HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

DIVISION BENCH

PRESENT:

HON'BLE MR. JUSTICE RAJENDRA MAHAJAN

&

HON'BLE MR. JUSTICE G.S. AHLUWALIA

CRIMINAL APPEAL NO. 142 OF 2008

Gappe alias Vimlesh

-Vs-

State of M.P.

&

CRIMINAL APPEAL NO. 470 OF 2008

Raju alias Ganga Singh

-Vs-

State of M.P.

Shri Sushil Goswami, Counsel for the appellants.

Shri Prakhar Dhengula, Public Prosecutor for the respondents/State.

Date of hearing : 25.11.2017

Date of Judgment : 01/12/2017

Whether approved for reporting : Yes.

J U D G M E N T
(01/12/2017)

PER JUSTICE G.S. AHLUWALIA:

This common judgment shall also dispose of Criminal Appeal No.470/2008 filed by Appellant Raju @ Ganga Singh.

2. These two Criminal Appeals have been filed by appellants Gappe @ Vimlesh and Raju @ Ganga Singh against the judgment and sentence dated 5-1-2008 passed by Special Judge (M.P.D.V.P.K. Act), Bhind in Special Sessions Trial No.

89/2006 by which the appellant Gappe @ Vimlesh has been convicted under Section 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and has been sentenced to undergo the Life Imprisonment and a fine of Rs.10,000/- with default sentence and appellant Raju @ Ganga Singh has been convicted under Section 364-A/120-B of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and has been sentenced to undergo the Life Imprisonment and a fine of Rs.10,000/- with default imprisonment.

3. The necessary facts for the disposal of the present appeals in short are that Rambaran Singh made a Gum Insaan Report on 24-10-2006, to the effect that his son Praveen and Jitendra had gone to attend the 13th day function in the house of Prakash Baghel and thereafter did not return back and he was under impression that they might have gone to the house of any relative but when they did not come back even in Diwali festival, then he searched for them but could not be traced, therefore, gum insaan report was lodged.

4. On 27-10-2006, F.I.R. Ex. P.14 was lodged against the appellants Gappe @ Vimlesh, Appellant Raju @ Ganga Singh and one Satpal Lodhi to the effect that during enquiry of gum insaan report, Rambaran Singh has produced a handwritten letter in which a ransom of Rs. 6 lacs has been demanded by Dacoit Raju Singh, who is lodged in Itawah Jail, for releasing the children. The statements of witnesses were recorded. Thereafter, the police received an information from Rambaran Singh, that the abductees have returned back. The police went to their house, send them for medical examination and took them to the place of incident. The appellants were arrested. After completing the investigation, the police filed the charge sheet against the appellants for offence under Sections 364-A/120B of I.P.C. and under Section 11/13 of M.P.D.V.P.K. Act.

5. The Trial Court by order dated 20-1-2007 framed charges under Sections 364-A of IPC read with Section 11/13 of M.P.D.V.P.K. Act and under Section 120B of IPC read with Section 11/13 of M.P.D.V.P.K. Act.

6. The appellants abjured their guilt and pleaded not guilty.

7. The Prosecution, in order to prove its case, examined Rambaran (P.W.1), Praveen (P.W.2), Jitendra Yadav (P.W.3), Ramdutt (P.W.4), Pintu Sharma (P.W.5), Ramprakash (P.W.6), Ramniwas (P.W.7), D.J. Rai (P.W.8), Parimal Singh (P.W.9), Santosh (P.W.10), Shailendra Singh (P.W.11), Ramal Singh (P.W.12) and Ravi Yadav (P.W.13). The appellants examined Devi Dayal (D.W.1), Nathu Singh (D.W.2) and Ram Sewak Yadav (D.W.3).

8. The Trial Court after considering the documentary as well as oral evidence, convicted the appellant Gappe @ Vimlesh under Section 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and sentenced to undergo the Life Imprisonment and a fine of Rs.10,000/- with default sentence and appellant Raju @ Ganga Singh under Section Section 364-A/120-B of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and sentenced to undergo the Life Imprisonment and a fine of Rs.10,000/- with default imprisonment.

9. Challenging the conviction and sentence passed by the Trial Court, it is submitted by the Counsel for the appellants that the appellant Gappe @ Vimlesh was falsely implicated as Dharam Singh, father of one of abductee Jitendra, was an accused for murder of one Pappu and the grand mother of appellant Gappe @ Vimlesh was the eye witness in the said case. As the father of Jitendra was insisting that the family of Gappu should compromise the matter and since, it was refused by them, therefore, he has been falsely implicated. It is further submitted that since, the police had killed to innocent persons namely Lalla and Munesh by showing a fake

encounter, therefore, the police had a reason to concoct a false story of kidnapping of Jitendra and Praveen. It is further submitted that the entire prosecution case is based on the testimony of interested witnesses as Rambaran (P.W.1), Praveen (P.W.2), Santosh (P.W.10) and Shailendra (P.W.11) are closely related to each other as Rambaran (P.W.1) and Praveen (P.W.2) are father and son whereas Santosh (P.W.10) and Shailendra (P.W.11) are nephews of Rambaran (P.W.1). Similarly Ramdutt (P.W.4) and Jitendra (P.W.3) are uncle and nephew.

10. *Per contra,* it is submitted by the counsel for the State that the prosecution has proved beyond reasonable doubt that Praveen and Jitendra were taken away by the appellant Gappe @ Vimlesh by alluring them to gift a mobile phone and handed over them to Lalla and Dinesh. Thereafter a phone call on the mobile of Rambaran (P.W.1) was made, informing that the children are in the captivity of Satpal Lodhi and whether Rambaran has received any letter or not? On 24-10-2006, Rambaran received a letter which was in the handwriting of Praveen in which it was mentioned about the demand and kidnapping of Praveen and Jitendra. A note was also appended at the bottom of the letter that Rambaran should meet with Raju who is detained in Itawah Jail. On 24-10-2006 itself, Rambaran went to Itawah Jail and met with Raju who demanded Rs. 6 lakhs. Later on, two more letters written by Praveen and Jitendra were received. The police was informed and F.I.R. was lodged. Subsequently, Rambaran paid Rs. 6 lacs to a person and consequently, Praveen and Jitendra were released and they came back to their house on 6-11-2006. The police took them to the spot, where an encounter took place between police party and Lalla and Munesh, and both Lalla and Munesh died. Thus, it was submitted that the prosecution has proved the guilt of the appellants beyond

reasonable doubt and the judgment and sentence passed by the Trial Court, does not call for any interference.

