



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

% Reserved on: 23rd May, 2023
Decided on: 26th June, 2023

+ **CRL.A. 166/2021**

JEEVAK NAGPAL @ VEEVEK NAGPAL @
 SHANKY

.....Appellant

Represented by: Mr. Bharat Dubey, Ms. Shubhlaxmi
 Dubey, Dr. Sonia Dubey and
 Ms. Tanya Kapoor, Advocates.

versus

THE STATE

.... Respondent

Represented by: Mr. Prithu Garg, APP for State with
 Insp. Ravinder Singh, PS Prashant
 Vihar.

Mr. Prashant Diwan, Ms. Kushika
 Chachhra and Mr. Mayank Verma,
 Advocates for complainant.

Mr. Tushar Sannu, Standing Counsel
 IHBAS with Dr. Om Prakash,
 Dr. Pratibha, Dr. Shehzadi Malhotra,
 IHBAS.

Mr. Devender Kumar Upadhaya,
 Superintendent, Tihar Jail No.8/9.

+ **DEATH SENTENCE REF. 1/2020**

STATE

..... Petitioner

Represented by: Mr. Prithu Garg, APP for State with
 Insp. Ravinder Singh, PS Prashant
 Vihar.

Mr. Prashant Diwan, Ms. Kushika
 Chachhra and Mr. Mayank Verma,
 Advocates for complainant.

versus



JEEVAK NAGPAL ALIAS VEEVEK NAGPAL ALIAS
SHANKY

..... Respondent

Represented by: Mr. Bharat Dubey, Ms. Shubhlaxmi
Dubey, Dr. Sonia Dubey and Ms.
Tanya Kapoor, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

MUKTA GUPTA, J.

1. By way of this death reference, the learned Trial Court has submitted its order on sentence dated 6th October, 2020 for confirmation of death sentence awarded to Jeevak Nagpal, pursuant to its judgment dated 30th September, 2020 wherein Jeevak Nagpal was held guilty for offences punishable under Sections 364A/302/201/506 of the Indian Penal Code, 1860 ("IPC"). Parallely, by way of CrI.A. No.166/2021, Jeevak Nagpal (hereinafter "appellant") has also challenged the said judgment and order on sentence of learned Trial Court whereby the appellant was directed to undergo rigorous imprisonment for 7 years along with fine of ₹30,000/- in default whereof, simple imprisonment for 6 months for offence punishable under Section 506 of IPC; was further directed to undergo rigorous imprisonment for 7 years along with fine of ₹30,000/- in default whereof, simple imprisonment for 6 months for offence punishable under Section 201 IPC; was further directed to undergo imprisonment for life for offence punishable under Section 364A IPC; and was further sentenced to death subject to confirmation by this Court for offence punishable under Section 302 IPC.



2. Brief facts of the prosecution case are that on 18th March, 2009, the deceased had gone to a nearby stationary shop and when he did not return, deceased's uncle (*tauji*) Brijesh Mahajan (PW-1/Complainant) informed the police about the same, and the information was recorded vide DD No.44 (Ex.PW-21/A). On this, SI Bal Kishan (PW-21) and Ct. Jalraj (PW-27) reached the spot. Enquiry was made from the father of the child/deceased Rajesh Mahajan (PW-36) over phone, who informed that that he had received a text message from one mobile No.9990401054 on his mobile No. 9811092230 regarding kidnapping of his son and demand of ransom. Statement of complainant was recorded (Ex.PW-1/A) and *rukka* was prepared (Ex.PW-42/A) on which FIR No.161/2009 dated 19th March, 2009 under Section 364A IPC was got registered at PS Prashant Vihar (Ex.PW-8/A). IO/Insp. Pratap Singh (PW-42) made efforts to locate the deceased, but was unsuccessful. Insp. Amardeep Sehgal was instructed to put the abovementioned numbers on technical surveillance for monitoring the same. On 19th March, 2009 at about 11.30 AM, Insp. Amardeep Sehgal informed that the location of mobile No.9990401054 was at or near Sector-11, Rohini and accordingly, secret informers in plain clothes were deployed in the area and one secret informer gave information regarding one person in suspicious condition roaming around the house of the victim situated in Sector-11, Rohini. On pointing out of the secret informer, the said suspicious person was apprehended and during interrogation, he disclosed his identity as Jeevak Nagpal. The appellant was thereafter arrested vide memo Ex.PW-36/B. His disclosure statement (Ex.PW-36/E) was also got recorded. The appellant also produced two mobile phone handsets one of



make TIA and other of make Nokia. The mobile handset of make TIA was found containing text messages pertaining to threats and ransom demands made to Rajesh Mahajan. The said mobile phone was found containing SIM of No.9990401054 while the mobile phone of Nokia was found containing SIM of No.9873883039. Thereafter the appellant led the police party to the scene of crime and to the place where he had disposed of dead body of the deceased i.e. dividing road between Sector-24, Rohini and Deep Vihar in a dry drain. The dead body was identified by Rajesh Mahajan and crime team was called at the spot. Various exhibits were seized from the spot and the dead body was sent to BJRM Hospital for getting the post-mortem done.

3. Dr. K. Goyal (PW-17) conducted the post-mortem examination on the dead body of the deceased on 19th March, 2009 and prepared his report (Ex.PW-17/A). He opined:

On external examination, following injuries were found on body:-

1. *Both lips extensively bruised orally as well as externally, more lower lip with bruising over ala nasil both sides and tip of nose along with diffuse bruising around the mouth, reddish in colour.*
2. *11 lacerations scattered irregularly, superficial to full skin deep over lower side of occipital region and back of neck at and around mid line with multiple scratches. Sizes of lacerations raised between 0.75 c.m. x 0.2 c.m. to 1.8 c.m. x 0.4 c.m.*
3. *Diffused bruising with swelling over right malar region 5x4 c.m. area, reddish in colour.*
4. *Abraded area right side neck running horizontally at the level of apple of adam from mid line front up to 11.5 c.m. distance at lateral aspect of right side neck, about 1 c.m. wide, reddish brown, interrupted at places and about 7 c.m. below right ears.*



5. *Pattern contused abrasion more or less rectangular shape, present over: -*
- a) *right back of chest at the level of inferior border of right scapula and about 2 c.m. right to mid line of size 1 x 0.2 c.m.*
 - b) *Mid line back of abdomen over vertebral column 1x0.2 c.m.*
 - c) *At mid line, epigastrium upper side 1.2 x 0.4 c.m. having grazing.*
 - d) *1 c.m. x 0.4 c.m. with slight grazing over epigastrium about 1.5 c.m. left to mid line.*
 - e) *1.2 x 0.4 c.m. with grazing over epigastrium about 4 c.m. left to mid line.*
- All these five injuries (a to e) were reddish brown in colour and their ends were very dark, cuticle deep while intervening area was little lighter. Also, same type of injury 1 x 0.3 c.m. over left thigh front about 5 inches below left inguinal ligament area.*
6. *8 c.m. long scratch placed obliquely over right side chest above nipples.*
 7. *Abrasion 1 x 0.7 c.m. just below left inguinal region.*
 8. *Superficial lacerations avulsion 1.6 x 1 c.m. over left thigh front about 17 c.m. below mid inguinal point.*
 9. *Pattern contused abrasion same as to injury no. 5, 1 x 0.3 c.m. over antero medial aspect of right thigh about 6 c.m. below medial part of inguinal ligament area.*

On internal examination, there was sub scalp bruising over occipital region. Skull bones, meninges and brain matter were intact and congested. All the neck structures were intact and NAD. Tracheal mucosa was congested. Little froth was present in trachea. Bony cage was intact. Both lungs were profusely oedematous, congested and frothy. All abdominal organs were Intact. There was about 20-30 cc of churned food material with small partly churned Rajma like pieces were present in the stomach and rest was NAD. The bowels were intact.



Urinary bladder and rectum were full. Spinal column was intact and genital organs were NAD.

OPINION: - The cause of death was Asphyxia consequent upon smothering i.e. closure of airways (nostrils and mouth). All injuries were ante mortem in nature. Injury no.1 was caused by manual pressure over mouth and nose and was sufficient to cause death in ordinary course of nature. All other injuries were caused (except no.5 and 9) by blunt force impacts. Pattern of injuries no.5 and 9 was consistent with being caused by some relatively blunt penetrating object wide and blunt penetrating surface. Pattern of injuries was consistent with intense torture just prior to death. Time since death was about 17-18 hours."

4. On 19th March, 2009, the appellant led the police party to his house i.e. C-4/3, Sector-11, Rohini where one silver colour Wagon-R bearing No.DL 2CAF 7578 was parked on the road outside his house. IO (PW-42) called the mobile crime team who inspected the car and found bloodstains on the seat cover adjoining the driver seat and one jack handle having blood on its point/sharp side was found. Both the seat cover and the jack handle were seized vide memo Ex.PW-36/S and Ex.PW-36/T respectively. Vide his supplementary disclosure statement (Ex.PW-24/A), the appellant led the police team to M/s Shiv Stationery shop situated at B-5/57, Rohini, Sector-11 from where he had kidnapped the deceased. Thereafter, upon completion of investigation, charge-sheet was filed and the appellant was charged for offence punishable under Sections 364A/302/201/506 IPC. To prove its case, the prosecution examined 42 witnesses and on the other hand, to rebut



the case of the prosecution, the appellant got examined himself as a witness along with 12 other witnesses.

5. Learned counsel appearing on behalf of the appellant submitted that the charges framed against the appellant have not been duly proved by the prosecution against the appellant. The evidence is not reliable and does not inspire confidence and thus the impugned judgment and order on sentence be set aside and the appellant be acquitted. It was contended that the prosecution had built up a false case by introducing an informer in its story who was neither cited nor produced as a witness in the Court and therefore, such evidence is neither admissible nor reliable and is liable to be discarded. In this regard reliance was placed on the decisions reported as (1984) 1 SCC 319 Bhugdomal Gangaram & Ors. vs. State of Gujarat and (2001) 3 SCC 451 Kanhai Mishra @ Kanhaiya Misar vs. State of Bihar. It was submitted that the accused was arrested from outside his house and was taken to office of Crime Branch at Rohini, Sector-3 where he was subjected to third degree which can also be confirmed from the TV channel footage of the press conference which took place at the office of DCP, Pushpanjali. Despite the alleged place of the appellant being heavily inhabited nobody was called from the neighbourhood to witness the proceedings. It was further contended that the TIA phone shown to have been recovered from the appellant was planted on him and was never actually recovered from him. Rather, the said phone was arranged from one Shiv Kumar (PW-2) of Rajhans Telecom and planted upon the appellant. Further, neither the said phone was got identified from the person who claimed to have sold it nor any bill of purchase/ sale of the same was brought on record. It was further



contended that the recovery of dead body at the instance of the appellant is not proved and the story of prosecution in this regard is unreliable. It was further submitted that the place of recovery of dead body was already known to the police and that the police itself got the body recovered in the absence of the appellant. For this purpose, it was submitted that the same can be confirmed by the TV Channel footage where the appellant could not be seen. The appellant could also not be seen in the photographs for which the IO in his cross-examination stated that the appellant could not be seen as large number crowd had gathered at the spot and to protect the appellant, he was taken aside. Even as per the crime team report, the time of recovery of the dead body is the time when the appellant was not arrested. As regards the recovery of Wagon-R car it was submitted that the house of the accused was locked and the keys were with the IO while the parents of the appellant were detained by the police. The fact that the father gave the keys of the car to the IO and thereafter, fled away is a false story concocted by the prosecution. Further, it was contended that the crime team did not examine the vehicle properly as various photos of the vehicle were taken but the same do not show if stepney was taken out and whether the stepney lying in the car had spanner in the tool kit or not. No finger prints of the deceased child were found inside the car or outside the car. It was further submitted that the scientific evidence i.e. the FSL report did not support the case of the prosecution which is to say that the seat cover and the jack spanner taken out of the car allegedly having bloodstains did not tally with the blood group of the deceased. In this respect reliance was placed on the decision in (2018) 2 JCC 1247 (DHC) Manoj @ Monu & Anr. vs. State.



