosed the number of the motor cycle to the Principal. Thereafter, the Principal Mrs. Joshi, the teacher PW-15 Dipak Shelar and others went to the DSP office to prepare sketch of the said person. While he was helping police to prepare sketch of the said person on computer, they came to know that the said person and the motor cycle have been apprehended by the police. He has identified appellant No. 1 as the same person who had been to the school and took Nilesh on motor cycle on that day.

9. PW-18 Dr. Dipali was doing internship at CPR Hospital, Kolhapur. She was residing in the hostel i.e. Murli Sankul Sita Colony, Kolhapur. PW-13 Zavare was residing near her hostel. Two months prior to the incident, she got acquainted with PW-13 Zavare. After about one month. Shri Zavare had arranged a trip to Barki. Shri Zavare and his wife and son, Tabbasum, Riyaz, Sunita Savant and both the appellants with their son attended the said trip, hence, she got acquainted with both the accused persons. They took many photographs during the said trip. PW-18 Dr. Dipali has stated that she was sharing a room with PW-10 Dr. Manisha. She has further stated that on 3.9.2001, she had been to C.P.R. Hospital at about 8 a.m. and was on duty at OPD No. 4. At about 12.45 to 1.00 p.m. appellant No. 1 Yogesh came to the OPD of the Hospital. He called her out. He told her that he wants to leave his son in her room for some time as his wife was accompanying him. He also told that he had been to the room and Dr. Manisha Thakkar (PW-10) is in the room and he had asked Dr. Manisha about it. Hence, Dipali said yes. This witness noticed that the wife of appellant No. 1 was standing at some distance from the Hospital. After her duty came to an end on that day at 1.45 p.m., Dipali returned to the room. When she returned to the room, she found Manisha and one boy in school uniform in the room. Dipali realised that the boy was not the son of the appellant, hence, she asked Manisha as to who the boy was. PW-10 Manisha told her that Shilpa appellant No. 2 had left the boy in the said room and Shilpa told that she will take away the boy after some time. She asked the boy as to how he came to their room. The boy told her that the said uncle had left him in their room and the uncle told him that his father will come to collect him and they have to go out. They waited for a considerable period of time, but nobody came to take the boy. Then PW-18 Dr. Dipali checked the school bag of the boy. His name and address was written on his progress card which was found in the school bag, but there was no contact number on the card. She then approached PW-13 Zavare as she had got acquainted with the appellants through Zavare. PW-13 Zavare also agreed that the boy should be sent home. Then PW-18 Dipali and PW-13 Zavare left the boy at home. They found mother of the boy at the address. She asked them how the boy is with them. PW-18 Dr. Dipali then disclosed that the appellants Yogesh and Shilpa had left the boy at her room and did not come back to take the boy for a

long time, hence, she brought the boy home. Meanwhile, some male persons arrived including PW-1 Sunil, uncle of the boy. The uncle of the boy informed them that the boy was taken from the school directly without intimating him and money was demanded. The evidence of this witness corroborates the evidence of Nilesh.

10. The evidence of Nilesh and PW-18 Dipali is further corroborated by the evidence of PW-10 Dr. Manisha who was sharing the hostel room with PW-18 Dr. Dipali. Dr. Manisha has stated that on 3.9.2001 at about 8 a.m. PW-18 Dipali left for CPR Hospital. This witness was in the room continuing her studies. At about 12 noon, she was called by Rector of the Hostel. She therefore went to the balcony. One lady, one male person and one boy were on a motor cycle. They asked Manisha where Dipali is. She told them that Dipali has left for CPR Hospital. They asked her in which department Dipali is available. Thereafter all of them left on the motor cycle. She continued to study. After about 15-20 minutes, all the three persons came back. The lady came to her room along with the child. The said lady told her that they had talked with Dipali and they want to keep the boy in the room and they will come back after some time. They left the boy in the room stating that they will come after some time. The said boy had school uniform on his person and his school bag was with him. After some time, PW-18 Dr. Dipali came back to the room and questioned as to who the boy is. PW-10 Manisha told Dipali that her acquaintance namely Shilpa left the boy in the room. Dipali told that the said boy is not the son of Shilpa Ingale. Therefore, they asked the boy about his identity. The boy could tell his name as Nilesh. However, he could not give any further details. Hence, they searched the school bag and found the name and address in the diary of the school. The boy told them that the lady and the person who dropped him at the room are acquainted with his father and hence he accompanied them. The persons said that they will drop him at his house. They waited for some time. As nobody came to take the boy, PW-18 Dr. Dipali called PW-13 Ravindra Zavare. Thereafter Dipali and PW-13 Zavare left the boy at his home. She has identified both the lady and the male person with her as the appellants.