11. Heard the learned Counsel for the parties.

12. The questions for determination can be summarized as under :

1. Whether Praveen and Jitendra were taken away by Gappe @ Vimlesh and he handed over them to Lalla and Dinesh?
2. Whether any letter written by Praveen was actually received by Rambaran Singh on 24-10-2006?
3. Whether Rambaran Singh went to Itawah jail and met with Appellant Raju @ Ganga Singh?
4. Whether any demand of ransom was made by Appellant Raju @ Ganga Singh?
5. Whether any clothes of the abductees were shown or given to Rambaran Singh by Appellant Raju @ Ganga Singh in the jail?
6. Whether the F.I.R. was lodged on 24-10-2006 and mandatory provision of Section 157 of Cr.P.C. was complied with and whether the F.I.R. is ante-dated and ante-timed?
7. Whether Rambaran Singh had paid an amount of Rs. 6 lacs by way of ransom to any body?
8. Whether the abductees Praveen and Jitendra were released by the kidnappers?
9. Whether the appellants have been falsely implicated in the matter?

13. Before considering the evidence which has come on record, it would be appropriate to consider that whether these "related witnesses" are merely "related witnesses" or they are "interested witnesses" also. It is also well settled principle of law that the evidence of a witness cannot be rejected or discarded merely because he is "related" or "interested

witness". However, their testimony should be scrutinized very cautiously.

14. The Supreme Court in the case of **Joginder Singh v. State of Haryana,** reported in **(2014) 11 SCC 335** has held as under :

> **"37.** At this juncture, we may note with profit another aspect that has been highlighted by the learned counsel for the respondent. The prosecution has not examined Chander, husband of the deceased, a relevant eyewitness, Bala, Murti and Bimla, three other injured witnesses. No explanation has been given by the prosecution. Though there have been certain suggestions to PW 16 in the cross-examination, but his answer is evasive. It is well settled in law that non-examination of the material witness is not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. (See *State of H.P.* v. *Gian Chand [*(2001) 6 SCC 71*]*.)
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> **38.** In this context, we may also note with profit a passage from *Takhaji Hiraji* v. *Thakore Kubersing Chamansing [(2001) 6 SCC 145]*: (SCC p. 155, para 19)
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> "*19*. … It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the

witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself—whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses."

39. Recently in *Manjit Singh* v. *State of Punjab [(2013) 12 SCC 746]*, this Court, after referring to earlier decisions, has opined thus: (SCC p. 757, para 24)

"*24*. … it is quite clear that it is not the number and quantity but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness (see *State of U.P.* v. *Iftikhar Khan [(1973) 1 SCC 512]*)."

40. In the case at hand, non-examination of the material witnesses is of significance. It is so because PW 11 is really an interested witness though the High Court has not agreed with the same. It appears from the material brought on record that he had an

> axe to grind against the appellant. That apart, Chander, who was present from the beginning, would have been in a position to disclose more clearly about the genesis of the occurrence. He is the husband of the deceased and we find no reason why the prosecution had withheld the said witness. Similarly, the other three witnesses who are said to be injured witnesses when available should have come and deposed. Therefore, in the obtaining factual matrix that their non-examination gains significance".

15. The Supreme Court in the case of **Raju v. State of T.N.,** reported in **(2012) 12 SCC 701,** has held as under :

> **"21.** What is the difference between a related witness and an interested witness? This has been brought out in *State of Rajasthan* v. *Kalki [(1981) 2 SCC 752]*. It was held that: (SCC p. 754, para 7)
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> "*7.* … True, it is, she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be 'interested'."
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> **22.** In light of the Constitution Bench decision in *State of Bihar* v. *Basawan Singh [AIR 1958 SC 500]*, the view that a "natural witness" or "the only possible eyewitness" cannot be an interested witness may not be, with respect, correct. In *Basawan Singh [AIR 1958 SC 500]*, a trap witness (who would be a natural eyewitness) was considered an interested witness since he was "concerned in the success of the trap". The Constitution Bench held: (AIR p. 506, para 15)
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> "*15.* … The correct rule is this: if any of the witnesses are accomplices who are *particeps criminis* in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if

> they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person."

16. The Supreme Court in the case of **Jalpat Rai v. State of Haryana,** reported in **(2011) 14 SCC 208** has held as under :

> **"42.** There cannot be a rule of universal application that if the eyewitnesses to the incident are interested in the prosecution case and/or are disposed inimically towards the accused persons, there should be corroboration of their evidence. The evidence of eyewitnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a calibre as to be regarded as wholly reliable could be sufficient and enough to bring home the guilt of the accused. But it is a reality of life, albeit unfortunate and sad, that human failing tends to exaggerate, over implicate and distort the true version against the person(s) with whom there is rivalry, hostility and enmity. Cases are not unknown where an entire family is roped in due to enmity and simmering feelings although one or only few members of that family may be involved in the crime.
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> **43.** In the circumstances of the present case, to obviate any chance of false implication due to enmity of the complainant party with the accused party and the interestedness of PW 1, PW 4 and PW 8 in the prosecution case, it is prudent to look for corroboration of their evidence by medical/ballistic evidence and seek adequate assurance from the collateral and surrounding circumstances before acting on their testimony. The lack of corroboration from medical and ballistic evidence and the circumstances brought out on record may

> ultimately persuade that in fact their evidence cannot be safely acted upon.
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> **44.** Besides PW 1, PW 4 and PW 8, who are closely related to the three deceased, no other independent witness has been examined although the incident occurred in a busy market area. The place of occurrence was visited by PW 20 in the same night after the incident. He found three two-wheelers one bearing No. HR 31 A 5071, the second bearing No. RJ 13 M 7744 and the third without number lying there.One Maruti car bearing No. HR 20 D 8840 with broken glass was also parked there. The owners of these vehicles have not been examined. At the place of occurrence, one HMT Quartz wristwatch with black strap, one belcha and four pairs of chappals were also found. There is no explanation at all by the prosecution with regard to these articles. Nothing has come on record whether four pairs of chappals belonged to the accused party or the complainant party or some other persons. Whether the HMT Quartz wristwatch that was found at the site was worn by one of the accused or one of the members of the complainant party or somebody else is not known. Then, the mystery remains about the belcha that was found at the site. These circumstances instead of lending any corroboration to the evidence of those three key witnesses, rather suggest that they have not come out with the true and complete disclosure of the incident."