6. The prosecution also relies upon the last seen evidence in the form of testimony of Jai Pal Singh Mann (PW-34) who was a property dealer and who stated to have seen the deceased child sitting in the Wagon-R car of the appellant around 9.30 PM. It was submitted that there was significant improvement in the version of PW-34 as narrated to the police in his statement under Section 161 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) and as stated before the Court, which renders his version unbelievable. In this regard, reliance was placed on the decision reported as AIR 2008 SC 114 Sattatiya @ Satish Rajanna vs. State of Maharashtra. It was also pointed out that the IO never moved an application for getting the appellant identified by PW-34 and therefore, in the absence of identification by PW-34 of the appellant renders the evidence of ‘last seen’ weak. Learned counsel for the appellant further pointed out that the permission to get the voice sample of the appellant recorded by the CFSL was illegally granted. It was submitted that such permission could have been granted only after the appellant consents for same. Even otherwise, the IO after obtaining permission from the concerned Court did not take the accused to CFSL and rather got recorded his voice sample in his own room at the police station with the help of a private videographer Sonu Kohli (PW-18). It was further contended on behalf of the appellant that doubts looms as to whether the deceased child was present in the custody of the appellant or whether the deceased child was in the custody of PW-5 and his associates. A question in this regard was put to the forensic expert who examined the voice recording if he could ascertain the side from which the voice of the child was coming to which he replied that he was unable to ascertain the



side from which the voice of the child was coming. For this purpose, learned counsel also places reliance on the observation of the learned Trial Court noted during the recording of the evidence that the voice of the child was coming from the side of the witnesses which establishes a strong link of the presence of deceased child with the witnesses instead of the appellant. It was further contended that the mobile phone recordings were tampered and hence, cannot be relied upon. It was submitted that as per the testimony of PW-25, the Nokia mobile phone of the appellant had the auto recording facility. From the cross-examination of PW-5, PW-25 and the IO it is evident that three calls were exchanged between PW-5 and the appellant. However, as per the cross-examination of PW-25, PW-25 admitted that with the permission of the IO, he removed the memory card of the phone and erased all the other calls leaving behind only two calls i.e. he deleted the lengthiest call of 184 seconds. This is sufficient proof of tampering and the beneficiary of which is no-one other than PW-5, PW-25 and their associates. It was further pointed out that the prosecution heavily relies upon electronic evidence however, no certificate under Section 65B of the Indian Evidence Act, 1872 was brought on record. Learned counsel further pointed out that even till date the prosecution has not been able to ascertain the time till which the child was alive. As per the case of the prosecution, Jai Pal Mann saw the child alive till 10.35 PM and it was around 11.00 PM when the *crane-wala* reached with his crane, meaning thereby, that the deceased child was killed between 10.35 and 11.00 PM however, as per the CDR of the appellant, dozens of calls were made and received by the appellant during this period and therefore, it would be impossible for the appellant to talk on



the mobile phone and simultaneously injure the deceased child. It was submitted that the burden of proof lies upon the prosecution to prove the time of death and the manner of death etc. which the prosecution has miserably failed to prove. In this regard, reliance was placed on the decisions in (2017) 1 JCC 289 (SC) Harbeer Singh Sheesh Pal & Ors. vs. State of Rajasthan, AIR 1976 SC 975 Bhagirath vs. State of M.P., AIR 1977 SC 170 Rabindra Kumar Dey vs. State of Orissa and AIR 1976 SC 966 Partap vs. State of U.P. Learned counsel for the appellant further pointed out that it is also interesting to know that all the injuries found on the person of the deceased were on the left side of his head which would be towards the window side of the child and as such it would be difficult for the person sitting on the driver seat to inflict injuries on the left side of the body i.e. towards the window. Furthermore, even Sahil (PW-9) or the *crane-walas* did not notice any abnormal stain on the person or clothes of the appellant, which were although alleged to be stained with blood. It was further contended that even the IO in the present case did not conduct the investigation properly. It was submitted that the duty of IO is not to bolster up prosecution case with such evidence which enables the Court to record conviction but it is to bring out the real unvarnished truth and reliance was placed on a decision in AIR 1974 SCC 822 Jamuna Chaudhari vs. State of Bihar.

7. On the other hand, learned APP for the State submits that there is no infirmity in the judgment and order on sentence and thus, the present appeal be dismissed. To substantiate its case, learned APP relied upon the following facts.



- i. That two mobile phones were recovered from the appellant on 19th March, 2009 wherein messages were found in the 'inbox' and 'outbox' folder of both the mobile phones and a transcript of the messages was prepared by the IO (Ex.PW-36/A-1 to A-3 and Ex.PW-24/C-1 to C-5 of TIA mobile and Nokia mobile respectively). The recovery of these mobile phones was witnessed by PW-36.
- ii. Text messages exchanged between the father of the deceased (PW-36) and the appellant were extracted from the SIM card of the TIA mobile. Messages were not recovered from the TIA handset as it had no memory card from which data could be retrieved.
- iii. That the IMEI number of both the handsets recorded in the seizure memo matched with those mentioned in the CDRs of the mobile phone. CDR of mobile No.9990401054 used by the appellant confirms that multiple phone calls and messages were exchanged between the appellant and PW-36 between 7.17.19 PM on 18th March, 2009 and 9.34.19 AM on 19th March, 2009. The CDR further reveals that the appellant had removed the SIM card of mobile No.9873883039 from Nokia handset due to exhaustion of its battery at 8.48 PM and transferred the same to TIA handset and it remained in the TIA handset till 11.12 PM. Further CDR of mobile No.9990401054 shows that this number which was originally lodged in TIA handset was



switched off between 8.30.19 PM till 12.30.02 AM on 19th March, 2009.

- iv. Location analysis from CDRs of both the mobile number used by the appellant confirms the location of the appellant near deceased child's residence at Sector-11, Rohini in the evening of 18th March, 2009. His location is at Rohini, Sector-24, VBPS in the night of 18th March, 2009 i.e. at the time of commission of murder and dumping of the dead body. And, in the morning of 19th March, 2009, i.e. at the time of his arrest his location is again at Sector-11, Rohini.
- v. Shiv Kumar (PW-2) identified the appellant as the person who had purchased the TIA handset from his shop on 24th February, 2009 for a sum of ₹1,200/-. Further, Sunil Rastogi (PW-28) identified the appellant as the person who had purchased SIM card of Idea Cellular of mobile No.9990401054 from his shop on the ID of one Sanjay s/o Hari Ram in the month of February, 2009.
- vi. Pursuant to appellant's disclosure, his clothes stained with blood were seized vide memo Ex.PW-40/A and as per the FSL report Ex.PW-38/A human blood of 'A' group was detected on the jeans of the appellant i.e. the deceased's blood.
- vii. Pursuant to appellant's disclosure statement (Ex.PW-36/E), the dead body of the deceased was recovered from inside the drain at the dividing road of Sector -24 and Deep Vihar, Rohini.



- viii. As per the post-mortem report (Ex.PW-17/A), the cause of death of the deceased was opined to be asphyxia consequent upon smothering and injury No.1 caused by manual pressure over the mouth and nose was opined to be sufficient to cause death in the ordinary course of nature.
- ix. The appellant further got recovered one Wagon-R car bearing registration No.DL 2CAF 7578 from outside his residence at C-4/3, Sector-11, Rohini. As per the crime team report (Ex.PW-39/B) who inspected the car, blood stains were found at several places at the seat cover of the passenger seat and also on car jack handle with screwdriver like shape. As per the FSL report (Ex.PW-38/A), blood found on the car jack handle tallied with the blood of the deceased. Further, from inside the dashboard of the car, RC and driver license of appellant's father Mahender Nagpal were found which were seized vide memo Ex.PW-36/U.
- x. Pursuant to supplementary disclosure statement (Ex.PW-24/A), on 21st March, 2009, the appellant led the police to Shiv Stationery shop at B-5/55, Sector-11, Rohini from where the deceased had purchased one register and two gel pens, and from where the deceased was kidnapped by the appellant. The police and Shiv Singh (PW-20) who was the shopkeeper of the stationery shop was led by the appellant to his residence where one register with the stamp of M/s Shiv Stationery on the first page was found, identified by PW-20 and thereafter, seized



vide memo Ex.PW-20/A. Further, a wrapper containing two gel pens had already been recovered on 19th March, 2009 from the spot where the dead body was found.

- xi. A voice recording of a call between PW-5 and the appellant was recovered from the mobile phone of PW-25, which was found to contain voice of the deceased as well as identified by PW-36. This voice recording was sent for FSL examination and as per the FSL (Physics) report (Ex.PW-5/A-6), voice of the appellant in the conversation recorded in PW-25's phone matched with appellant's voice sample.
- xii. That the appellant was also identified by Jai Pal Singh Mann (PW-34) and the deceased (through photos) as having seen the deceased in the company of the appellant on 18th March, 2009 at about 9.00-9.30 PM in the front seat of a Wagon-R car, when he was stopped by the appellant with a request for drinking water.
- xiii. From the disclosure statement of the appellant dated 19th March, 2009, it was discovered that the appellant had committed the crime owing to high amounts of debts on him and his family. Amit Kumar Ganguly (PW-13), who was the Chief Manager at Bank of India proved that there was an outstanding amount of ₹28.37 lakhs for which his account was classified as 'non-performing asset' on 31st March, 2009. Sahil (PW-19) also deposed about the factum of financial losses incurred by appellant's father in business and that appellant



used to borrow money from his friends. Naveen Hooda (PW-26) also stated that he had given a loan of ₹25,000/- to the appellant in the first week of February, 2009 and a further loan of ₹38,000/- after about a week or ten days.