11. As far as PW-10 Manisha is concerned, the learned Advocate for the appellant submitted that no identification parade was held before the witness identified both the appellants in Court. He submitted that both the accused persons were unknown to this witness i.e. PW-10 Dr. Manisha, in such case, the identification of the appellants directly in the Court by Manisha without any previous identification parade cannot be relied upon. It is to be noted that PW-18 Dipali knew the accused persons since prior to the incident as she had met them on a trip. PW-18 Dipali has identified both the accused persons as the persons who had come to CPR Hostel. She identified appellant No. 1 as the person who asked permission to leave the boy at her Hostel and also identified appellant No. 2 as the wife of the appellant No. 1 stating that she was standing a little away from the hospital. Even otherwise, the evidence of PW-10 Dr. Manisha and PW-18 Dr. Dipali shows that accused persons left one boy in their hostel room and the

boy was not the son of the appellants. The evidence of PW-21 Ranjit and the evidence of PW-23 Principal Mrs. Joshi shows that it was the appellant No. 1 who had taken away Nilesh on his motorcycle from the school. They have both identified appellant No. 1 in the test identification parade as well as in the Court. Thus, from the evidence of other witnesses it appears that the same persons approached Manisha saying they wanted to keep the boy in her hostel room and appellant No. 2 came back and left the boy in the hostel room of Manisha and Dipali. Manisha has identified the two persons who came with the boy as the appellants. We are of the opinion that identification of the appellants by PW-10 Manisha can be relied upon more so for the reasons mentioned in the next six paras.

12. As stated earlier, the learned counsel for the Appellants pointed out that PW-10 Manisha identified the Appellants for the first time in the Court. He submitted that PW-10 Manisha has not seen any of the appellants before 3rd September, 2001. He reiterated that no Test Identification Parade (TIP) was held prior to the identification of the appellants in the Court by PW-10 Manisha and as such the evidence of PW-10 Manisha directly identifying the appellants in the Court without any previous TIP, cannot be relied upon.

The Supreme Court has considered the evidentiary value of identification of an accused by a witness in the Court for the first time in a case when the eye-witnesses did not know the accused earlier and when no Test Identification Parade has been held. In the case of Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat, the Supreme Court observed that the real credence of such evidence would depend upon the facts and circumstances of each case. It was further held that in the absence of Test Identification Parade, it cannot be said that the evidence of any independent witness would become inadmissible, totally useless or irrelevant.

13. In the case of Ramanbhai Naranbhai Patel (supra) also two witnesses directly identified the accused in the Court but without any previous Test Identification Parade. It was argued that such identification is of no assistance to the prosecution. The Supreme Court observed that as the witnesses were injured in the incident, they could have easily seen the faces of the accused persons who assaulted them and the appearance and identity would remain imprinted in the minds of the witnesses especially when they were assaulted in broad daylight.

14. Mr. Ingawale, the learned counsel for the appellants again argued that as far as the identification of the appellants by PW-10 Manisha at the time of trial without participating in the test identification parade is concerned, such identification is worthless and, therefore, that part of the evidence should be excluded from the consideration and thus a vital link in the chain of circumstances would be missing.

15. In connection with the above argument of Mr. Ingawale, we may make useful reference to a decision of the Supreme Court in the case of Ronny @ Ronald

James Alwaris Etc. Vs. State Of Maharashtra, . In the said decision, it is observed that the statement of the witness made in the court is substantive evidence whereas the evidence of identification in the TIP is not substantive evidence but it is only corroborative evidence. It falls in the realm of investigation. The purpose of test identification parade is to test the observation, grasp, memory, capacity of a witness to recapitulate what he has seen earlier, the strength or trustworthiness of the evidence of the identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. But if a witness has seen an accused earlier in such circumstances which lend assurance to identification by him in court and if there is no inherent improbability or inconsistency, his statement in court about the identification of accused should be relied upon as any other acceptable but uncorroborated testimony. The identification of the accused by a witness if he had an opportunity to interact with him or to notice his distinctive feature lends assurance to his testimony in court and absence of corroborative evidence by way of test identification parade would not be material.

16. In the case of Ronny @ Ronald James Alwaris Etc. Vs. State Of Maharashtra, , the prosecution had relied on the evidence of two witnesses i.e. PW-29 and PW-34. Both these witnesses had directly identified the accused for the first time in court. The evidence of both these witnesses was relied upon by the prosecution to show that the accused persons had come to the bungalow of the deceased on the night of the incident. The evidence of both these witnesses was accepted by both the trial court as well as the High Court, that the accused persons were seen entering the bungalow of the deceased on the previous night. The Supreme Court has observed that both the courts below had rightly accepted the identification of the accused by these two witnesses. The accused persons were not known to both PW-29 and PW-34 prior to the date of incident, however, both these witnesses had a talk with the accused when the accused came to the bungalow. Some talk took place between the witnesses and the accused for about 7-8 minutes. Thereafter, the accused persons entered into the bungalow. On the next day, the inmates of the bungalow were found dead. The Supreme Court held that identification of the accused by a witness if he had an opportunity to interact with him or notice his distinctive features lends assurance to his testimony in court and that the absence of corroborative evidence by way of TIP would not be material.