17. The Supreme Court in the case of **Sunil Kundu v. State of Jharkhand,** reported in **(2013) 4 SCC 422,**has held as under:

> **"22.** It was argued by Mr Ratan Kumar Choudhuri, learned counsel for the State that different persons react differently to a particular situation and as such there may be minor variations in their statements. He submitted that minor contradictions and inconsistencies which do not go to the root of the prosecution version need to be ignored. In this case, it is not possible for us to adopt

> such an approach because there is a major lacuna in the prosecution story. It has been alleged that at least two of the accused were carrying pistols; the deceased was fired at and he was injured. This case is not borne out by the medical evidence. At the cost of repetition, we must state that no bullets or empty cartridges have been recovered from the scene of offence. If we keep this major lacuna of the prosecution story in mind and consider the abovementioned inconsistencies in the evidence of the prosecution witnesses, it would not be possible to term them as minor inconsistencies or variations which should be ignored. Besides, all the three important prosecution witnesses are related to the deceased and, therefore, are interested witnesses. We are aware that the evidence of an interested witness is not to be mechanically overlooked. If it is consistent, it can be relied upon and conviction can be based on it because, an interested witness is not likely to leave out the real culprit. But in this case, the interested witnesses are not truthful. Their presence itself is doubtful. According to PW 6 Narendra Yadav, they were present at the scene of offence, but their names are not mentioned in the FIR. The genesis of the prosecution case is suppressed. Moreover, admittedly, there is deep-rooted enmity between the accused and the deceased to which we have made reference earlier. We are mindful of the fact that enmity is a double-edged weapon but possibility of false involvement because of deep-rooted enmity also cannot be ruled out."

18. The Supreme Court in the case of **Rohtash Kumar v. State of Haryana,** reported in **(2013) 14 SCC 434,** has held as under:

> **"35.** The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in the court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of*

> *Maharashtra [(1995) 4 SCC 255]* this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court therein held that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought. (See also *Paras Ram* v. *State of Haryana [(1992) 4 SCC 662]*, *Balbir Singh* v. *State [(1996) 11 SCC 139]*, *Kalpnath Rai* v. *State [(1997) 8 SCC 732]*, *M. Prabhulal* v. *Directorate of Revenue Intelligence [(2003) 8 SCC 449]* and *Ravindran* v. *Supt. of Customs [(2007) 6 SCC 410]*.)
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> **36.** Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon."

19. The Supreme Court in the case of **State of Haryana Vs. Ram Singh** reported in **(2002) 2 SCC 426** has held as under:

> **"19.** Significantly all disclosures, discoveries and even arrests have been made in the presence of three specific persons, namely, Budh Ram, Dholu Ram and Atma Ram — no independent witness could be found in the aforesaid context — is it deliberate or is it sheer coincidence — this is where the relevance of the passage from *Sarkar on Evidence* comes on. The ingenuity devised by the prosecutor knew no bounds — can it be attributed to be sheer coincidence? Without any further consideration of the matter, one

thing can be, more or less with certain amount of conclusiveness be stated that these at least create a doubt or suspicion as to whether the same have been tailor-made or not and in the event of there being such a doubt, the benefit must and ought to be transposed to the accused persons. The trial court addressed itself on scrutiny of evidence and came to a conclusion that the evidence available on record is trustworthy but the High Court acquitted one of the accused persons on the basis of some discrepancy between the oral testimony and the documentary evidence as noticed fully hereinbefore. The oral testimony thus stands tainted with suspicion. If that be the case, then there is no other evidence apart from the omnipresent Budh Ram and Dholu Ram, who however are totally interested witnesses. While it is true that legitimacy of interested witnesses cannot be discredited in any way nor termed to be a suspect witness but the evidence before being ascribed to be trustworthy or being capable of creating confidence, the court has to consider the same upon proper scrutiny. In our view, the High Court was wholly in error in not considering the evidence available on record in its proper perspective. The other aspect of the matter is in regard to the defence contention that Manphool was missing from the village for about 2/3 days and is murdered on 21-1-1992 itself. There is defence evidence on record by DW 3 Raja Ram that Manphool was murdered on 21-1-1992. The High Court rejected the defence contention by reason of the fact that it was not suggested to Budh Ram or Dholu Ram that the murder had taken place on 21-1-1992 itself and DW 3 Raja Ram had even come to attend the condolence and it is by reason therefor Raja Ram's evidence was not accepted. Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one — the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to

> the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution witnesses, in particular PW 10 Dholu Ram that his father Manphool was missing for about 2/3 days prior to the day of the occurrence itself — what more is expected of the defence case: a doubt or a certainty — jurisprudentially a doubt would be enough: when such a suggestion has been made the prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet — it is the prosecutor's duty to prove beyond all reasonable doubts and not the defence to prove its innocence — this itself is a circumstance, which cannot but be termed to be suspicious in nature."

20. It is also well established principle of law that every omission is not fatal to the prosecution story.

21. The Supreme Court in the case of **Mritunjoy Biswas v. Pranab** reported in **(2013) 12 SCC 796,** has held as under:-

> "8.....It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see *Leela Ram* v. *State of Haryana [(1999) 9 SCC 525]*, *Rammi* v. *State of M.P. [(1999) 8 SCC 649]* and *Shyamal Ghosh* v. *State of W.B. [(2012) 7 SCC 646]*)."

22. We shall now, consider each and every circumstance

individually and later on the cumulative effect of all the circumstances would be considered.

(a) Whether Praveen and Jitendra were taken away by appellant Gappe @ Vimlesh and he handed them to Lalla and Dinesh?

Praveen (P.W.2) has stated that he along with Jitendra, Parmal, Ravi and Santosh had gone to the house of one Prakash to attend an invitation. They went to Itawah Toll Tax booth, from where he, Jitendra and Satosh got separated from others. They attended the function and came back to Itawah Toll Tax booth. The appellant Gappe came on a motor cycle and asked that if they want to have a mobile, then they should go along with him and thereafter he and Jitendra went along with Gappe on his motor cycle and asked Santosh to go back to his house and they would follow him soon. On the way, they met with a boy Munesh. All the four persons reached near Quwari Bridge where two persons were standing along with arms. Praveen and Jitendra were handed over to them and thereafter Gappe and Munesh came back. Thus, an important aspect of the matter is that Santosh was accompanying Praveen and Jitendra, when they went along with Gappe.

Similarly, Jitendra (P.W.2) has stated that he, Praveen and Santosh came back from the house of Prakash Baghel and reached Indira Gandhi Square, Itawah Road, where he met with appellant Gappe. Gappe told that if they want a mobile, then he can get the same from Ater Road. Thereafter he along with Praveen sat on the motor cycle of Gappe and went to Petrol Pump situated at Ater Road. From there, the appellant Gappe talked to some one from Public Telephone Booth Thereafter, the appellant Gappe took them to a place near Para Village, where they met with Munesh who also sat on the motor cycle. They went towards a well, where they met with

Dinesh who was having 12 bore gun. Gappe and Dinesh had a talk and Munesh was sent back by Dinesh. Thereafter Dinesh and Lalla came back and thereafter the hands of this witness and Praveen were tied. Gappe was sent back. An important aspect of the matter is that this witness has also stated that he, Praveen and Santosh came back from the house of Prakash Baghel and when they reached Indira Gandhi Square, Itawah Road, they met with Gappe.