8. In addition to the above submissions and in response to the contentions put forth on behalf of the appellant it was contended by learned APP that the disclosure and recovery of dead body at appellant's instance was proved by deceased's father (PW-36), who was also present at the time of appellant's arrest and there is nothing on record to suggest any enmity between the appellant and the family of the deceased for which PW-36 might falsely implicate the appellant. PW-3 and PW-39, deposed that they had received wireless messages to reach the dry drain where the dead body was recovered. Furthermore, the Zee news video (Ex.DW-1/A) relied upon by the appellant is neither supported by certificate under Section 65B of the Evidence Act nor the said video shows a 360 degree view of the spot nor does the said video reflect the time, date and place of recording as also admitted by DW-1, rather the said video merely records the recovery of dead body from one angle. And therefore, it cannot be said that the appellant was not present at the spot. It was the appellant's case that he was not present at the time of recovery of Wagon-R car from his house, however, learned APP submitted that the same was proved by PW-27, PW-40 and PW-42 as well as PW-36 and there is no reason to not believe these witnesses. The officer who conducted the mechanical inspection of the car i.e. PW-23, the crime team official (PW-39), victim's father and the IO have



consistently deposed that the key was available at the time of inspection of the car. The case of the appellant that the actual culprit of the offence was Devender Sharma @ Dev (PW-5) was demolished by the CDR and the location analysis of mobile No.9899902999 belonging to PW-5 as per which at the time of commission of offence, PW-5 was not in Rohini and instead was moving towards Chattarpur which is at a substantial distance from Rohini. It was also the case of the appellant that the version of the witness to the last seen evidence i.e. PW-34 was not believable and also that it was inconceivable that the deceased did not raise any alarm when PW-34 saw him. Per contra, learned APP submitted that PW-34 has given each and every detail of the incident which does not leave any doubt that he did not see the deceased in the company of the appellant. Further, the reason why the deceased did not raise any alarm because the appellant and the deceased were known to each other and that the deceased was in the company of the appellant from 6.00-6.30 PM till 10.00-10.30 PM i.e. for over four hours showing that the deceased was not aware of the appellant's intention to kill him.

9. Having heard the counsel for the parties and perusing the record, the following evidence emerges.

10. Brijesh Mahajan (PW-1) deposed that on 15th March, 2009 his elder brother Rajesh had gone to Chandigarh with his elder son Vaibhav and his younger son Manan (deceased) was living with them in a joint family. On 18th March, 2009, at about 6.30-7.00 PM, Manan had gone to purchase some articles from nearby stationery shop but did not come back. He searched for him in the neighbourhood and when no clue was found, he made a call at



number 100. He spoke with his brother Rajesh, who told him that some unknown person had sent a message from mobile No.9990401054 to his mobile No.9811092230 and demanded ransom for his son Manan. He informed about this to the police and his statement (Ex.PW-1/A) was recorded. Police searched and tried to locate Manan at different place. On 19th March, 2009 his brother also came back and during investigation, police apprehended Shanky @ Jeevak Nagpal @ Veevek Nagpal. Jeevak Nagpal disclosed about the kidnapping and murder of his nephew Manan for money. Appellant led them to the 60 ft dividing road between Sector-24 Rohini and Deep Vihar in the dry drain, pointed out to the place and got recovered the dead body.

11. Rajesh Mahajan (PW-36) deposed that on 15th March, 2009 he had gone to Chandigarh with his elder son Vaibhav concerning some business work on 18th March, 2009 at about 9.30 PM, when he along with his son Vaibhav Mahajan were about to leave from Chandigarh, he came to know from his family member that his younger son/deceased had gone missing. After sometime when he checked his mobile phone No.9811092230, he found that he had received several messages from mobile No.9990401054 with regard to kidnapping of his son/deceased and demand of ransom money. He stated that in the first message it was written "*humne apke bete Manan ko kidnap kar liya he, ab hum jaisa kehte jayen vaise karte jao, police ko batane ki hoshiyari mat karna*". In the second message it was written "*hume 25 lakh rupiya 30 minute ke andar andar chahiye, phir hum aage batayenge ke kya karna hain*". He further stated that in one of the messages, demand for ransom of ₹55 lakhs was made and, in another



message, he was to pay a ransom of ₹7 crores till 7.00 PM on the next day. On the next morning i.e. 19th March, 2009 at about 4.00 AM, he along with his son Vaibhav reached Delhi and at his house, police officials were also present and he joined the investigation with them. In the same morning, messages were coming on his mobile from the same number and one message read “15 minute mein ek ek ungli katenge, ungliya khatam to wo bhi khatam, itna hi time he tere pass”. At about 11.30-11.45 AM, one boy Jeevak Nagpal @ Shanky was seen in a suspicious condition moving near his house. He stated to have known the accused as previously residing at H.No.C-5/57, Sector-11, Rohini which was two houses away from his own house i.e. C-5/53. On being called by the police, the appellant tried to run away but was overpowered by police officials. From the appellant, two mobile phones, one of make TIA and another Noika 7670 were recovered. The TIA mobile phone was found containing SIM No.9990401054 and the Nokia 7670 was found containing SIM No.9873883039. On further checking, it was found that the aforesaid SMS were sent to him from the SIM No.9990401054 and the contents of those SMSs were reduced into writing by the police in his presence (Ex.PW-36/A-1 to Ex.PW-36/A-3). Thereafter the accused was arrested vide memo Ex.PW-36/B. His disclosure statement (Ex.PW-36/E) was also recorded. Thereafter, the appellant led them to the dividing road of Sector-24 and Deep Vihar, Rohini and led the police party towards dry drain towards Deep Vihar from where dead body of the deceased was recovered. The dead body of the deceased was sent to BJRM Hospital where he identified the body of his son/deceased (Ex.PW-36/R) and after the post-mortem, the dead body was handed over to him. He



again joined investigation and the appellant led the police party to his house where one Wagon-R car bearing No.DL 2CAF 7578 stationed outside his house. Mobile crime team was called by the IO and after inspection, blood stains were found at the seat adjoining the driver seat and one jack handle of the car was found near his door under his seat adjoining the driver seat. The jack handle had blood on its pointed sharp side from one end. Both the seat cover and the jack handle were seized by the police. On 22nd March, 2009, he was again called by the IO to the police station where IO informed him that Ajeet Singh Mahendro had produced one mobile Nokia N73 with SIM No.9873363860 which was used by Devender Sharma @ Dev and by virtue of a software, the conversation between them and appellant on the night of 18th March, 2009 was automatically recorded. The said recording was played by the IO and on hearing the conversation, he identified the voice of his son/deceased as well as the voice of the appellant. He stated that his son/deceased was pleading to the appellant that “*bhaiya maine kya bigada hai aapka, jo mereko maarna chahte ho*”. On 26th March, 2009, he was again called by the IO and on reaching the police station, he handed over his mobile phone Nokia N73 with SIM No.9811092230 on which he had received kidnapping and ransom messages. The text messages received on his phone were written by the IO (Ex.PW-24/C-1 to C-5). In his cross-examination he stated that he got to know about the kidnapping of his son/deceased at about 10.30-10.45 PM, when he read out the messages of his mobile phone for the first time. He tried to contact the number from which the messages were received but could not be contacted. He denied the suggestion that his son/deceased was acquainted with the procedure of



opening and closing or locking and unlocking of the doors of the car, however, he stated that the deceased was acquainted with the procedure of opening and closing of window panes of the doors of the car. He stated that he did not remember whether the main door of the house of the appellant was closed or opened at the time when he reached there with the police.

12. Jai Pal Singh Mann (PW-34) stated that on 18th March, 2009, he was going to his house from his office in his Alto car when on the way at about 9.00-9.30 PM, the appellant gave an indication to stop the car at 60 foota road, Sector-24, Rohini after crossing the office of Dada Dev Property. The appellant was standing near a Wagon-R car bearing No.7578 and asked for water, and as he was not having any water, Jai Pal Singh Mann told the appellant that he may go to office at Khasra No.32/22, Block-C-1, Deep Vihar which was situated at a distance of about half a kilometer. He saw one child aged about 10-12 years sitting inside the car. Thereafter, he left for his house. He stated that he could identify the child sitting in the Wagon-R car from the photographs and accordingly, the photographs (Ex.PW-3/A-1 to Ex.PW-3/A-24) were shown to him. Jai Pal Singh Mann identified the child in photographs (Ex.PW-3/A-1, Ex.PW-3/A-5, Ex.PW-3/A-6, Ex.PW-3/A-19 and Ex.PW-3/A-21) as the child sitting in the Wagon-R car on that day. In his cross-examination he stated that his office never remained closed as one person always remained inside the office. He further stated that the minor child sitting in the Wagon-R car was wearing a capri and a T-shirt of yellow colour. The minor child was sitting on the front seat adjacent to the driver's seat however, he did not raise any noise on seeing him and did not attempt to beat the window glass of the door at that



time. He further stated that he did not talk to the minor child at that time and that the engine of Wagon-R car was not switched on.

13. Devender Sharma @ Dev (PW-5) deposed that the appellant had borrowed ₹15,000/- from him in the end of year 2008. He had demanded back his money from the appellant several times but the appellant was not returning his money and used to promise to return the same after one-two days on every occasion. On 18th March, 2009 at about 8.30 PM, he along with friend Harpreet @ Sonu and Ajeet Singh Mahendru @ Bobby were roaming in Swift car in Rohini. As he had to take his money back, at about 9.30 PM he reached Sector-11 Rohini and went to the house of the appellant where he was not found present. Thereafter, he went to Sector-15 Rohini where they picked up Monty and all of them left for Chattarpur Mandir. On their way, he took the mobile of his friend Bobby having number 9873363860 for calling the appellant. At about 10.15 PM he made a call from his said number when he asked the appellant to return his money. During this call, he heard the voice of a child coming from the side of the appellant and that child was saying “*bhaiya tum mujhe kyon marna chahte ho, maine tumhara kya bigada hai*”. Thereafter, the appellant disconnected the call. On becoming suspicious, he narrated this incident to his friend Bobby, who told him that there was a call recording software in his mobile and that the said call might have been recorded in the mobile instrument. Thereafter, Bobby made him hear the said call recording after which, in order to ascertain if there was something wrong, he again made a call to the appellant at about 10.35 PM from the mobile number of Bobby and inquired about the voice coming from behind, when he had made the previous call,



on which the appellant replied that there was no one with him and thereafter, disconnected the call. He again tried to call the appellant but his phone was found to be switched off. On 22nd March, 2009, he was called at PS Prashant Vihar where Bobby was also present and Bobby produced his mobile phone Nokia N-73 and the IO checked the said mobile instrument and heard the conversation. IO reduced the entire conversation into writing (Ex.PW-5/A-1 to Ex.PW-5/A-4) and a CD was also got prepared (Ex.PW-5/C). He further stated that on 25th March, 2009, IO obtained his voice sample with the help of a private videographer and thereafter, voice sample of the appellant was taken in a separate audio cassette.

14. Ajeet Singh Mahendru @ Bobby (PW-25) corroborated the version of Dev (PW-5). In his cross-examination, he stated that when the police was about to seize his mobile, he informed the police that there was recording of his personal data on which the police gave him the phone and he deleted all the data except recording of call between the appellant and Devender. He further stated he had deleted the aforesaid data in the presence of the police and two calls between the appellant and Devender were not deleted and that he had not deleted any conversation between appellant and Dev.

