

SC: Harpal Singh V. State of Punjab (2016) - Electronic Evidence

This Court in Anvar P.V. (supra) has held in no uncertain terms that the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Act would have to yield thereto. It has been propounded that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of Section 65B are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to Sections 65A and 65B of the Act as above. In the said matter, apparently the prosecution has relied upon the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of Section 65B(2) had been complied with, in absence of a certificate under Section 65B(4), the same has to be held inadmissible in evidence.

Supreme Court of India

Harpal Singh @ Chhota vs State Of Punjab on 21 November, 2016

Author: A Roy

Bench: A.K. Sikri, Amitava Roy

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2539 OF 2014

HARPAL SINGH @ CHHOTA ?APPELLANT

VERSUS

STATE OF PUNJAB ?RESPONDENT

WITH

CRIMINAL APPEAL NO. 388 OF 2015

SUKHMEET SINGH @ DEPUTY ?APPELLANT

VERSUS

STATE OF PUNJAB ?RESPONDENT

J U D G M E N T

AMITAVA ROY, J.

The appellants, two out of the six persons, convicted under Sections 364A, 395, 412, 471, 120B IPC and the appellant-Harpal Singh @ Chhota in Criminal Appeal No.2539 of 2014 also under Section 25 of the Arms Act, hereby impeach the affirmation of their conviction by the High Court by the common impugned judgment and order dated 21.04.2014 rendered in a batch of appeals. Though eight persons including the appellants were indicted of the charges corresponding to the offences proved, one Gurinder Singh @ Ginda died during trial and Rupinder Singh was exonerated therefrom. Following their conviction on the aforementioned charges, the appellants and other similarly situated have been awarded sentences ranging from one year to imprisonment for life and fine commensurate therewith. It has been ordered that all the sentences would run concurrently.

2. We have heard Mr. R. Basant, learned senior counsel for the appellant in Criminal Appeal No. 2539 of 2014, Mr. Subromaniam Prasad, learned senior counsel for the appellant in Criminal Appeal number 388 of 2015 and Mr. V. Madhukar, learned counsel for the State.

3. The records divulge that on 11.01.2008 at about 7.45 p.m., while Inspector/SHO of Nurmahal Police station was on patrol duty, he received a secret information that on 09.01.2008 at about 10/11 a.m., four persons had kidnapped one Gagan Mahendru son of Subhash Mahendru, resident of Mota Singh Nagar, Jalandhar in their Honda City car from near Preet Palace at gun point, most probably for extracting ransom.

As the input disclosed offence under Sections 364, 364A/34 IPC r/w Sections 25/27/54/59 of the Arms Act, the information was forwarded to the police station for its registration and consequential steps.

FIR No.10 dated 11.01.2008 under the afore-mentioned provisions of law, accordingly was registered with the Nurmahal Police Station and investigation was initiated, in course whereof, the statement of Gagan Kumar Mahendru as aforesaid was recorded under Section 161 Cr.P.C. In his statement Gagan, who claimed to be the victim of kidnapping, stated that on 09.01.2008 Sukhmeet Singh @ Deputy, Gurinder Singh @ Ginda, Jasbir Singh @ Jassi etc. had kidnapped him, tied his hands and bundled him in the dickey of their car, with the dishonest intention of realising ransom and took him in the house of Rupinder Pal Singh from where he was released on 11.01.2008. He claimed to have identified the places where he had been kept captive and also the places to which he had been shifted in between.

The statements of the victim and his father Subhash Mahendru were also recorded under Section 164 Cr.P.C. On pursuing the investigation, the police also visited the place from where the victim had been kidnapped. The Lancer car bearing No.PB-08-BA-4700 of the victim was found parked outside Hotel Taj, Jalandhar which was recovered and handed over to him. The accused persons were arrested between 16.01.2008 and 23.01.2008 and the following mobile phones were recovered from their possession:

Sukhmeet Singh @ Deputy 98553?64086
(appellant in Crl. Appeal No. 388 of 2015)

Gurinder Singh @ Ginda 98148-81082
Jatinder Singh @ Sappi 98151-58151
Jasvir Singh @ Jassi ? 98151? 58161
Harpal Singh @ Chhota 98760?87794
(appellant in Crl. Appeal No. 2539 of 2014)

Harpreet Singh @ happy. 98158- 54784
Surinder Singh @ Manga 98154-03503

On the basis of disclosure statements made by appellant Sukhbir Singh @ Deputy a sum of Rs.25 lakhs and a point .32 revolver belonging to the victim, Honda City Car bearing number HR 16F 7337 lying concealed, as well as two iron chains with which Gagan, the victim had been tied were recovered by the investigating agency.