Thus, from the evidence of Praveen (P.W.2) and Jitendra (P.W.3), it is clear that Santosh (P.W. P.10) was along with them, when they went along with Gappe.

Santosh (P.W.10) has stated that Praveen and Jitendra had gone to attend the invitation given by Prakash and thereafter they did not return back. Their whereabouts were not known and this witness felt that they might have gone to the house of some relative but could not get any information. Thereafter, this witness thought, that Praveen and Jitendra must have gone somewhere in search of job. Thus, it is clear that Santosh has not stated that he had also gone to the house of Prakash Baghel along with Praveen and Jitendra, and while coming back, the abductees, Praveen and Jitendra, went along with the appellant Gappe @ Vimlesh

Thus, if the evidence of Praveen (P.W.2) and Jitendra (P.W.3) is considered along with the evidence of Santosh (P.W.10), then it is clear that Santosh has not supported the evidence of Praveen (P.W.2) and Jitendra (P.W.3) to the effect that he was along with the abuctees, till they met with Gappe. If the evidence of Praveen (P.W.2) and Jitendra (P.W.3) is considered, then it would be clear that their evidence on this issue is not trustworthy, because it is not the case of the prosecution that Santosh at any point of time had informed. Rambaran Singh (P.W.1) about the fact that Praveen (P.W.2) and Jitendra (P.W.3) had gone along with Gappe, otherwise,

there was no reason for Rambaran (P.W.1) of not disclosing this fact in his Gum Insaan Report, Ex. P.6.

It was further stated by Praveen (P.W.2) and Jitendra (P.W.3) that they had gone along with Parmal (P.W. 9) and Ravi Yadav (P.W.13) to attend the function in the house of Prakash Baghel, but Parmal (P.W.9) and Ravi Yadav (P.W. 13) have not supported the prosecution case, and they have turned hostile. They were cross examined by the Public Prosecutor, however, nothing could be elicited from their evidence, which may support the prosecution story.

Thus, the evidence of Praveen (P.W.2) and Jitendra (P.W.3) to the effect that when they met with Gappe at Itawah Road, Santosh (P.W.10) was also with them, is not trustworthy.

Praveen (P.W. 2) has not stated in his evidence, that while they were going along with Gappe on his motor cycle, Gappe had a talked with someone from a Public Telephone Booth, whereas Jitendra (P.W.3) has stated that Gappe had talked to some one from Public Telephone Booth.

Further, it is the evidence of Praveen (P.W.2) that when they reached near Quwari bridge, they found that two armed boys were standing to whom Praveen and Jitendra were handed over by Gappe, whereas Jitendra (P.W.3) has stated that when they reached near a well, they found that Dinesh was standing there with 12 bore gun. Gappe had a talk with him. Thereafter, Lalla and Dinesh came back. Thus, it is clear that there is a discrepancy in the evidence of Praveen (P.W.2) and Jitendra (P.W.3) with regard to the manner in which they were handed over to Dinesh and Lalla.

Thus, this Court is of the considered view that the prosecution has failed to prove beyond reasonable doubt that while Praveen (P.W.2) and Jitendra (P.W.3) were coming back from the house of Prakash Baghel, they met with Gappe who

asked that whether Praveen (P.W.2) and Jitendra (P.W.3) wants a mobile or not and thereafter took them on his motor cycle and handed over them to Dinesh and Lalla.

b. Whether any letters written by Praveen and Jitendra were actually received by Rambaran Singh on 24-10-2006?

It is the case of the prosecution, that on 23-10-2006, Rambaran Singh, father of Praveen, received a telephonic call on his mobile and the caller introduced himself as Satpal Lodhi and informed that his children are in his captivity**.** At about 2:45-3:00 P.M., another phone call was recieved and the caller enquired that whether this witness has received his letter or not? By that time, this witness had not received any letter. On 24-10-2006, at about 10 A.M., this witness received a letter in which it was mentioned that this witness should go to Itawah Jail and should meet with Raju who would tell them about the whereabouts of this children. The letter is Ex. P.1 and the envelop is Ex. P.2. On the same day, this witness went to Itawah jail and met with Raju who demanded Rs. 6 lacs and assured that his children would come back. This witness also identified Raju in the Court. When this witness expressed his inability to pay such a huge amount, then it was replied by Raju, that it is upto this witness either to accept his offer or not? It was replied by this witness that he has no other option but to accept the offer. Thereafter, he received another registered envelope containing two letters, one was written by Praveen (P.W.2) and another was written by Jitendra (P.W.3). These letters are Ex.P.4 and P.5 and the envelope is Ex. P.3. Thereafter, this witness lodged written report which is Ex. P.6.

If the written report Ex. P.6 is considered, then it would be clear that it was made on 24-10-2006 and was merely containing an information of Gum Insaan. There was no

mention in the said report, that he had received a letter and had met with Raju in Itawah Jail. A specific question was put to this witness, as to why he did not mention about his meeting with Raju in Itawah Jail in his written complaint Ex. P.6, then in para 14 of his cross examination, it was replied by this witness, that since, his children were hostages with the accused persons, therefore, he was scared of their lives so the fact of meeting with Raju was not mentioned in the written complaint. Whether, this explanation given by this witness is worth reliance or not, would be considered later on. However, the centripetal question is that although this witness has stated that he had received the first letter Ex. P.6 on 24-10-2006 and thereafter, he went to Itawah Jail on 24-10-2006 itself and met with Raju, but this fact is not mentioned in written complaint Ex. P.6. Thus, non-mentioning of the receipt of letter on 24-10-2006 and meeting with Raju in written complaint Ex. P.6, creates a doubt that whether any letter was really received by this witness or not?

The next question would be that whether the explanation given by this witness that since, he was scared of lives of the abductees, therefore, he did not mention the fact of receipt of letter and meeting with Raju, is plausible or not?

According to the prosecution, Rambaran Singh (P.W.1) handed over the letter Ex. P.1 to the police on 27-10-2006 vide seizure memo Ex. P.8, and accordingly, a F.I.R. was lodged by the police against Gappe, Raju and Satpal Lodhi on 27-10-2006 itself.

From the prosecution case itself, it is clear that nothing had transpired between 24-10-2006 and 27-10-2006, which might have persuaded this witness to approach the police and handover the letter Ex.P.1 to the police. When this circumstance was put by this Court, to the Public Prosecutor, seeking explanation, then it was replied that since, Rambaran

(P.W.1) had received two more letters on either 25 or 26-10-2006, therefore, this witness was left with no other option but to inform the police about the letter and his meeting with Raju, as he was now more or less interested in saving the lives of the abductees. The explanation given by the Public Prosecution appeared to be very impressive, but on deeper scrutiny of the evidence, the same was found without any basis and was contrary to record.