15. Sahil (PW-19) deposed that the appellant was earlier residing at C-5/57, Rohini Sector-11 and was his friend from many years. He further stated that the appellant and his family had shifted to C-4/C, Sector-11, Rohini. On 18th March, 2009 the appellant made a telephone call to him at about 9.00 PM when he along with his mother and cousin reached their house, many people were found gathered outside the house of Mahajan family and he got to know that their son/deceased who had gone to Shiv



Stationery was missing. At about 9.00-9.15 PM, he received a call from the appellant who told him that his Wagon-R car had met with an accident was in need of services of a crane. Thereafter, he found number of RACE Company from the internet and made a call on the helpline number of the company and gave the mobile number of the appellant. At about 10.00 PM, the appellant requested him to come on his bike as the appellant would take his car on the next day and also requested him to bring ₹1,000/- in case the crane company comes as he was having no money. Accordingly, he left on his motorcycle for Sector-24-25 dividing road and reached there at about 10.30 PM and made a call to the appellant, whose phone was found switched off. He saw a crane standing nearby and he went to the driver and inquired if they were from RACE Company. One driver Daya Nand and helper Nirmal replied positively and they waited for about half an hour at the red-light signal. Thereafter, he sent an SMS to the appellant asking about his whereabouts and at about 11.10 PM, the appellant made a phone call to him and informed him that he was standing ahead of Sirifort College on the Bawana Road. He requested the crane operator to follow him and he drove his motorcycle and on reaching the T point, main road, dividing road of Sector-24 Rohini and Deep Vihar where the appellant met him and pointed to his Wagon-R car. He stated that the car was standing at a place where there was no electricity and the crane driver towed the Wagon-R car and followed the appellant and himself to the house of the appellant. In the morning, at about 7.15 AM the appellant called him asking if Manan had reached his house on which he replied that he was not aware and on the appellant's request to come outside in the *gali*, he refused as he was feeling



sleepy. He further stated that the appellant used to tell him that his father had suffered a financial loss, they were in a hardship and that the father of the appellant was in a debt of loan from bank for an amount of ₹25-30 lakhs.

16. Daya Nand (PW-15) deposed that he used to drive crane and Nirmal was a helper with him and he used to park his crane No.DL 1LE 1578 at Mayapuri D-Block Crane Stand. He stated that his supervisor Mukesh had helpline numbers of RACE Company and Mukesh used to call them for reaching the customers whenever required. On 18th March, 2009 at about 9.30 PM, he received a telephone call from Mukesh who informed him that he had to take the crane ahead of Rithala Metro Station, Rohini and had to tow a car 7578 Wagon-R, which had broken down and he was given mobile number of the customer which he had fed in his phone. Thereafter, he along with Nirmal reached Rithala Metro Station and called the customer who informed him that he was at red light signal of crossing of Sector-24 and 25 Rohini. He went ahead of the crossing when a motorcyclist met him who asked him if he was from RACE Company to which he replied positively and thereafter, that motorcyclist informed him that the customer was his friend and he could not connect him thus, requested the witness to make a call to the customer. He further stated that after about 10-15 minutes he was able to connect with the customer and the customer directed them to his location. Thereafter, he followed the motorcyclist and after 10-15 minutes he reached on the road dividing Sector-24 Rohini and Deep Vihar. He correctly identified the appellant as the customer who had asked for the services of the company to tow his Wagon-R car. The appellant pointed to



his car parked on the left side of other road and accordingly, he drove the crane to the wrong side and took a U turn for towing the car. His helper Nirmal got down from the crane and anchored the hook of the crane to tow the car and followed the motorcycle on which the customer/appellant was sitting with his friend/motorcyclist. The car was towed upto H. No.C-4/3, Sector-11, Rohini and he was paid ₹800/- for his services. After about three-four days, he was called to PS Prashant Vihar where he saw the appellant and his statement was recorded. In his cross-examination he stated that as the customer/appellant did not ask for the bill, he did not issue any bill. Nirmal Kumar Yadav (PW-16) corroborated the version of Daya Nand (PW-15).

17. IO/Inspector Pratap Singh (PW-42) stated that on 18th March, 2009 at about 9.30 PM, he received an information vide DD No.37PP at PP Sector-16, Rohini regarding missing of a boy from C-5/53, Rohini Sector-11 which was marked to ASI Bal Kishan for inquiry. Thereafter, he also went to the spot. He met Brijesh Mahajan as well as other family members of the missing boy who told him that the deceased had gone to nearby stationery shop at about 6.00-6.30 PM but had not returned back. Thereafter, efforts were made to locate the boy in the park, streets, market area etc. but no clue could be found. Brijesh Mahajan informed him that his elder brother who was the father of the deceased had gone to Chandigarh. Brijesh Mahajan informed him about the telephonic conversation between Brijesh and Rajesh and that Rajesh had received SMS on his mobile phone regarding kidnapping of the deceased and asking for ransom and that those messages were received from mobile No.9990401054. He recorded the statement of



Brijesh Mahajan (Ex.PW-1/A) and *rukka* (Ex.PW-42/A) was prepared on which FIR was got registered. Efforts to trace the boy were made but the deceased could not be traced. The mobile number was put on technical surveillance. On 19th March, 2009 at about 4.00 AM, Rajesh Mahajan returned back to Delhi and joined the investigation. At about 11.30 AM an information was received that as per technical surveillance, location of the SIM No. 9990401054 was found near Sector-11 Rohini and accordingly secret informers in plain clothes were deployed in the area. At about 11.30 AM, information was received that one person in suspicious condition was roaming around the house of the deceased and on pointing by the secret informer, the said suspicious person was apprehended. On interrogation, he disclosed his identity as Jeevak Nagpal. He produced two mobile phones one of TIA make and other of Nokia of black colour from which text messages have found to have been sent to Rajesh Mahajan. Accordingly, the appellant was arrested vide memo Ex.PW-36/C and transcripts of the messages were prepared. Father of the appellant was informed about the arrest of the appellant and spare clothes of the appellant were arranged from his house and the clothes worn by the appellant at the time of his apprehension was seized vide memo Ex.PW-40/A. Thereafter the appellant led the police team along with Rajesh Mahajan to a dry drain at dividing road between Sector-24 Rohini and Deep Vihar from where the dead body was got recovered. Crime team was also called at the spot. He also inspected the spot and lifted eight exhibits from there which were seized. Thereafter, the dead body was sent to BJRM Hospital for post-mortem examination. On 19th March, 2009 at about 6.30 PM, the appellant led the



police team to Sector-11 Rohini where Rajesh Mahajan also joined the investigation and from outside the appellant's house i.e. C-4/3, Sector-11 Rohini, Wagon-R car bearing registration No.DL 2CAF 7578 of silver colour was found stationed. The mobile team was called to inspect the car and on inspection, bloodstains were found on the seat adjoining the driver seat. One jack handle of the car was found in between the door and the seat having blood on its pointed/sharp side from one end. The weapon i.e. the jack handle was seized vide memo Ex.PW-36/S. During inspection one RC and driving license both in the name of the father of the appellant were recovered which were also seized. In his supplementary disclosure statement (Ex.PW-24/A), the appellant disclosed that he had purchased the TIA mobile from a shop situated at Sector-11, Rohini in the name of Raj Hans Telecom. The shopkeeper Shiv Kumar identified the appellant as the boy who had purchased the TIA phone for ₹1,200/- on 24th February, 2009. Thereafter, the appellant led the police team to M/s Shiv Stationery Shop from where the deceased had purchased a register and two gel pens and when the deceased came out of the shop, he was kidnapped by the appellant. Thereafter, from the house of the appellant at C-4/3, Sector-11, Rohini one register having the stamp of M/s Shiv Stationery on the first page was found which was seized vide memo Ex.PW-20/A. Thereafter, on 22nd March, 2009, one Ajeet Singh Mahendru and Devender were also interrogated. From the mobile phone of Ajeet Mahendru, a call recording was found wherein the voice of the appellant and the deceased were found recorded in a call made by Devender from his mobile phone to the appellant. Thereafter, driver Daya Nand and helper Nirmal of the RACE Company



were interrogated and their statements were recorded. During interrogation, voice samples of the appellant as well as Devender @ Dev were obtained. Thereafter, upon completion of investigation charge-sheet was filed.

18. In his statement under Section 313 Cr.P.C., appellant Jeevak Nagpal stated that he has been wrongly implicated in the present case and that he neither kidnapped nor killed nor demanded any ransom. He stated that on 18th March, 2009, he was present in his house and in the evening he had taken out Wagon-R car which had some electrical and mechanical snag for which he took the help of his friend Sahil. On 19th March, 2009, he was at his home when Brijesh Mahajan, his wife and some police personnel visited his house, lifted him and took him to the office of Crime Branch at Avantika. His parents were also taken to the office of Crime Branch in a separate vehicle. Some police personnel locked the house and keys of the house also remained with the police. Thereafter, he was taken to the DCP office where a lot of media persons were present, who took his photographs and at the instance of police officials, he was made to make a statement before media channel. He denied knowing about the murder of the deceased or the place from where the dead body was recovered. He stated that the place of recovery of dead body was pointed out by Devender Sharma. He further stated that his parents were also detained at Sector-1, Avantika and that the keys of the house were given to his parents only after his parents moved to NHRC. He further stated that the jack handle of the car was planted which belonged to Devender Sharma whereas his entire tool kit including the jack handle was lying under the stepney. He further stated that the IO had planted witnesses against him and had spared the actual



culprits i.e. Dev and company as the father of Dev was in Delhi police who had managed the IO. He further stated that the IO deliberately did not send the TIA mobile for forensic investigation. He stated that he was innocent and was falsely implicated in the present case.

19. Thereafter, the appellant also appeared as a witness as DW-13. As a witness he deposed that on 18th March, 2009 till about 6.00 PM he was at his home and at about 6.00 PM he received a phone call from his friend Ankur asking him to play snooker at Sector-7 Market, Rohini, Delhi. After about half an hour, he left his home in his Wagon-R car bearing No.DL 2CAF 7578. After crossing the Japanese Park near Metrowalk, one Innova car coming from behind tried to overtake in speed and in order avoid collusion, he turned his car on the right side whereupon his car got imbalanced and collided with the divider due to which the axle of his car got damaged and started bumbling. He tried to chase the Innova car but due to damage, his car stopped after crossing Rithala Metro Station. Since the car belonged to his father, out of fear of being scolded, he called his friend Sahil Pahwa to call the crane and get the car lifted. Sahil came with the crane at about 11.30 PM and the Wagon car was towed and dropped in front of his house. Next morning on 19th March, 2009, at about 9.00 AM, he saw Mrs. Meena w/o Brijesh Mahajan standing near the Wagon-R car and accordingly, he went outside and wished her. Immediately, thereafter, a vehicle came out of which five-six persons got down and forcibly pushed him inside the said vehicle and Brijesh Mahajan was already sitting in the said car. Despite having repeatedly asked as to why was he caught and why he being taken, no one replied and he was beaten. He was taken to the



office of Special Cell, Delhi Police at Sector-1, Rohini where 10-12 people were inside a room at the first floor who beat him with hands and *dandas*. He stated that he was asked to confess that he had kidnapped the deceased and as he denied, they beat him and told him that his family members have been made to sit at the ground floor and they will be beaten up unless he confesses. Later, however, he agreed to do whatever they said and after sometime he was taken downstairs where he saw his mother, father and friend Sahil and his parents sitting in the police station. Thereafter, he was taken to the office of DCP at Pushpanjali and he was asked to admit his guilt at the press conference, after which he was taken to police station at Rohini Sector-3. Thereafter, the glass by which he drank water was lifted and some of his hair strands were pulled and taken out by the police. Thereafter he was made to hear a recording by the IO from Nokia N-73 mobile. A videographer was called to record his voice and the IO had asked him to repeat the transcript many times till it closely resembled with the conversation recorded in the mobile phone. In his cross-examination, he denied his presence near Sector-11, Sector-16, Sector-13, Unitech and Sunheri Bagh Society at Sector-13, between 5.35 PM till 7.46 PM. He further denied his presence at VBPS, Sector-24 between 8.47 PM to 11.12 PM and stated that he was at Rithala. Further, he stated that he was only having a Nokia mobile phone with number 9873883039. He denied having sent SMSs to Sahil Pahwa from his TIA mobile phone. He stated that he had only made a phone call to Sahil from Nokia mobile phone with respect to the damage to his Wagon-R car and crane operator for towing the vehicle.