On the same day, Gurinder Singh @ Ginda also suffered a disclosure statement following which an amount of Rs.11 lakhs was recovered from his room. Similar disclosure statements were also made by Jatinder Singh @ Jatin, Jasvir Singh @ Jassi and Harpal Singh @ Chhota, acting whereupon, huge amounts of cash were recovered together with a country made pistol with live cartridges.

On 22.01.2008 and 23.01.2008, as well disclosure statements were made by Harpreet Singh @ Happy and Surinder Singh @ Manga and pursuing the same, several lakhs of currency notes were recovered from the almirah/room of these persons along with one Qualis car bearing number PB 10 AY 4144 said to have been used by the appellant Sukhmeet Singh @ Deputy, in the commission of the crime.

Noticeably, the Honda City car recovered bore engine number 30125 765 and chassis number 377271 standing in the name of one Deepak Bhiwani, s/o Raj Singh Bhiwani, resident of Bhiwani and was of model 2007, as disclosed by the registration certificate found inside the vehicle. The documents recovered also disclosed that the insurance policy of the car stood in the name of Deepak Bhiwani issued on 18.11.2007. Further from the dicky of the car, a driving licence of the victim Gagan Kumar was also retrieved along with one small roll of tape, one scissor and one black colour rope.

Investigation divulged that the Hona City car did bear fake number HR 16 F 7337 which was stolen in the intervening night of 30.11.2007/01.12.2007 from Delhi and for which FIR number 255 dated 01.12.2007 was registered with Rajinder Nagar Police Station. Though the Engine number and the chassis number did match, the actual registration number was DL 4C AH 4492.

On the completion of the investigative drill, charge-sheet under Sections 364A, 392, 395, 397, 412, 465, 467, 468, 471, 474, 120B IPC and Sections 25/27 of the Arms Act was laid against the accused persons. As hereto before stated, Gurinder Singh @ Ginda died during the trial and the accused Rupinder Pal was acquitted by the trial court. The other co-accused Prabhjit Singh @ Sonu could not be arrested and was declared a proclaimed offender. The investigation however revealed that his mobile number 94636-12914 had been used in the commission of the offence.

4. Charges were framed against the accused persons including the appellants under the above Sections of law to which they pleaded 'not guilty', whereafter the prosecution examined 27 witnesses. The accused persons in the course of their statements under Section 313 Cr.P.C. stood by their denial of the charge. While the appellant Sukhmeet Singh alleged political vendetta to frame him in the case and that the police had raided his house and had forcibly lifted Rs. 25 lakhs which belonged to his father Jarnail Singh and was arranged by him for the purchase of land, the others generally, but consistently imputed false implication in the offence. Fourteen witnesses were also examined in defence. The Trial Court on an assessment of the evidence on record, to reiterate, convicted the appellants and their co-accused under the above mentioned sections of law. By the verdict assailed in the instant appeals, the conviction and sentence recorded by the Trial Court have been sustained.

5. It is considered appropriate to revert to the rival assertions for better comprehension after traversing the evidence adduced to the extent unavoidable.