17. In the present case also PW-10 Manisha had an opportunity to interact with the appellants as the appellants had approached her stating that they wanted to keep their son with her for some time as both of them had to go out. Again the appellant No. 2 came and left the boy with her. On account of this interaction, there was every opportunity for PW-10 Manisha to observe the two appellants and to correctly identify them later on. Moreover, the fact that these two appellants told Manisha that they wanted to keep their son with her would cause Manisha to make a special note of the appearance of the appellants. It is not as if Manisha had seen these two appellants for a few seconds somewhere on a busy

road, but, the appellants had approached Manisha and had detailed conversation with her regarding keeping their son with her. As stated earlier, after some time, appellant No. 2 again came and left the boy with her. In such case, looking to the special circumstances that the appellants had requested this witness to keep their son with her for some time and the fact that this witness had conversation with both the appellants, it can be said that she had sufficient opportunity to observe these two persons. Thus, in the facts and circumstances of the present case, not holding Test Identification Parade would not be fatal to the prosecution and identification of the appellants in Court by Manisha can be safely relied upon.

18. However, the case of the prosecution is not only that the appellants had kidnapped Nilesh, but the case of the prosecution is that PW-22 Nilesh was kidnapped by the appellants for ransom. The fact that Nilesh was kidnapped for ransom is proved through the evidence of the complainant PW-1 Sunil. PW-1 Sunil is the paternal uncle of Nilesh. Nilesh is the son of Anil, brother of PW-1 Sunil. This witness has stated that on the day of the incident, his brother Anil i.e. father of Nilesh had gone to their farmhouse at Gaganbavada. On that day, Nilesh had been to school as usual at 7.30 a.m. This witness had left for his shop at about 9.00 a.m. His brother Anil and he was doing joint business in Plywood in Janata Bazar Chowk Rajarampuri. He has stated that at 12 noon, he received a telephone call. One lady talked to him and asked him the full name of Bablu and told him that she required this information in order to get information about his studies from the school. The said lady told that she is the tuition teacher of Bablu. Two days prior to this incident, Bablu was sent to a tuition teacher at Jadhavwadi behind their bungalow, hence PW-1 Sunil believed the person and gave full name of Bablu. This fact is corroborated by the evidence of PW-23 Mrs. Joshi Principal of the School who stated that a man came to her and told her that he was sent to take away a boy named Bablu whereupon she asked him to leave stating that no body of such name is in her school. Then the man went outside the office and talked to somebody on mobile phone. Thereafter this man returned and gave full name of the boy. PW-1 Sunil has stated that after about 30 to 45 minutes, he received another telephone call from a male person. He was talking in Hindi. The man asked him, "Anil Salokhe Hai Kya?" Sunil replied in Hindi "Wo Nahin Hai." The man again asked Sunil "Turn Nilesh ke Chacha Ho Kya?" PW-1 Sunil I questioned the said person "Turn Koun Bol Raha Hai?" The said person stated that "Nilesh Mere Kabjemein Hai. Mereko Pachis Peti Paisa Chahiye." The said person further stated that. If he does not get the money Nilesh will not be alive. (Paise Nahi melega to "Nilesh Jinda Nahi Milega.)".

19. On receiving this call for ransom, PW-1 Sunil went to the School of Nilesh. On reaching the school, he asked the Head Mistress PW-23 Mrs. Joshi about Nilesh. Mrs. Joshi told him that Nilesh was taken away by one person stating that there is programme at Nilesh's house. One boy Ranjeet (PW-21) told them that Nilesh had been taken away on Hero Honda Splendor motor cycle bearing registration number MH-09-V-5655. Thereafter PW-1 Sunil went to Rajarampuri Police Station and lodged a complaint. PW-1 Sunil stated that thereafter he received

another telephone call from the male person and the male person told him the address where the money was to be taken. The said person instructed him to keep the money near Sanjay Graha Nirman Sanstha, Borpadale Phata on Ratnagiri Road, near bulldozer at a place where the work of culvert was going on. The man instructed Sunil to keep the money below the stone near the culvert. The evidence of this witness clearly shows that demand was made for ransom.