20. As noted above, the case of the prosecution is based on circumstantial evidence and except Jai Pal Singh Mann (PW-23) who was going in his Alto car at about 9.00 – 9.30 PM and saw the deceased with the appellant to whom the appellant gave an indication to stop the car and asked for water. This witness saw the deceased child aged 10 to 12 years sitting in the car of the appellant and he identified the said child on the photographs being shown vide photographs Ex.PW-3/A-1, A-5, A-6, A-19 and A-20. The appellant appeared in the witness box as DW-13 and has assailed the case of the prosecution claiming the same to be false and fabricated, foisted at the instance of Devender Sharma. However, in his cross-examination appellant who appeared as DW-13 admitted the ownership of mobile No. 9873883039 which has also been proved by the prosecution by examining the CAF details Ex.PW-6/E which showed that this mobile number was in the name of Vivek Nagpal, S/o Maninder Nagpal and a certificate under Section 65B of the Indian Evidence Act vide Ex.PW-6/G and the call details of this mobile number i.e. 9873883039 have been proved by the prosecution. The appellant has however denied being in possession of TIA mobile phone, stated to be recovered from the appellant wherein SIM number 9990401054 was used from which messages were sent to the father of the deceased Rajesh Mahajan (PW-36). However, the evidence on the basis of call detail records also revealed that the appellant used the SIM of the mobile No. 9873883039 in his TIA mobile number from 8.48 PM to 11.12 PM and then reverted back this SIM of the mobile number 9873883039 to the NOKIA 7670 handset, in which this mobile number was originally used. The prosecution has proved that this TIA mobile phone recovered from the



possession of the appellant was sold to him with a SIM bearing mobile number 9990401054 by Sunil Rastogi (PW-28) on the 13th February, 2009 under the ID of one Sanjay, S/o Marl Ram, R/o East Kidwai Nagar. Further, this fact of changing the SIM card bearing mobile No. 9990401054 in the NOKIA 7670 was clearly put to him in cross-examination as DW-13, which he denied. The call details of the mobile number 9873003839 were duly exhibited and during this period the appellant used SIM card of mobile No. 9873003839 in TIA handset for communicating with PW-5/25 and PW-19/15 & 16, as is evident from the call detail records, as noted herein below:

“Usage of Mobile Number 9873883039 in the name of the Appellant

IMEI Number	Mobile Make / Model	Mobile Exhibit No.	Date	Time
352273011178240	Nokia 7670	Ex. P-36/1	18.03.2009	Up to 08:38:17 pm
354101000203940	TIA	Ex. P-1	18.03.2009	From 08:48 pm till 11:12:45 pm
352273011178240	Nokia 7670	Ex. P-36/1	19.03.2009	From 12:14:30 am

Call / SMS Chart (18.03.2009 and 19.03.2009) of Mobile No. 9873883039

Mobile Number	Call / SMS/ Direction	Time	IMEI No.	Location [Cell ID]
18.03.2009				
		05:35:16-07:04:50 pm	352273011178240	Sector-11, Rohini (21821)
9868155253 (Sahil) PW19	Call-Out	05:48:41 pm		
9873656536 (Naveen Huda) PW-26	Call-In	06:28:27 pm		



9811387805	SMS-In	07:23:17 pm	352273011178240	Sector-16, Rohini (10692)
9811634684	SMS-In	07:29:15 pm	352273011178240	Sector-11, Rohini (59402)
9313426677	SMS-In	07:34:52 pm	352273011178240	Sunehri Bagh, Sector- 13, Rohini (18653)
9313426677	SMS-In	07:40:19 pm	352273011178240	Unitech (55651)
9811387805	SMS-In	07:46:57 pm	352273011178240	Sector-11, Rohini (59403)
9313426677	SMS-In	07:57:03 pm	352273011178240	Prahlad Pur Bangar (14692)
		08:05:55- 08:38:17 pm	352273011178240	Sector-23, Rohini (27271)
		08:47:58- 11:12:23 pm	354101000203940	Sector-24, Rohini, VBPS (12353)
9873656536 (Naveen Huda) PW26	Call-In	08:48:33 pm		
9873656536 (Naveen Huda) PW26	Call-Out	08:49:41 pm		
9868155253 (Sahil) PW19	SMS-in	09:08:18 pm		
9868155253 (Sahil) PW19	SMS-in	09:08:43 pm		
9868155253 (Sahil) PW19	Call-Out	09:09:05 pm		
9868155253 (Sahil) PW19	Call-Out	09:32:05 pm		
9868155253 (Sahil) PW19	Call-Out	09:37:38 pm		
9868155253 (Sahil) PW19	Call-Out	09:43:01 pm		



9868155253 (Sahil) PW19	Call-Out	09:47:19 pm		
9868155253 (Sahil) PW19	Call-Out	09:51:01 pm		
9868155253 (Sahil) PW19	Call-Out	09:58:05 pm		
9211565810 (Crane Dayanand) PW15	Call-In	10:08:50 pm		
9868155253 (Sahil) PW19	Call-Out	10:10:11 pm		
9873363860 (Devender Sharma) PW5	Call-In	10:19:22 pm		
9873363860 (Devender Sharma) PW5	Call-In	10:20:46 pm		
9868155253 (Sahil) PW19	Call-Out	10:25:59 pm		
9211565810 (Crane Dayanand) PW15	Call-Out	10:29:37 pm		
9868155253 (Sahil) PW19	Call-Out	10:30:40 pm		
9873363860 (Devender Sharma) PW5	Call-Out	10:35:18 pm		
9211565810 (Crane Dayanand) PW15	Call-In	10:36:48 pm		
9868155253	Call-Out	10:38:10 pm		



(Sahil) PW19				
9868155253 (Sahil) PW19	SMS-in	10:42:43 pm		
9868155253 (Sahil) PW19	SMS-in	10:43:43 pm		
9211565810 (Crane Dayanand) PW15	Call-In	10:44:51 pm		
9899902999	Call-In	10:49:47 pm		
Devender Sharma PW-5				
9868155253 (Sahil) PW19	Call-In	10:50:32 pm		
9211565810 (Crane Dayanand) PW15	Call-out	10:52:30 pm		
9868155253 (Sahil) PW19	SMS-in	11:08:23 pm		
9868155253 (Sahil) PW19	Call-out	11:09:24 pm		
9868155253 (Sahil) PW19	Call-out	11:12:23 pm		
9868155253 (Sahil) PW19	Call-out	11:12:45 pm	354101000203940	Prahlad Pur Bangrar (14692)
19.03.2009				
9999184238	Call-out	12:14:30 am	352273011178240	Sector-16, Rohini (10692)
9311339393	SMS-in	12:37:48 am	352273011178240	Sector- 11, Rohini (21821)
9811658526	SMS - out	01:01:17 am		
9811658526	SMS - out	01:01:20 am		
9811041120	SMS -	01:01:27 am		



	out			
9811041120	SMS - out	01:01:30 am		
9711040029	SMS - out	01:01:36 am		
9711040029	SMS - out	01:01:39 am		
9811634684	SMS - out	01:03:37am	352273011178240	Sector-16, Rohini (10692)
9811634684	SMS - out	01:03:39 am		
9313426677	SMS - out	01:04:27 am		
9899068404	Call-out	03:15:47 am	352273011178240	Sector-11, Rohini (21821)
9868155253 (Sahil) PW19	Call-out	07:19:17 am		
		07:28:03- 07:55:16 am		
		08:01:02- 08.01.37 am	352273011178240	Sector-16, Rohini (10692)
		08:57:22- 09:45:52 am	352273011178240	Sector-11, Rohini (21821)

Note: Calls made from 8:47:58 PM to 11:12:23 PM from mobile number 9873883039 are from TIA mobile handset”

21. The calls on the 18th March, 2009 from 8.47.58 PM to 11.12.23 PM have been made from the handset. Thus, the defence of the appellant that he did not use the TIA mobile on which SIM No. 9990401054 was also used and no messages to Sahil or to Rajesh Mahajan falls flat from the details of the call records and SMSs as noted above. The prosecution has proved beyond reasonable doubt from the messages retrieved from the phone of Rajesh Mahajan (PW-36), the father of the deceased, that ransom messages



were sent to him from the mobile No. 9990401054. Further, prosecution has proved beyond reasonable doubt that the appellant called Sahil and Daya Nand the person from the crane to tow the vehicle, as is evident from the call details noted above. Further, the fact that the appellant sought help from Sahil is even admitted by him in answer to question No. 202 put to him in his statement under Section 313 Cr.P.C. wherein he said that on 18th March, 2009 he was present at his house in the evening and later on had taken out his WagonR car which developed some electrical and mechanical snag and thus he took the help of his friend Sahil.