Rambaran (P.W.1) in para 5 of his Examination-in-chief has stated that after coming back from Itawah Jail, he received two more letters by speed post and accordingly, he lodged the report which is Ex. P.6.

This part of evidence of Rambaran (P.W.1) gives a deep dent to the prosecution story. Written report Ex. P.6 submitted by this witness, merely speaks about Gum insaan report, but does not speak about receipt of any letter or meeting with Raju. If the evidence of this witness is considered, then according to this witness, he had received all the three letters i.e., Ex. P.1, Ex. P.4 and P.5, prior to lodging of report Ex. P.6, whereas in para 17 of his cross examination, this witness has stated that he had received the letters Ex.P.4 and P.5, either on 25th or 26th of October 2006 whereas written report Ex. P.6 was lodged on 24th October 2006. Further, this witness has stated that on the next date of receiving these letters i.e., Ex. P.4 and P.5, the same were handed over to the police. Thus, according to this witness, these two letters were handed over to the police either on 26th or 27th of October 2006, whereas according to investigating officer D.J. Rai (P.W.8), these two letters i.e., Ex. P.4 and P.5 were brought by Rambaran on 2-11-2006 and were seized vide seizure memo Ex. P.8. Thus, if the seizure memo Ex. P.8 is considered, then it is clear that two letters Ex. P. 4 and P.5 were made available by Rambaran to the police on 2-11-2006, whereas Rambaran

(P.W.1) has stated at one place that written report, Ex. P.1 was lodged on 24-10-2006, after receiving all the three letters, whereas in his cross examination, this witness has stated that letters Ex. P.4 and P.5 were received either on 25th or 26th October 2006 and the same were handed over to the police on the next date, whereas according to seizure memo Ex. P.8, the said letters i.e., Ex. P.4 and P.5 were seized by the police on 2-11-2006.

Thus, it is clear that the story of receiving three letters does not appear to be true, and the prosecution has failed to prove that any letter was received by Rambaran (P.W.1) on 24-10-2006.

C. Whether Rambaran Singh went to Itawah jail and met with Appellant Raju @ Ganga Singh?

Rambaran Singh (P.W.1) has stated that on 24-10-2006, at about 10 A.M., he received a letter Ex. P.1 and immediately after 30 minutes, he went to Itawah Jail by motor cycle. He reached Jail at about 11:30 A.M. where he was told that the permission is granted to visitors till 11 A.M. only. He did not make any application for meeting with Raju and by giving bribe to the jail authorities, he met with Appellant Raju @ Ganga Singh. No entry was made in any register. He met with Raju @ Ganga who said that he will be required to pay Rs. 6 lacs for getting the children released. He also threatened that in case, if the offer is acceptable to this witness, only then he should express his willingness, otherwise, he may refuse it. However, no other facts were stated by this witness. In cross examination, this witness further admitted that he had gone along with his nephew.

Shailendra (P.W. 11) has stated that at the time of meeting, one T-shirt of Praveen was given to these witnesses, i.e., Shailendra and Rambaran. However, Rambaran (P.W.1) has not stated that the appellant Raju had ever given any T-

shirt of Praveen in jail. Thus, the story created by prosecution in this regard is false and concocted.

Shailendra (P.W.11) has stated in para 8 of his cross examination, that he and his uncle [Rambaran (P.W.1)], left for Itawah by bus at 8 in the morning of 24-10-2006, whereas Rambaran (P.W.1) has stated that he had received the letter at around 10 A.M. and 30 minutes thereafter, they left for Itawah by motor cycle. Shailendra (P.W.11) has further stated that they alighted the bus at Shastri square, Itwah and went to jail by walking. They reached jail at 10:30 A.M. and went inside the jail at about 10:45 A.M. Whereas Rambaran (P.W.1) has stated that as he reached the jail at about 11:30 A.M., and since, the slips are issued to the visitors till 11 A.M. only, therefore, they had met with Raju after giving bribe to the jail authorities, but on the contrary, according to Shailendra (P.W.11), they had already reached Jail at around 10:30 A.M. and went inside the jail at around 10:45 A.M. Thus, it is clear that Shailendra (P.W.11) and Rambaran (P.W.1) had reached Jail well within the visiting hours and had also entered inside the jail, well within visiting hours, then there was no reason for them to bribe the jail authorities, in order to get entry in the jail. They could have entered inside the jail after obtaining due permission and also after making entry in the jail register. Nathu Singh (D.W.2) has stated that meeting of an outsider with a prisoner is not permissible without making due entry in the register and Rambaran (P.W.1) had not met with Raju on 24-10-2006. Thus, if the evidence of Rambaran (P.W.1), Shailendra (P.W.11) and Nathu Singh (D.W.2) are considered, then it is clear that the story of meeting Raju in Itawah jail on 24-10-2006, is a concocted story and the prosecution has failed to prove that Rambaran (P.W.1) and Shailendra (P.W.11) had met with Raju on 24-10-2006, in Itawah Jail.

d. Whether any demand of ransom was made by

Appellant Raju @ Ganga Singh?

As the prosecution has failed to prove that Rambaran Singh (P.W.1) had met with the appellant Raju @ Ganga Singh in Itawah jail on 24-10-2006, then the natural consequence would be that the prosecution has failed to prove the demand of ransom of Rs. 6 lacs by appellant Raju @ Ganga Singh in Itawah Jail from Rambaran (P.W.1).

e. Whether any clothes of the abductess were shown or given to Rambaran Singh by Appellant Raju @ Ganga Singh in the jail and whether any T-shirt was recovered from the appellant Raju @ Ganga Singh?

Shailendra (P.W. 11) has stated that at the time of meeting, one T-shirt of Praveen was given to these witnesses, i.e., Shailendra and Rambaran. In cross examination, it was clarified by this witness, that the T-shirt of Praveeen was given to them in the jail itself. Thus, the allegation made by this witness is that in order to prove the authenticity of claim that the children are in the captivity of Raju, a T-Shirt of Praveen was also given to them. It was also stated by this witness in para 5 of his evidence that the T-shirt was handed over to the police about 2 days thereafter. Whereas Rambaran (P.W.1) does not speak about giving of T-shirt of Praveen to him in the jail. Further according to the prosecution, the T-shirt was seized on 3-11-2006, on production of same by appellant Raju, from a place situated under a small bridge. The said T-shirt was seized vide seizure memo Ex. P.16. Further, Shailendra (P.W.11) has stated in para 6 of his evidence that the T-shirt which was given by Raju to Rambaran and the T-Shirt which was seized by seizure memo Ex. P.16 are one and the same. He has further stated in para 7 of his evidence, that on the date of seizure of T-shirt from the bridge, Raju was not present and the T-shirt was not seized from possession of Raju. He has further stated in para 6 of his evidence that in