PW1 Gagan Kumar, the person kidnapped, testified that at the relevant time, he was involved in Real Estate Business with his father Subhash Chandra (PW2). About 15-20 days before the incident on 09.01.2008, he received a call from mobile number 9914413696 and the caller introduced himself to be Ginda and expressed his keenness for effecting a property deal at Jandiala, District Jalandhar, in course whereof, he offered to sell the land of his aunt. The witness, though suggested that the caller ought to get in touch with his father, the latter insisted for necessary discussion with him. According to the witness, after 2/3 days, another call was made by the same person and accordingly, they fixed up a time at 9.00 a.m. on the next date, whereupon the victim along with his friend Chetan Chopra went to the scheduled place of meeting. The witness stated that at the time fixed, three persons came in a Innova car and thereafter the victim and his friend along with two persons proceeded in the car of the victim to survey the land. After the visit, they parted. The witness deposed that thereafter on many occasions, the same caller made telephone calls to further the deal and eventually, they decided to meet on 09.01.2008 at 9.00 a.m. for further discussions.

According to the witness, he was there at the site in his car bearing no. PB 08 BA 4700 and as stated by him on oath, at the first instance, two persons came there and boarded his vehicle. The victim was thereafter asked to proceed to the colony where the owner i.e the aunt referred to, used to reside. The witness stated that he took the vehicle to the place as directed. The person sitting by his side then pointed a revolver on his ear. Almost immediately thereafter, a Honda City car, driven at a high speed, pulled up in front of his car, wherefrom 4-5 persons alighted and attacked the victim. The witness stated that whereas one person pointed the revolver on his thigh, the other removed his licenced revolver along with his cell phone, keys of the car and currency notes amounting to Rs.15,000/-. The witness stated that thereafter a cap was placed on his face and a tape was pasted on his mouth. After some time, his hands were also tied and he was forcibly put into the dicky of the Honda City car. As the victim resisted, he was threatened to be killed with his own revolver. After moving the car for some distance, the abductors burrowed a hole in the rear seat of the car and the victim was asked to contact his father over a cell phone. Under compulsion, the victim talked to his father and acquainted him with his state of distress and requested him to concede to their request for his safety. The phone was thereafter disconnected. According to the victim, for the whole day, he remained in the dicky and could hear the exchanges of the occupants who were addressing each other as Happy, Jassi, Ginda, Deputy and Sabbi. He further stated that in the night, he was taken to a room with an attached bathroom where he was allowed to ease himself and thereafter was put on chains on his hands and feet and was blindfolded as well. He was thereafter taken to different places and was also offered food. Later, he was drugged. On objection being raised, he was threatened to be killed with his revolver. The victim stated that in the next morning, he found himself tied with iron chain, whereafter he was restored in the dicky of the car and the miscreants wandered around with him. In between, he was made to talk to his father, whereupon he repeated his request to do the needful for his release. Later in the night, the victim was informed by abductors that as the ransom amount was received, he would be released soon. He was threatened that in case, after his let off, he would disclose about the incident to anyone, he would be killed along with his family members. It was intimated, that they had strong political links and even if they were arrested, they would come out of custody soon and appropriately retaliate. The victim

was thereafter dropped at Nakodar Chowk.

The witness identified Sukhmeet Singh @ Deputy, Ginda, Harpreet Singh @ Happy, Sabbi, Jassa and Harpal Singh @ Chhota in Court to be those present in the Honda City in the car and thus the perpetrators of the crime. The witness also narrated, that on 12th, he was taken by the police to the place from where he was kidnapped and that his statements were duly recorded as well. He claimed to have identify the place and also disclosed that he had dropped his driving licence in the dicky of the car. He identified as well the driving licence produced in court along with the iron chains by which his hands were tied and the tape roll by which his mouth was muzzled.

In cross-examination, this witness admitted that the appellant Sukhmeet Singh at the relevant time was a Municipal Councillor and he knew him from before the incident. He however clarified that he did not have any personal acquaintance/intimacy with him and that he was also not conversant with his voice. He admitted as well, that he knew the full name of the appellant at the time of making of the statement before the police and the Magistrate. He however elaborated that as the accused persons used to address him as Deputy, he did use that name while making the statements. He also claimed to be unaware then that Sukhmeet Singh and Deputy was one and the same person. He also conceded qua his earlier statement that at the time of his release at Nakodar Chowk, he had not seen the appellant Sukhmeet present there. He also admitted that there was no test identification parade held and that he as well did not furnish the physical features of the miscreants to the police. According to this witness, neither the recovered money nor the weapons had been shown to him by the police. He stated that by 24.01.2008, he could come to know the names of all the accused persons from the newspaper. Vis-a-vis the name of Harpal Singh @ Chhota, the witness stated in particular that he did not know him prior to the incident and that he mentioned his name for the first time in the court.