22. Prosecution has proved beyond doubt that the appellant was in possession of SIM for mobile No. 9990401054 and that ransom calls were made from the said mobile number to the mobile phone of Rajesh Mahajan (PW-36) 9811092230, the CAF details whereof have been duly exhibited as Ex.PW-6/U besides the call detail records of mobile number 9990401054. From the CDR analysis of the mobile phone 9990401054 it is evident that the number was used in the TIA mobile handset as under:

“Usage of Mobile Number 9990401054 in following Mobile Phone

IMEI Number	Mobile Make / Model	Mobile Exhibit No.	Date	Time
354101000203940	TIA	Ex. P-1	18.03.2009	Up to 08:30:10 pm
			19.03.2009	From 12:30:02 am

23. Further the chats/ SMS transacted from 7.00 PM on 18th March, 2009 to 9.40 AM on 19th March, 2019 between the appellant and father of the deceased were retrieved from both the mobile phones. The said hand-



written text of the said SMS/ messages were exhibited as PW-24/C1 to C5 wherein a clear demand of ransom was made as under:

“Text of SMS received on mobile No. 9811092230 of Sh.Rajesh Mahajan s/o Shri M.C.Mahajan, r/o C-5/53, Sec-11, Rohini, Delhi from 7 PM on 18/3/9 till 9/34 AM on 19/3/9 from mobile No.9990401054 in possession of appellant





<u>S.No.</u>	<u>Dt. & Time</u>	<u>Contents of SMS</u>
1.	18/3/9 07/01 PM	TERA BETA MANNAN HAMARE PAS HAI BINA KISI HOSHIYARI KE JO HIM KEHTE HAI WAISA KARET JAO. POLICE KO KUCH BTYA TO THEK NAHI HOGA.
2.	18/3/9 07/01 PM	SABSE PAHLE HUMME 25 LAKH RUPEY 30 MIN ME DE KAR JA. USKE BAD HUM TUIJHE BATAYENGE KI AGE KYA KARNA HAI.
3.	18/3/9 07/02 PM	SABSE PAHLE MUMME 25 LAKH RUPEY 30 MIN. ME DE KAR JA. USKE BAD HUM TUIJHE BATAYENGE KI AGE KYA KARNA HAI.
4.	18/3/9 07/02 PM	YE PAISE PAHUCHA FIR ME TUIJHE TERE BETE SE BAT KARWAUNGA. AUR YE MAT SOCHIO KE BAD MEI KOI CHAL CHALE. WARNA JITNI ASANI TERI BACHE KO UTHANE ME HUI HAI USE ZADA ASANI TERI GHER KO UDANE ME HOGI SAMJHA.
5.	18/3/9 10/51 PM	DON'T PANIC ASK HOW MUCH THEY NEED BUT WE NEED HIM BACK.
6.	19/3/9 01/20 PM	TERE BAAP KA NOUKER NI LGA. SAMJHA NA. AUR SUN. MUJHEY CALL KARNE KI SOCHIO BHI MAT. AUR..... KEHNE SE KUCH NI HOGA SAMJHA NA. JAISA BOLA HAI WAISA KAR. TUIJHE MNNA KIYA THA NA. KISI KO BATANE LIYE. TERE GHAR WALO NE SARI JAGHA BTA DIYA HAI. POLICE ME BHI.
7.	19/3/9 01/19 PM	TU HUMARI BAAT MAN. HUM TERI MANEGE. PEHLE YEI PAISA PAHUNCHA. FIR AUR IKHATE KARIO. YE MAT SOCH KI ITNE HI DENE HAI. YE TO BAS NAZRANA HAI. AB TU MUJHE 55 LAKH RUPEY SUBHA AUR 7 CRORE SHAM 7 CRORE TAK. ISSE ZADA TIME NI HAI. HUMARE PAAS DENE KO TO JALDI KAR. AUR GHAR WALON KO KAH KI AB SHORE NI KARENGE. SABKO BOLE KI WO MIL GYA HAI. AUR JALDI KE. YE SAB TERE PAAS SIRF SUBHA 6 BAJE TAK TIME HAI JO KERNA HAI JALDI KER.
8.	19/3/19	BOL BE KYA HAI. HUA PAISO KA INTEZAM?



	06/18 AM	
9.	19/3/19 06/28 AM	JAWAB DE MUJHE JALDI YA MAR DALU ISE.
10	19/3/9 06/50 AM	PURI RAT DI THI TUIJHEY. ABHI TAK KUCH NI KIYA HAI. AUR MENE KHA NA PEHLE PAISA DE USKE BAD TERI BAT KARWA DUNGA. FIR SE MAT BOLIO YE BAT. AUR JALDI KER. AUR KOI KOSHIYARI MAT DIKHAIO. SAMJHA. POLICE WALO KO MNA KIYA USSE DHUNDENE.
11.	19/3/9 06/39 AM	KITNI DER LAGEGI AB TUIJHEY. YE BTA JALDI.
12.	19/3/9 06/57 AM	KITNE HUE HAI.
13.	19/3/9 07/08 AM	WHAT 5 ? 5 LAKH AUR 5 CRORE AND DON'T TELL ME THE SHIT KE 5 LAKH HI HUE HAIN. ITNA BRA DEALER AUR KUCH NI HAI USKE PAS. YA FIR BETE SEI JADA PYARA PSA HAI TUIJHEY
14.	19/3/9 06/56 AM	KITNA TIME CHAHIYE AUR. EK GHATA AUR DETE HAI TUIJHEY USKE BAAD HAR 5 MIN MEI 2 LAKH UPPER DIYO.
15.	19/3/9 06/58 AM	KAHA HAI ABHI TU.
16.	19/3/9 07/37 AM	SALE JHUTH BOLTA HAI MUJHSE. POLICE STATION ME HAI TU. PAISO KA INTEZAM KER LE JALDI WARNA SAHI NHI HOGA.
17.	19/3/9 07/59 AM	15 MIN REH GAYE HAI AB. KITNEY KA INTEZAM HUA. JALDI BTA. WARNA GYA TERA BETA. AUR YE MAT SOCH KE AUR TIME MILEGA, PENALTY WALA BHI 30 MIN HAI JADA NHI.
18.	19/3/9 07/58 AM	BOL AB KITNE IKHATE HUE ABHI TAK



19.	19/3/9 08/16 AM	55 LAKH KA BOLA HAI TUIHE. JALDI KER. TIME KHATAM HO RHA HAI.
20.	19/3/9 08/11 AM	BATA JALDI KYA HUA.
21.	19/3/9 At 08/51 AM	TUMHE HAMARA WISHWAS KARNA PAREGA. WO BILKUL THIK HAI HA BAS RO RHA HAI GHAR JANE KEI LIYE. MAGAR GHAR WALON KO TENSION HI NHI HAI. KITNA TIME CHAHIYE AUR. HAR 15 MIN ME EK UNGLI KATENGE. AUR TERE PAS PAHUCHA DENGE BAS UTNA AUR TIME HAI TERE PAS. UNGLIA KHATAM TO WO BHI KHATAM.
22.	19/3/9 At 09/34 AM	TO BTA KITNE HUE ABHI TAK. AB TO MARKET BHI KHUL GAYE HOGI. ABHI TAK KUCH NI KIA HAI HUMNE BUS DARA RAHE THE. JALDI KER AB.

Text of SMS sent by Rajesh Mahajan from his Mobile No. 9811092230 to 9990401054

1.	18/3/9 11/35 PM	DEAR BROTHER MAINE ABHI APKA MESSAGE PDHA HAI. MEREY MOBILE KI BATTERY KHATAM THI. MEIN ABHI CHANDIGARH MEI HUN. MEI ABHI YHA SEI DELHI KEI LIE CHLA HUN. MEI ABHI KE APKI DEMAND PURI KRTA HUN. DEAR BROTHER MANAN APKE BETE JAISA HAI PLEASE USKA DHYAN RKHNA. PLEASE MERI EK BAR USE BAT KRWA DO.
2.	19/3/9 01/48 AM	MAI ABHI KARNAL PHUNCH GYA HUN. MEI DELHI A RHA HUN. MERE GHAR WALON KO KUCH NHI BTAYA. AAP KE BARE MEI GHAR WALE USKE NAI ANE PER HI YE SAB KAR RHE HAIN. MEI DELHI ANE PER APKI DEMAND PURI KRTA HUN.
3.	19/3/9 01/50 AM	PLEASE EK BAR MERI MANAN SE BAT KARWA DO.
4.	19/3/9 06/57 AM	ABHI PAHUNCHA HOON DELHI. RAKAM BAHUT BARI HAI. PLEASE THODA TIME DO. EK BAR MANAN SE BAAT KAA



		DO. PLEASE REQUEST HAI.
5.	19/3/9 07/10 AM	KUCHH KA INTEZAM HO GYA HAI. OR KAR RHA HOON.
6.	19/3/9 07/14 AM	ABI 5 HUYE HAI.
7.	19/3/9 07/33 AM	GHER PE HOON
8.	19/3/9 07/58 AM	MAI GHAR PER HI HOON. CHAHO TO MEIN GHAR WALO SEI BAT KERWA DUN.
9.	19/3/9 08/28 AM	8-10 LAKH KA INTAZAM HO GAYA HAI. AAP BAT KER LO.
10.	19/3/9 08/46 AM	MAI PAISO KA INTZAM KER RHA HOON. ABHI MARKET NAHI KHULI HAI MERI APSE HATH JOD KER REQUEST HAI KI EK BAR BETE SE BAAT KERWA DO. GHAR MEIN SAB RO RAHEN HAI. MAI PAISO KA INTEZAM KER RHA HUN.
11.	19/3/9 09/23 AM	TUM BHI MERE PE MERE PE WISHWAS KARO. MAI TUMHARE LIYE PAISO KA INTAZAM KER RHA HUN. PLEASE MERE BETE KO KUCH MAT KARNA. TUM ABHI MERE PAR VISHWAS KRO. MAI TUMHAREY LIYE PAISO KA INTZAM KER RHA HUN. MUJHEY PAISEY NHI MERA BETA CHAHIYE.

24. From these messages it is proved beyond reasonable doubt that the appellant kidnapped the 12 year old child, S/o Rajesh Mahajan and demanded ransom failing which his son would be killed. Even ignoring the evidence of the recorded conversation as received in the mobile phone of Ajit Singh Mahendru, wherein Devender Sharma @ Dev (PW-5) was speaking to the appellant and in between voice of a child from the side of



the appellant was heard “*bhaiya tum mujhe kyon marna chahte ho, maine tumhara kya bigada hai*”; for the reason the said mobile phone was admittedly cleaned up by Ajeet Singh Mahendru @ Bobby (PW-25) by removing his personal details though he has claimed that the conversation between the appellant and Devender Sharma (PW-5) has not been deleted, the prosecution has proved beyond reasonable doubt its case from the following circumstances as noted below as well:

- i) Appellant was known to the deceased and his family, as deposed to by Rajesh Mahajan, father of the deceased who stated that the appellant used to previously reside in H.No. C-5/57, Sector-11, Rohini which was situated two houses away from their house and thereafter the appellant’s family sold the said house and moved somewhere else.
- ii) The appellant and his family were in need of money for which the appellant committed the offence of kidnapping for ransom which was the motive behind the crime. In this regard prosecution examined PW-13/ Amit Kumar Ganguli, Chief Manager, Bank of India, Hamdard Dava Khana Branch who proved the bank account details of the appellant’s father, namely, Mahender Nagpal which showed an outstanding amount of ₹28.37 lakhs as on 18th March, 2009 and that his account had been classified as a Non-Performing Asset (NPA) on 31st March, 2009. Further Sahil (PW-19) the appellant’s friend also deposed about the financial losses incurred by the appellant’s father in business and the debt of loans from banks as also appellant requesting Sahil for giving him ₹20,000/- which he refused. Prosecution has



also examined Naveen Hooda (PW-26) who deposed that he had given a loan of ₹25,000/- to the appellant in the first week of February, 2009 and a further loan of ₹38,000/- at 2% interest after about a week or 10 days thereafter and that he made calls to the appellant for demanding the money back. As per the CDRs of the appellant's mobile No. 9873883039, Naveen Hooda (PW-26) made a call from his mobile No. 9873656536 in the evening of 18th March, 2009.