fact T-shirt was handed over by Rambaran (P.W.1) to the police. Thus, it is clear that recovery of T-shirt belonging to Praveen, at the instance of Raju is nothing but a concocted story. Further, if the evidence of Shailendra (P.W.11) is concerned, then it is clear that Raju was detained in Itawah jail, then how he came in possession of T-shirt of Praveen, has also not been explained by prosecution. The prosecution must have produced the record of Itawah jail, to show that on what date and by whom, the said T-shirt was brought in Itawah Jail and how, the appellant Raju came in possession of the said T-shirt. As the appellant Raju was detained in Itawah jail, therefore, it was not possible for him to handover the said T-shirt to Rambaran (P.W.1) and further Rambaran (P.W.1) has not stated that the appellant Raju had ever given any T-shirt of Praveen in jail. Thus, the story created by prosecution in this regard is false and concocted. Further, the prosecution has not collected any evidence to show as to how, the appellant Raju @ Ganga Singh came to know that the children of Rambaran (P.W.1) have been kidnapped. The prosecution should have collected the visitors' register of Itawah Jail, to find out that who were the persons, who had met with the appellant Raju @ Ganga Singh? There is nothing on record to show that with whom, the appellant Raju @ Ganga Singh had hatched conspiracy to kidnap Praveen (P.W.2) and Jitendra (P.W.3).

f. Whether F.I.R. was lodged on 24-10-2006 and whether mandatory provision of Section 157 of Cr.P.C. was complied with, and whether the said F.I.R. was ante-dated and ante-timed?

According to the prosecution story, on production of letter Ex. P.1 by Rambaran (P.W.1) on 27-10-2006, a F.I.R. Ex. P.14 was lodged. It is mentioned in the F.I.R. that a copy of the same is sent to Special Judge, Bhind. However, no

document has been filed to show that a copy of the F.I.R. was sent to the Special Judge, Bhind. D.J. Rai (P.W.8) has accepted in his cross examination that he has not produced any acknowledgment of receipt of carbon copy of F.I.R. by the Court of competent jurisdiction. Thus, it is clear that the prosecution has failed to prove that a copy of the F.I.R. was ever sent to Special Judge (M.P.D.V.P.K, Act), Bhind as required under Section 157 of Cr.P.C.

Further D.J. Rai (P.W.8), who is the investigating officer, has stated in para 2 of his examination in chief that as the names of Gappe, Raju and Satpal Lodhi were mentioned in letter Ex. P.1, therefore, F.I.R. Ex. P.14 was lodged against Gappe, Raju and Satpal Lodhi. However, in para 10 of his cross examination, this witness has admitted that the name of Gappe was not mentioned in letter Ex. P.1. He further admitted that the name of Gappe was also not mentioned in letters Ex. P.4 and P.5. Thus, where the investigation officer, D.J. Rai (P.W.8) has specifically stated that he had registered the case against Gappe on the basis of the letter Ex. P.1 and whereas letter Ex. P.1 does not contain the name of Gappe, then it becomes doubtful that whether the F.I.R. was actually registered on 27-10-2006 or not? According to the prosecution case, Praveen (P.W.3) and Jitendra (P.W.4) came back to their house on 6-11-2006 and only then the name of Gappe came in the light. Further D.J. Rai (P.W.8) who had investigated the matter had denied the suggestion in para 11 of his cross examination that the name of Gappe was never disclosed by Rambaran (P.W.1), however, from the case diary statement of Rambaran Ex. D.1 as well as the Court evidence of Rambaran (P.W.1), it is clear that he had never named Gappe. Thus, the denial of suggestion by D.J. Rai (P.W.8) that the name of Gappe was never disclosed by Rambaran (P.W.1) is false.

The Supreme Court in the case of **Shivlal Vs. State of**

Chhatisgarh, reported in **(2011) 9 SCC 561** has held as under :

> **"8.** This Court in *Bhajan Singh* v. *State of Haryana [(2011) 7 SCC 421]* has elaborately dealt with the issue of sending the copy of the FIR to the Ilaqa Magistrate with delay and after placing reliance upon a large number of judgments including *Shiv Ram* v. *State of U.P. [(1998) 1 SCC 149]* and *Arun Kumar Sharma* v. *State of Bihar [(2010) 1 SCC 108]* , came to the conclusion that CrPC provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 CrPC, if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case.
>
> **19.** In the instant case, copy of the FIR was not sent to the Magistrate at all as required under Section 157(1) CrPC. In such a case, in the absence of any explanation furnished by the prosecution to that effect, would definitely cast a shadow on the case of the prosecution. This Court dealt with the issue in *State of M.P.* v. *Kalyan Singh*[4], wherein this Court was informed by the Standing Counsel that in Madhya Pradesh, police is not required to send the copy of the FIR to the Ilaqa Magistrate, but it is required to be sent to the District Magistrate. It was so required by the

> provisions contained in Regulation 710 of the Madhya Pradesh Police Regulations. This Court held that Regulation 710 cannot override the statutory requirements under Section 157(1) CrPC which provide for sending the copy of the FIR to the Ilaqa Magistrate."

The Supreme Court in the case of **State Vs. N. Rajamanickam** reported in **(2008) 13 SCC 309** has held as under:-

> **"9.** Delay in receipt of the FIR and the connected documents in all cases cannot be a factor corroding the credibility of the prosecution version. But that is not the only factor which weighed with the High Court. Added to that, the High Court has noted the artificiality of the evidence of PW 1 and the non-explanation of injuries on the accused persons which were very serious in nature. The combined effect of these factors certainly deserved consideration and, according to us, the High Court has rightly emphasised on them to hold that the prosecution has not been able to establish the accusations. Singularly, the factors may not have an adverse effect on the prosecution version. But when a combined effect of the factors noted by the High Court are taken into consideration, the inevitable conclusion is that these are cases where no interference is called for."

The Supreme Court in the case of **Ratiram Vs. State of M.P.,** reported in **(2013) 112 SCC 316** has held as under :

> **"25.** We will be failing in our duty if we do not deal with the contention of Mr Khan that when there has been total non-compliance with Section 157 of the Code of Criminal Procedure, the trial is vitiated. On a perusal of the judgment of the learned trial Judge we notice that though such a stance had been feebly raised before the learned trial Judge, no question was put to the investigating officer in this regard in the cross-examination. The learned trial Judge has

> adverted to the same and opined, regard being had to the creditworthiness of the testimony on record that it could not be said that the FIR, Ext. P-7, was ante-dated or embellished. It is worth noting that such a contention was not raised before the High Court. Considering the facts and circumstances of the case, we are disposed to think that the finding recorded by the learned trial Judge cannot be found fault with. We may hasten to add that when there is delayed dispatch of the FIR, it is necessary on the part of the prosecution to give an explanation for the delay. We may further state that the purpose behind sending a copy of the FIR to the Magistrate concerned is to avoid any kind of suspicion being attached to the FIR. Such a suspicion may compel the court to record a finding that there was possibility of the FIR being ante-timed or ante-dated. The court may draw adverse inferences against the prosecution. However, if the court is convinced as regards the truthfulness of the prosecution version and trustworthiness of the witnesses, the same may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case.....”