A perusal of the statement made by the victim under Section 164 Cr.P.C. demonstrates that the same is substantially identical to the one on oath at the trial. The sequence of events are in the same order and in particular, he reiterated the names of Sonu Bhajji, Happy Bhajji, Ginda, Sabbi and Deputy while referring to the persons in the car, while he was languishing in the dickey thereof.

PW2 Subhash Chander, the father of the victim deposed that at the time of the incident, his son was in real estate business with him. He admitted that his son had mentioned to him about the proposed deal which was being promoted by a party of Jandiala on which he had advised the victim to inspect the site so that a decision could be taken lateron. The witness testified that on 9.1.2008, his son informed him that he had received a telephone call in connection with the deal and that he had fixed 9.30 in the morning for the said purpose. That on the same day, his son had left for negotiations in his Lancer car PB 08 BA 4700, was stated by him. According to the witness, at about 11.45 a.m. on that day, he received a telephone call conveying to him that his son had been kidnapped and further a ransom amount of Rs. 5 crores was demanded for his release. The witness stated that the caller also threatened him that if the money demanded was not arranged, his son would be killed. Thereafter, on his entreaties, he was allowed to talk to his son who pleaded that the ransom amount be paid as otherwise, his abductors, who were equipped with deadly weapons, may do harm to him.

The witness stated that thereafter, he received a telephone call from a mobile phone No. 9814804700 enquiring of him about the arrangements made about the ransom amount. According to the witness, subsequent thereto from time to time, he kept on receiving telephone calls at the interval of 3/4 hours about the progress in the collection of the ransom amount with the insistence that the amount should be paid early, if he wished the welfare of his son. In response to a call received at 9 pm on the same day and on the expression of his inability to arrange more than Rs. 1 crore, the caller asked him to await further instructions. By the next phone call at 10 pm, the abductors informed the witness that no amount less than Rs. 1 crore was acceptable to them.

The witness further stated that on the next date i.e. 10.1.2008, he received a call from the cell phone of his son at 8.30 a.m., and on the query made, he stated that by then, he could arrange only 90-92 lakhs with great difficulty. This was followed by another call at 10/11 a.m. from the same person enquiring about the amount arranged to which the witness replied that somehow he had been able to arrange Rs. 1 crore and requested the abductors to close the deal. Eventually at 4.20 p.m., through another call, the abductors instructed the witness to fill the money in two bags and take the train ?Shane Punjab? for Delhi . The witness on his request was allowed to be accompanied by one attendant and he was instructed to sit in the last compartment of the train with the caveat that in case he would try to act smart or against the instructions or inform the police, all his family members would be eliminated. He was informed as well that he would be under watch on the train.

According to the witness, he took the money in two bags and along with his friend Munish Berry boarded the train from Jalandhar. He stated that on the way, he kept on receiving telephone calls from the abductors to ascertain the stages of the journey. He stated that when the train reached near Sirhind Railway Station, they directed both of them to come near the left side door of the compartment and wait for a flash signal while the train would be reaching Raj Pura and to drop the bags when the train would slow down near an over-bridge, 3/4 k.m. before Raj Pura so that the same could be collected by them. The abductors also assured them to release the victim after the money was received.