iii) Conduct of the appellant prior to the incident and after the incident: Master Rijul Mahajan (PW-41) aged 15 years, cousin of the deceased deposed that on 18th March, 2009 at about 12 noon when he came outside the school gate in order to board my school van, he saw the appellant standing outside the school. He further stated that the appellant signaled him to come near him and also tried to snatch the magazine that he was holding, however he told the appellant that his Cab driver was waiting for him, he left and boarded school van. Further at 5.30 PM on 18th March, 2009 itself after attending Taekwando Class when Master Rijul Mahajan was returning along with his two friends, namely Sumit and Mannu towards his house, the appellant again met them while he was sitting in one WagonR car and offered him a ride for dropping him home. Though, he and his friend Sumit refused, however, his friend Mannu accepted the lift and sat in appellant's car and went away. As regards the post-event conduct of the appellant is concerned, Sahil (PW-19) and the two persons on the crane (PW-15) and (PW-16) clearly stated that when they reached



with the crane for towing the car, they waited for the appellant for 30-40 minutes at the red light/ signal of the crossing of Sector 24 and 25, Rohini and as the appellant was not reachable and only after he became reachable, they got to know the exact spot where the WagonR car was and proceeded to the T point at the main dividing road of Sector 24 and 27, Rohini where they met the appellant. Thus, this time gap of 30 – 40 minutes when the appellant was not accessible to anybody was sufficient to him for committing the murder of the 12 year old child and disposing of his body at the nearby dry drain.

iv) From the call detail records of the mobile No. 9990401054 from which father of the deceased Rajesh Mahajan was receiving ransom messages on the evening of 18th March, 2009 and the morning of 19th March, 2009 it was evident that the handset with IMEI No. 354101000203940 of TIA mobile on which the mobile No. 9990401054 was used, was also used as the handset with the SIM of mobile No. 9873883039 which was in the name of the appellant on 18th March, 2009 from 8.48 PM till 11.12.45 PM. Learned counsel for the appellant has sought to discredit the recovery of the said TIA mobile from him and states that in the seizure memo of the TIA mobile, its IMEI number is not reflected. As per seizure memo of the TIA mobile (Ex.PW-36/F) it was recorded that the IMEI of the mobile phone is “35410” which are the initial five digits of the IMEI number of the TIA mobile phone i.e. 354101000203940. Hence there is no force in this contention of learned counsel for the appellant.



v) The call detail records of both the mobile numbers of the appellant showed his location near the victim's house i.e. Sector -11, Rohini in the evening hours from 5.35.16 PM to 7.04.50 PM. Further, even in the morning of 19th March, 2009 the CDR of the two mobile phones of the appellant showed his location as Sector 11, Rohini near the house of the deceased. Even though the presence of the appellant at Sector 11 prior to and after the incident cannot be incriminating as the appellant was a resident of C-4/3 Sector 11, Rohini after shifting from C-5/57 Sector 11, Rohini, however the CDR location of the appellant showing his location at Sector 24, Rohini from 8.47.58 PM to 11.12.23 PM on 18th March, 2009 where the victim's body was discovered in the dry drain is clearly incriminating. Challenging the locations in the call details record, learned counsel for the appellant contends that the same could be misleading. It may be noted that at a given place if the range of two towers is available, the CDR may show either of them at any given point of time, however it cannot be said that once the person is not within that range some totally different location will be shown.

vi) Pursuant to the disclosure statement of the appellant the victim's dead body which was dumped in the dry drain at the dividing road of Sector 24, Rohini and Deep Vihar was recovered. Contention of learned counsel for the appellant is that when the recovery of the dead body was made the appellant was not present as he was in the DCP office, as is evident from the press conference as also the video of the ZEE News produced by DW-1. A perusal of the video reveals



that it only showed the dead body and all other persons who were present there were not shown. Thus, when the entire view was not taken in the video, it cannot be assumed that the appellant was not present at the spot. In any case, no certificate under Section 65B was filed by DW-1 or any other competent person from the ZEE News and hence this video is not admissible in evidence. Further, contention of the appellant that the crime team report notes that “accused be arrested after thorough investigation” shows that the appellant had not been arrested when the crime team inspected the scene also deserves to be rejected. Undoubtedly, as per the arrest memo the appellant was arrested at 12.00 PM on 19th March, 2009 whereas the crime team inspection of the spot was carried out from 1.00 PM to 2.15 PM on the 19th March, 2009, however the same does not falsify the time of arrest as the crime scene inspection team is independent of the investigating agency and may not necessarily know whether the appellant had been arrested or not. In any case the Police officer of the crime team PW-3 and PW-39 clearly stated that when they reached the spot, which information was given to them on the wireless, they found the IO present at the spot and it is only the investigating officer who showed them the place where the dead body was lying, which was possible only after the appellant had been arrested and he had already led to the discovery of the dead body, because of which wireless message could be sent to the crime team to carry out inspection. As per the arrest memo the appellant was arrested at 12.00 PM on 19th March, 2009 which is proved from the



call details record of the appellant's mobile number 9873883039 (Ex.PW-6/F), the last call whereon was recorded at 11.46.44 hours on 19th March, 2009 and as per the CDR of mobile number 9990401054 (Ex.PW-29/B), the last call was recorded at 9.34.01 hours on 19th March, 2009.

vii) The dead body was duly identified by the father and uncle of the deceased i.e. (PW-36) and (PW-1).

viii) Recovery of white and blue towel lying on the footpath from near the dead body had blood stains on it. As per FSL report, human blood of 'A' group which tallied with that of the deceased's blood group was found on the said towel. Undoubtedly, as contended by the learned counsel the recovery of the blood stained hand towel does not connect to the appellant as neither his finger print nor blood was found on the towel, but the presence of towel stained with the blood of the deceased, being near the dead body shows the use of the said towel for wiping after disposing of the dead body.

ix) Recovery of the WagonR car from in front of the house of appellant and on inspection bloodstains on the seat cover of the front passenger seat were found and as per FSL report human blood was found on the said seat cover. Undoubtedly, the bloodstains on the seat cover has not given the blood grouping, however once human blood was found on the car of the appellant, it was for the appellant to explain how the blood came on the front passenger seat where the deceased was seen sitting by the witness Jai pal Singh Mann (PW-35) on the previous night.



- x) Recovery of one car jack handle with screw driver – like shape on one side having bloodstains and as per the FSL report the same was stained with the human blood of ‘A’ group which tallied with the blood group of the deceased. Claim of the appellant is that this jack handle claimed to be the weapon of offence did not belong to the appellant’s car as the entire tool kit was present in the car itself beneath the stepney. It is contended that as the dickey of the car was not opened due to lack of keys, it cannot be held that the jack handle is connected to the offence and the appellant. It may be noted that the jack handle with the screw driver as per the FSL report contained human blood of ‘A’ group which tallied with that of the deceased. As per the post-mortem Ex.PW-17/A the pattern of injuries No.5 and 9 was consistent with being caused by some relatively blunt penetrating object having wide and blunt penetrating substance. Further, subsequent opinion of the Doctor conducting post-mortem (Ex.PW-17/C) was taken and it was opined that injury No.2, 5, 6, 8 and 9 mentioned in the post-mortem report (Ex.PW-17/A) were possible with the weapon shown to him i.e. car jack handle. Thus the recovery of car jack handle with screw driver like shape on one side, at the instance of the appellant clearly connects to the murder of the deceased by both the result of the FSL opining blood group of ‘A’ origin on it as also the subsequent opinion rendered by the post-mortem doctor (Ex.PW-17/C).
- xi) Pursuant to the supplementary disclosure statement recorded on 20th March, 2009 the appellant led to the shop, namely Rajhans



Telecom from where he had purchased the TIA handset on 24th February, 2009 and the owner of the shop Shiv Kumar (PW-2) identified the appellant to have brought the TIA handset for a sum of ₹12000/- from his shop on 24th February, 2009. Though this evidence is sought to be challenged as no receipt of sale of TIA mobile phone was given by Shiv Kumar, however the conduct of the appellant in taking to the shop of Shiv Kumar and the appellant's identification by Shiv Kumar are relevant and admissible under Section 8 of the Indian Evidence Act. [See (1972) 1 SCC 249 H.P. Administration Vs. Om Prakash].

xii) Further, the appellant led the Police to Shiv Stationery shop situated at B-5/55, Sector 11, Rohini from where the deceased purchased one register and two gel pens and from where the deceased was kidnapped and the wrapper of the gel pens were recovered near the dead body of the deceased. Even if the wrapper of the gel pen is a common object and required to be discarded; the recovery of register (Ex.P-20/1) having the words "Shiv Long Exercise Book" on its cover at the instance of the appellant from the dining table of his house is admissible in evidence under Section 27 of the Evidence Act. Further, the investigating officer prepared the un-scaled site plan of the appellant's residence showing recovery of the register vide Ex.PW-20/B and Shiv Kumar (PW-20) when he appeared in the witness box deposed before the Court that on 18th March, 2009 in the evening deceased purchased a register and 2 gel pens from him.



xiii) Further, as even admitted by the appellant, he took services of Sahil as his car broke down, prosecution has led sufficient evidence to show that the appellant sought the help of Sahil (PW-19) when his car broke down, and Sahil in turn called the personnel from RACE services to tow away the appellant's car and when they reached near the spot, the appellant did not take their call for around half an hour to 40 minutes, ostensibly for the reason at that time appellant was in the process of disposing off the body of the deceased.

xiv) As per the post-mortem report conducted on 19th March, 2009 time since death was approximately 17 – 18 hours, thus, consistent with the prosecution case that the victim was murdered between 9.30 PM and 11.10 PM, between the time appellant first called Sahil for crane and thereafter again contacted Sahil at 11.10 PM to find out the whereabouts of Sahil and crane people. As per the testimony of Sahil (PW-19), he received a call from the appellant at about 9.00 – 9.15 PM informing him that his WagonR car had met with an accident and that crane services were required. Sahil reached near Sirifort college dividing road at Sector 24/25, Rohini at about 10.30 PM but the phone of the appellant was switched off and thereafter he left SMS on the mobile phone of the appellant. At about 11.10 PM, the appellant made a call to him informing him that he was ahead of Sirifort college on Bawana Road and thereafter he met the appellant. At about 11.40 PM, he reached the house of the appellant with the crane and the WagonR car.



xv) Further the clothes of the appellant which he was wearing at the time of commission of offence and were recovered at his instance contained human blood of 'A' origin which blood group tallied with that of the deceased.

25. The defense of the appellant, particularly, by examining his mother is of illegal arrest and custodial violence. It may be noted that soon after the arrest appellant was produced before the learned Metropolitan Magistrate when no such pleas were taken. However, subsequently the mother made a complaint, on which a vigilance inquiry was carried out, however the report thereof could not be exhibited as the record had been destroyed. Hence, the plea of custodial violence belatedly cannot be looked into in the absence of any evidence to support the same.