Thus, it is clear that where there is an omission or delay in sending the copy of F.I.R. to the concerning Magistrate, then the said lapse on the part of the prosecution, by itself would not be sufficient to throw the case of the prosecution being ante timed and ante dated. However, if the surrounding circumstances creates doubt with regard to the prosecution story, then omission in sending the copy of the F.I.R. to the concerning Magistrate would assume importance.

Thus, if the facts of the case are considered in the light of the fact, that mandatory provision of Section 157 of Cr.P.C. was not complied with, it appears that the F.I.R. Ex. P.14 was in fact recorded some time after 6-11-2006 and therefore, the F.I.R. dated 27-10-2006 Ex. P.14, appears to be ante-dated

and ante-timed.

g. Whether Rambaran Singh had paid an amount of Rs. 6 lacs by way of ransom to any body?

Rambaran (P.W.1) has stated in para 6 of his evidence that he received a phone call on his mobile that one person would meet him in Grain Market Dabra, and his identity was also told and was directed to handover the money to him. Accordingly, he paid the amount of Ransom to the said person. Although the appellants have not cross examined this witness on this issue, but in view of the surrounding circumstances, it has become necessary to check the authenticity of this statement. The case diary statement of Rambaran (P.W.1) was recorded on 27-10-2006, and in the said statement there is no mention of giving any amount of ransom. Thus, it is clear that this witness might have given the amount after 27-10-2006. But why this witness did not inform the police about the demand of ransom and handing over of the amount to a person in Grain Market, Dabra, is a question which has remained unanswered. When the witnesses had already approached the police on 27-10-2006, then it was expected that they would have taken police in confidence with regard to demand of ransom and the fact that one person would come to collect the ransom amount. Further more, Ramdutt (P.W.4) has stated in para 4 that a total amount of Rs. 10 lacs was paid to a person at Dabra Grain Market, whereas Rambaran (P.W.1) has stated that an amount of Rs. 6 lacs was given at Grain Market, Dabra. Rambaran (P.W.1) also does not speak about the presence of Ramdutt (P.W.4) at the time of handing over of the ransom amount. Further, it appears that the allegation of giving ransom amount was made for the first time in the Court. Ramdutt (P.W.4) has further admitted in para 7 of his cross examination that the fact of handing over the ransom amount is being narrated by him for the first time in the Court.

Further, there is nothing on record, that on what date, Rambaran (P.W.1) received the phone call for payment of ransom amount. There is nothing on record to show that on what date the ransom amount was paid. There is nothing on record to clarify that, when Rambaran (P.W.1) and Ramdutt (P.W.4) had already approached the police on 27-10-2006, then why the fact of demand of ransom and handing over the ransom amount to one person at Grain Market, Dabra was not told to the police. When Rambaran (P.W.1) had received a telephonic call for payment of ransom amount, then why he did not inform the police, has not been clarified by him. Even it has not been clarified by these witnesses, that from where the amount of Rs. 6 lacs or 10 lacs were arranged. There is nothing on record to show that whether Rambaran (P.W.1) and Ramdutt (P.W. 4) were having the amount in their own house or they had withdrawn the same from bank account. No details of bank account have been produced. If these witnesses had taken money from somebody else, then no one has been examined to prove that he had given money either to Rambaran (P.W.1) or Ramdutt (P.W.4). Surprisingly, Dharam Singh, the father of Jitendra (P.W.3) is alive and still he has not entered into witness box with regard to payment of ransom amount. There is a reason for Dharam Singh for not entering in the witness box. The said reason shall be considered in the following paragraphs. But one thing is clear, that where any ransom amount is required to be paid, then it would be the father of abductee who would make arrangements of the money, but in the present case, that aspect is completely silent. Thus, in considered opinion of this Court, the prosecution has failed to prove that Rambaran (P.W.1) or Ramdutt (P.W.4) had paid any ransom amount to anybody.

h. Whether the abductees Praveen and Jitendra were

released by the kidnappers ?

This Court has already come to a conclusion that the prosecution has failed to prove that Gappe had taken away the abductees and has also come to a conclusion that no demand of ransom has been proved and even the fact of payment of ransom amount has also not been proved, therefore, there is no question of release of abductees from the captivity of the accused persons. Further, according to D.J. Rai (P.W.8) as well as Praveen (P.W.2), after the release, the abductees were sent for medical examination, however, their M.L.C. reports have not been proved, to show that whether they were really sent for medical examination or not? Thus, the prosecution has failed to prove beyond reasonable doubt that the abductees Praveen (P.W.2) and Jitendra (P.W.3) came back to their house on 6-11-2006 after they were released by the accused persons.

i. Whether the appellants have been falsely implicated in the matter?

It is the case of the appellant Gappe, that one person known as Pappu was killed and Dharam Singh, the father of Jitendra (P.W.3) was also an accused. In the said case, Smt. Longshree, the grand mother of the appellant Gappe, was the eye witness and Dharam Singh and his family members were pressurizing Smt. Longshri to enter into compromise and since, She did not agree to that, therefore, Gappe he has been falsely implicated. In order to establish the defence, the appellant Gappe has placed the copy of Charge sheet, F.I.R., and case diary statement of Smt. Longshri, on record, as Ex. D.5, D.6 and D.7. Jitendra (P.W.3) has admitted in para 18 of his cross examination that his father Dharam Singh had remained in jail in a murder case and Smt. Longshri, the grand mother of the appellant Gappu was a witness in the said case. D.J. Rai (P.W.8) has admitted in para 11 of his cross

examination that during investigation, he had come to know that there is an old enmity between the families of Rambaran and Gappe, and father of Jitendra, namely Dharam Singh is an accused of killing one person who is the servant of Ramprakash. Since, Dharam Singh was an accused in a murder case, and the grand mother of Gappe was an eye witness, therefore, the possibility of false implication of the appellant Gappe is also not ruled out. Enmity is a double edged weapon. Where enmity provides a ground for falsely implicating a person, but at the same time, it provides a motive for committing an offence. Thus, it has to be considered in the light of facts and circumstances of each case, that whether a person has been falsely implicated because of enmity or the offence has been committed because of enmity. In the present case, it appears that since, Dharam Singh was an accused in a case of murder, and the grand mother of the appellant Gappe was an eye witness and since, the family of Gappe had not agreed for entering into a compromise, therefore, it appears that the appellant Gappe has been falsely implicated in the matter.