The witness stated that as the train slowed down at the place indicated, they threw away the two bags containing the ransom money and proceeded towards Delhi. Subsequent thereto, they took a train back to Jalandhar. Meanwhile, he received a telephone call from the victim that he had reached home safely. The witness deposed that on 12.1.2008 he along with victim and 2/3 friends, met the police at Jandiala on their way to police station and narrated the entire incident. The witness stated that on 13.1.2008, he received a call from the police that the Lancer car No. PB 08 BA 4700 has been located near Taj Hotel, Garha Road, Jalandhar and thereafter on completion of the formalities, the vehicle was handed over to his son. The witness in course of his testimony, identified the two bags in which the ransom money had been taken i.e. Ex. P9 and P10. He mentioned that the currency was in the denominations of Rs. 1000, Rs. 500 and Rs. 100. He also clarified that on 5/6 packets of the currency notes, he had inscribed initials/names like AS, KK, Om Namah Shivah, Om Sri Ganeshay Namah, and Jai Hanuman. The witness at the trial, identified the currency notes as a part of the ransom money. The bundles of currency notes produced in the court were marked as Ex. P11 to Ex. P68.

In his cross-examination, the witness admitted that though he knew Sukhmeet Singh at the time of incident as he was a Municipal Councillor, he clarified that he did not have any personal relationship with him. He conceded that he had not informed the police/Magistrate about the initials and names on the packets of the currency notes. He however claimed that even in absence of such initials/names, he could have otherwise identified the currency notes from the denominations thereof. He however disclosed that his relations from whom money was collected did inform that such initials/names had been inscribed on the packets. He admitted that the FIR was registered on 11.1.2008. He elaborated on the names of the persons and relations from whom different sums of money was taken on loan. He specified the amounts as well. He stated that his statement was recorded by the police on 12.1.2008.

PW4 SI Pritam Singh, who at the relevant time, was posted at the Nurmahal Police Station, deposed that he did partake in the investigation and had accompanied the I.O. Inspector Satish Kumar Malhotra. He reiterated that on 11.1.2008, the I.O. received a secret information that the accused persons Sukhmeet Singh, Gurinder, Jatinder and Jaspreet had been seen moving near the office of DIG to surrender before the police whereupon, they were arrested thereat and cell phones were recovered from their possession vide Ex. PF/1 to PF/3. He also stated about the disclosures made by the accused persons following which various amounts were recovered from the places shown by them. Vis-a-vis, Sukhmeet Singh, he stated that the revolver of the victim was also recovered from the living room of the accused. He further testified that on the disclosure of the accused appellant Sukhmeet Singh subsequent thereto, along with cash of Rs. 25 lakhs, one revolver of .32 bore bearing No. B-3211 wrapped in a plastic packet was recovered from the room of his house. The witness stated that the cash as well as the other articles recovered/seized were duly deposited in the malkhana.

He further deposed that on the basis of another secret information received on 18.1.2008, appellant Harpal Singh @ Chhota was arrested and acting on his disclosure statement, cash together with one country made pistol and one live cartridge wrapped in a plastic packet was recovered from underneath a tree on a Jandiala Road as shown by him. The witness stated as well about further disclosure statements made by the appellant Sukhmeet following which Honda City car HR 16 F 7337 was recovered from near the well of Gurinder Singh @ Ginda at village Bir Pind kept parked under the cover of standing maize crop. The witness confirmed the recovery of one driving licence, registration certificate, tape roll, small scissor and black string from the dicky of car which were duly seized vide recovery memo Ex. PO/2. The witness also identified these items when confronted therewith. He also stated about the collection of finger prints on the car by a finger print expert.

He also stated about the arrest of accused Harpreet Singh and recovery of mobile phone from him. He referred to a disclosure statement made by said accused person leading to discovery of Rs. 3.5 lakhs from the almirah of his house. That a Qualis Car

bearing number PB 10 AY 4144 was also recovered on the disclosure statement made by the accused Harpreet was stated by the witness.

He did similarly mention about the arrest of accused Surinder Singh and recovery of Rs. 1,05,000 on the basis of his disclosure statement, from the roof of motor at village Mullewal Arian wrapped in a plastic envelope. The witness stated as well about the arrest of accused Rupinder Pal and the recovery of cash from him.

In his cross-examination, the witness conceded that the arrest memo pertaining to Sukhmeet did not contain either his signature or the signature of any public witness. He however denied that the memo was a forged one. He asserted to have attested the disclosure statement of the appellant Sukhmeet Singh which had led to the recovery of the Honda City car, otherwise kept concealed. His statement made in the course of his further cross-examination, being neither of any particular significance nor referred to in course of the arguments, are not being dilated upon.