26. In view of the evidence as discussed above, the prosecution has proved beyond reasonable doubt that the appellant committed the kidnapping for ransom and murder of the deceased minor child, Manan Mahajan, aged around 12 years besides destroying the evidence by throwing the dead body in a dry drain and threatening the father of the deceased, therefore, his conviction for offence punishable under Sections 364A, 302, 201 & 506 IPC is upheld.

SENTENCE

27. The appellant has been awarded sentence to death for offence punishable under Section 302 IPC, imprisonment for life for offence punishable under Section 364A IPC, rigorous imprisonment for seven years along with fine of ₹30,000/-, in default, to undergo simple imprisonment for six months for offence punishable under Section 201 IPC and rigorous



imprisonment for seven years alongwith fine of ₹30,000/-, in default whereof, to undergo simple imprisonment for six months for offence punishable under Section 506 IPC.

28. At the time of awarding the death sentence, the learned Trial Court considered the mitigating circumstances i.e., the parents of the appellant were 56 and 51 years old and that he had a younger brother aged 30 years who was unmarried and that the appellant was unmarried who was merely 21 years of old at the time of commission of offence and was pursuing studies for Chartered Accountant. Thereafter, the learned Trial Court considered the aggravating circumstances, i.e., the appellant kidnapped his neighbor's son, demanded ransom, threatened the family of the deceased, murdered the deceased with jack handle of his car and also smothered the deceased which resulted in the death of the deceased and thereafter, dumped the dead body of the deceased in an attempt to dispose of the evidence. Resultantly, the learned Trial Court was of the opinion that the manner of commission of the offence by the appellant was cruel and gruesome, therefore, the learned Trial Court deemed it appropriate to award death sentence to the appellant subject to confirmation by this Court.

29. The guidelines for awarding capital punishment as laid down by the Hon'ble Supreme Court in the decision reported as AIR 1983 SC 957 Macchi Singh vs. State of Punjab are that the Court may award extreme penalty of death sentence in the rarest of rare cases when society's collective conscience is so shocked that it expects the holders of the judicial power to inflict the death penalty irrespective of their personal opinion as regards the desirability or otherwise of retaining death penalty. To evaluate



the necessity to award death sentence, the following circumstances were noted, which though illustrative were not exhaustive:

“I. Manner of Commission of Murder

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

- (i) When the house of the victim is set aflame with the end in view to roast him alive in the house.*
- (ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.*
- (iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.*

II. Motive for Commission of murder

When the murder is committed for a motive which evince total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust, (c) a murder is committed in the course for betrayal of the motherland.

III. Anti Social or socially abhorrent nature of the crime

- (a) When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorize such persons and frighten them into fleeing from a place or in order to deprive them of, or make them with a view to reverse past injustices and in order to restore the social balance.*



(b) In cases of 'bride burning' and what are known as 'dowrydeaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of Crime

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of Victim of murder

When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder. (b) a helpless woman or a person rendered helpless by old age or infirmity. (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust. (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.”

30. A two judges Bench of the Hon'ble Supreme Court in the decision reported as (2013) 5 SCC 546 Shankar Kisanrao Khade vs. State of Maharashtra held that while awarding death sentence, the crime test, the criminal test and the R-R test have to be looked into and not the “*balancing test*”, and in view thereof, this Court would be required to determine whether the option of life sentence is “*unquestionably foreclosed*”. In the present case, it is evident that the appellant was in financial stringency and needed money for which he had kidnapped the child. From the evidence on record, it appears that the murder of the deceased was not preplanned as the appellant was not armed with any weapon, however when the appellant got



stuck with his car, he smothered the victim and used the jack handle of his car to inflict injuries on the deceased so as to cause his death. Though causing death of someone in itself is perversity, however causing death by smothering and inflicting injuries by jack handle though opined to be consistent with intense torture, cannot be held to be a diabolic or seriously perverse manner of committing murder so as to shock the collective conscience of the society and fall in the category of rarest of rare cases.

31. No material has been placed on record by the State to show that the appellant is a menace to the society with no possibility of any reformation and that there is no other option except to award the extreme sentence of death, In the decision reported as (2008) 13 SCC 767 Swamy Shraddananda (2) vs. State of Karnataka, Hon'ble Supreme Court noted that a special category of sentence may be formed wherein a convict may be directed to undergo an actual period of incarceration without remissions/commutations by the Executive so that death penalty can be put to actual use as little as possible and really in the rarest of rare cases. It was held:

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and



inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580] besides being in accord with the modern trends in penology.

94. In the light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.”

32. Even in the later decision in 2014 (2) SCALE 301 Birju vs. State of M.P. and 2014 (3) SCALE 344 Ashok Debbarma @ Achak Debbarma v. State of Tripura while reiterating the triple test i.e. Crime Test, Criminal Test, and R-R Test the Supreme Court followed the principles laid down in Swamy Shraddananda.



33. Recently, Hon'ble Supreme Court in the decision reported as (2023) 2 SCC 353 Manoj & Ors. vs. State of Madhya Pradesh framed guidelines for psychiatric and psychological evaluation of convict before awarding death sentence. It was laid down:

“Practical guidelines to collect mitigating circumstances

248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

250. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

(a) Age

(b) Early family background (siblings, protection of parents, any history of violence or neglect)

(c) Present family background (surviving family members, whether married, has children, etc.)

(d) Type and level of education

(e) Socio-economic background (including conditions of poverty or deprivation, if any)

(f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)

(g) Income and the kind of employment (whether none, or temporary or permanent, etc.);

(h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.



251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness, if any.”

34. Further, in the decision reported as 2023 SCC OnLine SC 472 Vikas Chaudhary vs. State of Delhi, Hon'ble Supreme Court observed:

“20. The imperative to conduct evaluation of mitigating circumstances at the trial stage, “to avoid slipping into a retributive response to the brutality of the crime” which this court noticed was frequently occurring in several cases, was underlined, and it was categorically held that the court had to elicit information from the state and the accused. The prosecution also is mandated to produce before the Sessions Court, material disclosing psychiatric and psychological evaluation of the accused, which is to preferably be collected beforehand. At the stage when the trial court is informed that the prosecution intends to press for imposition of capital sentence, the evaluation should be insisted upon; the state is under a duty to present all objective materials, as mentioned in *Manoj* (supra), having regard to the decision in *Bachan Singh* (supra) and importantly, the fact that it is in a position to actually gather the materials. Its task is to present the facts-relating to the accused, which are favourable and unfavourable, for the court to impose a just sentence.



21. *Since the judgment in Sriharan (supra) reserves the power to impose special or fixed term sentences (which may be longer than the minimum specified in Section 433A CrPC - i.e., may extend to considerably long periods, such as 30 years), with only the high courts and this court, it is imperative that this exercise is carried out even in cases where the accused might eventually not be imposed the death sentence. To put it simply - although the trial courts are not empowered to impose such special sentences, yet at the stage when they arrive at findings of guilt in the case of a heinous offence, what would be the nature of the sentence imposed eventually, is unknown; therefore, the prosecution would have to inform the court, and present relevant materials (as elaborated in Manoj), in case the death sentence is proposed. In that event, if ultimately death sentence is not imposed, it is open to the state (or the aggrieved party, under Section 372 CrPC) to appeal against the trial court judgment on the point of sentence; at that stage the evaluation before the High Court would be nuanced, and informed with full materials, about the convict, which otherwise it would not have the benefit of. Further, if considerable time has elapsed since the trial stage at which this exercise was undertaken, the appellate court should direct that a fresh attempt be made, to take into account the contemporaneous progress, if any, made by the convict.*

22. *In view of the above discussion, it is held that wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of Manoj, for evaluation. In case this results in imposition of death sentence, at the stage of confirmation, the High Court would have the benefit of independent evaluation of these materials. On the other hand, if death sentence is not imposed, then, the High Court may still be in a position to evaluate, if the sentence is adequate, and wherever appropriate and just, impose a special or fixed term sentence, in the course of an appeal by the state or by the complainant/informant. Given the imperative need for such material to form a part of the court's*



consideration, it has to be emphasized that in case the trial court has failed to carry out such exercise (for whatever reason), the High Court has to call for such material while considering an appeal filed by the state or complainant for enhancement of sentence (whether resulting in imposition of capital punishment, or a term sentence).”

35. In pursuance of the law laid down by the Hon’ble Supreme Court, this Court vide order dated 2nd May, 2023 directed the Superintendent Tihar Jail to send a report regarding the conduct of the appellant while in custody and was also directed to get the appellant’s psychiatric and psychological evaluation done and send report to this Court. Accordingly, a report dated 23rd May, 2023 from IHBAS was filed wherein it was noted:

“Based on clinical history, serial mental assessments, psychological testings and evaluation, clinical interview by Medical Board members, it is opined that the patient does not have any psychiatric disorder.”

36. As noted above, from the facts of the case, it is evident that the father of the appellant was in debt and besides he himself owed money to Naveen Hooda. The appellant was enrolled in the Chartered Accountant Course. There is no previous criminal history either of the appellant or his family members. On psychological assessment of the appellant, no such ailment or past history has been found. As per the Nominal Roll, the jail conduct of the appellant is satisfactory except for one jail punishment dated 15th July, 2020. In the jail appellant is working as a Sahayak at the legal office. Thus it cannot be said that the option of life sentence is unquestionably foreclosed as the appellant is capable of being reformed. Further, as noted above, the appellant was not armed with any weapon of offence and had kidnapped the



minor child aged 12 for ransom which ransom messages he sent to the father of the victim and only when his car broke down and the appellant had to call for help from his friend Sahil, that he committed the murder of the victim by smothering him and inflicted injuries by jack handle available in the car. Hence even though the offence of kidnapping for ransom was committed in a preplanned manner, it cannot be held that the murder of the victim was committed in a pre-planned manner.

37. Thus, in view of the settled principles of law viz. sentencing and the factual position in the present case, this Court comes to the conclusion that this case does not fall in the category of 'rarest of rare cases'. It is not a case where reformation of the appellant is not possible and accordingly, this Court is of the considered view that sentence of imprisonment of life with no remission till 20 years would be the appropriate sentence. The sentence of the appellant is thus modified to rigorous imprisonment for life with no remission till 20 years and to pay a fine of ₹1 lakh, in default whereof, to undergo simple imprisonment for six months for offence punishable under Section 302 IPC. Sentences as awarded by the learned Trial Court for offences punishable under Sections 364A, 201 and 506 IPC are not modified and will remain the same.

38. Consequently, the reference seeking confirmation of death sentence of the appellant is turned down. CRL.A.166/2021 is disposed of upholding the conviction for offences punishable under Sections 302/364A/201/506 IPC and modifying the order on sentence as noted above.



39. Copy of the judgment be uploaded on the website of this Court and be also sent to Superintendent Tihar Jail for updation of record, intimation to the appellant and necessary compliance.

**(MUKTA GUPTA)
JUDGE**

**(ANISH DAYAL)
JUDGE**

**JUNE 26, 2023
'vn/ga'**



मात्यमेव जयते