23. If a matter is considered from another angle, then there is some motive or reason for the police to concoct a story. According to Praveen (P.W.2) when he came back to his house, the police had recorded their statements and took them to a place where the incident had taken place and when they reached there, he found that Lalla and Munesh were sleeping and thereafter they were killed by Police. Thus, it appears that an encounter is alleged to have taken place in which the police had killed two persons. Whether it was a fake encounter or was a genuine encounter is not a subject matter of this appeal, however, the possibility of concocting the story by the police is also not ruled out.

24. The Supreme Court in the case of **Sampath Kumar Vs.**

Inspector of Police reported in **(2012) 4 SCC 124** has held as under:

> **"21.** In *Narayan Chetanram Chaudhary* v. *State of Maharashtra [(2000) 8 SCC 457]* this Court held that while discrepancies in the testimony of a witness which may be caused by memory lapses were acceptable, contradictions in the testimony were not. This Court observed: (SCC p. 483, para 42)
>
> "*42*. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person."
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> **22.** The difference between discrepancies and contradictions was explained by this Court in *State of H.P.* v. *Lekh Raj [(2000) 1 SCC 247]*. Reference may also be made to the decision of this Court in *State of Haryana* v. *Gurdial Singh*[5] where the prosecution witness had come out with two inconsistent versions of the occurrence. One of these versions was given in the court while the other was contained in the statement made before the police. This Court held that these were contradictory versions on which the conclusion of fact could not be safely based.
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> **23.** This Court in *Gurdial Singh [(1974) 4 SCC 494]* observed: (SCC p. 500, para 21)
>
> "*21*. The present is a case wherein the prosecution witnesses have come out with two inconsistent versions of the occurrence. One version of the occurrence is contained in the evidence of the witnesses in court, while the other version is contained in their statements made before the police. … In view of these contradictory versions, the

> High Court, in our opinion, rightly came to the conclusion that the conviction of the accused could not be sustained."
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> **24.** Reference may also be made to the decision of this Court in *Kehar Singh* v. *State (Delhi Admn.)[(1988) 3 SCC 609]* This Court held that if the discrepancies between the first version and the evidence in court were material, it was safer to err in acquitting than in convicting the accused."

25. The Supreme Court in the case of **Vadiveln Thevar Vs. The State of Madras** reported in **AIR 1957 SC 614** has held as under :

> **"11**. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after the consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England both before and after the passing of the Indian Evidence Act 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pages 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized on S. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted." Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence where determination of guilt depends entirely on circumstantial evidence.

If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging

> subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."

26. The Supreme Court in the case of **S. Govindaraju Vs. State of Karnataka** reported in **(2013) 15 SCC 315** has held as under :

> "**23**. It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same, without providing justifiable reasons for doing so. Where the omission(s) amount to a

> contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with the other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt."

27. The Supreme Court in the case of **Nallabothu Ramulu Vs. State of A.P.** reported in **(2014) 12 SCC 261** has held as under :

> **"24.** It is also important to note that PW 1 stated in Ext. P-1 that 30 people attacked them. But names of only A-1 to A-12 and A-15 figured therein. Names of all the accused were not stated by the witnesses. They stated that they would be able to identify the accused. However, no identification parade was held. Therefore, it cannot be said with certainty which accused attacked whom. Moreover, there are so many omissions and contradictions in the evidence of prosecution witnesses, that the entire fabric of the prosecution case appears to be ridden with gaping holes. These discrepancies have been meticulously noted by the trial court. The High Court, however, holds that the witnesses were examined 5½ years after the incident and, therefore, such discrepancies are natural. It is true that due to passage of time, witnesses do deviate from their police statements as their memory fades to some extent. Reasonable allowance can be made for such discrepancies. But when such discrepancies make the foundation of the prosecution case shaky, the court has to take

> strict note thereof. In this case, the trial court has meticulously located the discrepancies and opined that the witnesses have discredited themselves. The High Court ought not to have overlooked this reasoning of the trial court."

28. The Supreme Court in the case of **Bhagwan Jagannath Markad Vs. State of Maharashtra** reported in **(2016) 10 SCC 537** has held as under :

> **"19.** While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525]—. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to

> reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead to failure of justice. It is well known that principle "*falsus in uno, falsus in omnibus*" has no general acceptability [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381]. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness."

29. Thus, it is clear that minor discrepancies, embellishments, contradictions in the evidence of witnesses would not be material to discard the prosecution story but where the discrepancies or contradictions are to such an extent which shakes the very foundation of the prosecution case and which makes the evidence of the witnesses untrustworthy, then it would be very difficult rather hazardous to rely upon such evidence.

30. Thus, if the evidence which has been led is considered then it would be clear as noon day, that the prosecution has failed to prove beyond reasonable doubt that Praveen (P.W.2) and Jitendra (P.W.3) were taken away by appellant Gappe @ Vimlesh and were handed over to Lalla and Dinesh. The prosecution has also failed to prove that any letter was written by Praveen and Jitendra and has failed to prove that any letter

Ex. P.1, P.4 and P.5 were received by Rambaran (P.W.1). The prosecution has also failed to prove that Rambaran (P.W.1) went to Itawah Jail and met with the appellant Raju @ Ganga Singh. The demand of ransom of Rs. 6 lacs has also not been proved and the fact of making payment of ransom amount has also not been proved by the prosecution beyond reasonable doubt. On the contrary, it appears that the appellant Gappe @ Vimlesh has been falsely implicated due to enmity and the appellant Raju has been falsely implicated. Even the possibility of the F.I.R. being ante-dated and ante-timed cannot be ruled out. Consequently, it is held that the appellant Gappe @ Vimlesh is not guilty of committing offence under Section 364A read with Section 11/13 of M.P.D.V.P.K. Act. Similarly, appellant Raju @ Ganga Singh is also held not guilty of committing offence under Section 364-A/120B of IPC read with Section 11/13 of M.P.D.V.P.K. Act. They are acquitted of all the charges.

31. The judgment and sentence dated 5-1-2008 passed by Special Judge (M.P.D.V.P.K. Act) in Special Sessions Trial No. 89/2006 is hereby set aside.

32. The appellants are not on bail. They are directed to be set at liberty with immediate effect, if not warranted in any other case.

33. The appeals succeed, and hereby **Allowed.**

(RAJENDRA MAHAJAN)
Judge
(01.12.2017)

(G.S. AHLUWALIA)
Judge
(01.12/2017)

(alok)

ALOK KUMAR
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