PW5 Kashmir Singh, Finger Print Expert and photographer from Finger Print Bureau, Phillaur, stated that on 21.1.2008, he had taken the photographs of the chance prints on the window panes of the front door of the Honda city car bearing HR 16F 7337 and also on the rear mirror fitted thereto. He claimed to have prepared negatives of the chance prints and had compiled the report on the basis thereof which he proved Ex. PW5/A.

In cross-examination, he stated that the prints were available on the glass surface and he did not rule out any other type of print. He also stated that the prints collected were of the palm surface of the hand. He also did not enquire as to who had marked the chance prints.

PW8 Inspector Satish Kumar Malhotra, S.H.O. P.S., Phillaur, is the investigating officer. He testified that on 11.1.2008, he was posted at Police Station Nurmahal and while on patrol duty, he received a secret information that four persons, who had kidnapped Gagan Mahendrau at gun point and had abducted him in a Honda City car with a purpose to extract ransom. He deposed to have forwarded the information for the registration of the FIR and thereafter visited the place of occurrence, where he could not find any one present. According to him, he visited the same spot with other police personnel on 12.1.2008 and happened to meet, amongst others, the victim and his father Subhash Mahendru there. On the basis of a secret information received on 13.1.2008, the witness stated to have recovered the victim's Lancer Car bearing No. PB 08 BA 4700 parked near Taj Hotel, Garah Road, Jalandhar. He summoned the finger print expert and on the completion of the exercise undertaken by the latter, handed over the car to the victim on the completion of necessary formalities.

The witness stated that on 14.1.2008, from the call details collected, amongst others the appellant Sukhmeet @ Deputy was a suspect, whereupon he was arrested. The witness stated that on 16.1.2008, on the basis of a secret information, the appellant Sukhmeet was arrested along with Jatinder, whereupon on their search, mobile phones were recovered. He also referred to the disclosure statements made by the appellant Sukhmeet Singh and Jatinder, on the basis of which, cash of Rs. 25 lakhs and Rs. 10 lakhs respectively were recovered from their residences, kept in the plastic bags. According to the witness, acting on the disclosure statement of appellant Sukhmeet, one revolver of the victim was also recovered from his house. Similarly, after the arrest of Gurinder Singh @ Ginda, Jasbir Singh @ Jassi, Jatinder Singh @ Sabbi, on the basis of their disclosure statements, different amounts in lakhs were recovered from the places indicated by them. A .32 bore revolver bearing No. B- 3211 was also recovered on a later disclosure statement of the appellant Sukhmeet Singh @ Deputy. Subsequent thereto, according to the witness, again acting on the secret information, appellant Harpal Singh @ Chhota was arrested and one mobile phone was recovered from his possession. These accused persons also made disclosure statements and acting thereon, currency notes were recovered along with a pistol along with a live cartridge from beneath a tree near canal Jandiala. This witness further deposed that the appellant Sukhmeet Singh also made a disclosure statement pursuant whereto, the Honda City car HR-16-F 7337 used in the commission of offense was recovered being parked near the well of accused Ginda at Village Beer being kept camouflage by standing maize crop thereat. The witness also stated that on the search of the car, two iron chains, a small scissor, tape roll, a black colour rope and a driving licence in the name of the victim were recovered from the dickey of the car. The finger print expert also took the photographs of the prints available on the car. That a hole was also detected in the rear seat of the car was mentioned in particular by the witness. He also stated about the arrest of accused Harpreet Singh and Surinder Singh as well, following which the phones mobile were recovered from them. These

accused also made disclosures following which recoveries of huge cash kept in plastic envelopes was effected. Apart from getting recorded the statement of the victim and his father Subhash under Section 164 Cr.PC., the witness claimed to have obtained the call details of mobile phones of the accused recovered from accused persons. He also identified the seized articles including the Honda City and Lancer cars at the trial and identified and exhibited other items like, revolver, iron chain, tape rolls, currency notes etc. The witness, in course of his testimony mentioned that on every occasion of seizure, he had completed the necessary legal formalities in connection therewith.