20. The learned Counsel for the appellants submitted that there is no evidence to show that any calls for ransom were made from the mobile phones of any of the appellants. No doubt, the investigating agency has not led any evidence to show that from the mobile phone of the accused any calls were made. The calls were made on landline, hence, it did not reflect any number and as far as the cell phone is concerned, it is not known whether the calls were made from the mobile phone or they were made from a PCO. It is pertinent to note that one PCO owner has been examined. However, he has turned hostile and has not supported the prosecution. In our opinion, even if it is not proved that from the mobile phone owned by any of the appellants, the call was made, but the fact remains that the complainant has categorically stated that telephone calls were received by him and demand was made for ransom of Rs. 25 lakhs. The person also threatened that in case money is not given Nilesh would not be found alive. In this connection, we would like to advert to the evidence of PW-28 API Patil. PW-28 API Patil heard the wireless message at about 2.45 p.m. regarding kidnapping of a boy. The wireless also stated where the ransom money is to be kept that is near a stone near a bulldozer where work of culvert was going on at Sanjay Graha Nirman Sanstha, Borpadale Phata on Ratnagiri road. He immediately proceeded to the spot, i.e. the place where the culvert work was going on at Sanjay Graha Nirman Sanstha Borpadale Phata on Ratnagiri Road. On reaching there, he saw a motor-cycle bearing registration No. MH-09-V-5655. It was parked behind Sanjay Graha Nirman Sanstha. On searching near the motor cycle, he found two persons - one male and one female. PW-28 API Patil questioned them. On questioning, they told that the motor cycle bearing registration No. MH-09-V-5655 belongs to them. One rexine bag of blue colour was found with the appellants. On opening the bag, they found one Khanjir (big knife), Mobile phone, used clothes, cash, one Mangalsutra, four gold bangles, two silver bars and two keys. The said articles came to be seized and he took both the appellants into his custody. The fact that the appellant had a big knife with them shows that they had made preparation to carry out their plan as per the threats given by them that they would finish Nilesh if the ransom money was not given.

21. The learned Advocate for the appellant submitted that PW-18 Dr. Dipali stated that the appellants had come to the hostel at 12.45 p.m. However, he pointed out that PW-10 Dr. Manisha stated that the appellants came at 12 noon. He submitted that if the boy was left in the hostel room at 12 noon, it is not possible that they would go to CPR Hospital at 12.45 p.m. to seek permission of PW-18 Dipali to keep the boy in her hostel room. As far as this aspect is

concerned, PW-10 Dr. Manisha had stated that at about 12 noon, one lady, one male person and one boy came on motorcycle. They asked her where is Dipali. She told them that Dipali has left for CPR Hospital. They asked her in which department Dipali is available. Thereafter all of them left on the motor cycle. After about 15 to 20 minutes, those persons came back. This shows that boy was left in the room somewhere after 12.20 p.m. The learned Advocate pointed out that PW-18 Dipali has stated that the appellants came to CPR Hospital at 12.45 p.m. He submitted that in such case the prosecution case cannot be believed that the appellants left the boy in the hostel room at 12.20 noon. He also pointed out that the complainant has stated that the first phone call was received at 12 noon and the second phone call was received at 12.45 to 1.30 p.m. He submitted that this is inconsistent with the prosecution story that the appellants and the boy came to the room of Manisha with the boy at 12.20 noon. He further pointed out that the Principal Mrs. Joshi stated that the man came to the school at 12.45 p.m. He submitted that the appellants could not be the same persons who went to the school as well as the CPR Hospital. As far as the discrepancy in timings are concerned, it is seen that all the witnesses stated the time between 12 to 12.45 p.m. It is not expected that anybody would give the exact time. People give an approximate time. It is not as if the difference is of many hours in the timing. The difference is only of a few minutes here and there. In such circumstances, we are not inclined to attach much importance to the discrepancy in the timing.

22. Thereafter Mr. Ingawale submitted that it cannot be a case of kidnapping for ransom because the boy was not in the custody of the appellants, but the boy was kept in the custody of Manisha. As far as this aspect is concerned, the evidence of PW-23 Mrs. Joshi Principal of the School is relevant. Her evidence and the evidence of PW-21 Ranjeet, a student from the School and evidence of PW 18 Dr. Dipali and PW-10 Dr. Manisha shows that both the appellants took away Nilesh from the School and thereafter they left him with PW-10 Manisha. Once the appellants had taken away the boy then where the boy is kept by the appellants becomes immaterial. The boy may be kept in the house of the appellants or in a deserted place or in the house of a third person. The fact remains that the appellants had taken away the boy. Hence, the offence of kidnapping becomes complete. The fact that ransom calls were made has been stated by PW-1 Sunil which clearly shows that this is an offence of kidnapping for ransom. On carefully going through the evidence referred to above, we find that there is sufficient evidence to connect both the appellants with the crime, hence, we do not find any merit in this Appeal. The Appeal is dismissed.