In his cross-examination, the witness admitted that the victim had in his statement before him not mentioned particularly about Harpal Singh @ Chhota, He also admitted, that no TIP of the accused persons had been conducted. According to him, he did make an application for such TIP, but the same was dismissed as the accused persons refused to participate in the process. He denied the suggestion, that the appellant Harpal Singh had not refused to take part in the TIP. He admitted of a press conference held on 17.1.2008, in which Senior Superintendent of Police, Jalandhar had participated but expressed his ignorance as to whether in the news item dated 18.1.2008, it was suggested that there was a possibility of recovery of a country made pistol. According to this witness, this news item was got published by the accused persons. He denied the suggestion that no pistol/cartridge was recovered from the house of the accused Harpal Singh @ Chhota. The remaining statements made by this witness in the cross- examination are not of any added significance and further have also not been referred to or relied upon in course of the arguments.

PWs 10, 11, 12, 14, 16 are those, who on oath, stated to have lent different amounts to the father of the victim to meet the ransom demand. Of these witnesses, PW 14 in particular, claimed to have put his identification marks on the packets of currency notes like KK, AS, Jai Hanuman etc. and on the basis thereof, he identified at the trial, the same when shown to him. The common trend of cross- examination of these witnesses had been to elicit from them that there was nothing in writing to endorse such loan and that there was no transaction routed through the bank as evidence thereof.

PW23 H.C. Kamaljit Singh deposed that on 23.1.2008 he was a member of the police party, in-charge of the investigation of the case. According to him, appellant Harpal Singh @ Chhota present in the court and who was then in police custody, made a disclosure statement signed by him and further led the police party to the eastern side of Jandiala, Nurmahal Canal, from where he dug out a country made pistol wrapped in a polythene bag together with cash amounting to Rs. 65000/-. The witness stated that the recovered pistol was seized by memo PW23/A on which he along with others put their endorsements by way of attestation.

In cross-examination, the witness however admitted that no independent witness was present when the disclosure statement was recorded. He however denied that neither such statement had been recorded nor was any recovery caused on the basis thereof and in his presence.

PW24 Sumesh Makkar proved the call details of cell phone number 94636-12914 of Prabhjeet Singh, absconder accused. In this regard, he amongst others, proved the necessary documents to establish that the said accused person had applied for such connection.

PW25 Damandeep Singh, Nodal Officer, Vodafone, Essar South Limited, Mohali, deposed with regard to the mobile SIM number 99881-31831 standing in the name of Manjinder Singh r/o VPO Malsian Patti, Saltan Nagar, Jalandhar. Apart from proving the documents, on the basis of which the mobile connection was obtained by the holder thereof as named herein above, the witness also proved computer generated details of the said cell phone for the period 9.1.2008 to 16.1.2008 in the form of a printed copy which, he asserted was the true extract of the relevant data created in the usual and ordinary course of business and stored in the hard disc of the company server. He exhibited the call details as Ex. PW25/C.

Though this witness was formally cross-examined, not even a suggestion was made that the call details so proved, were inadmissible in law due to non-compliance of the requirements of Section 65B of the Indian Evidence Act, 1872 (hereinafter to be called as 'the Act').

PW26 Sunil Rana, Nodal Officer, Bharti Airtel Limited, Mohali, aside the necessary records with regard to the applications pertaining to SIM number 98151- 58151 recovered from accused Jatinder Singh and standing in the name of Iqbal Singh, 98154-03503 standing in the name of accused Surinder Singh, 98150-29026 in the name of Davinder Kumar, 98760- 87794 of

Jaspal Singh, 98760-63085 of Amrik Singh, 98766-81782 of Pavittar Singh, 98158-54784 of Varinder Singh and 98723-00707 of Pradeep Singh, also proved the call details pertaining to these cell phones for the period 8.1.2008 to 31.1.2008 and exhibited the corresponding documents. This witness stated that the call details proved, were computer generated and in the shape of printed copy which were true extracts of the relevant data created in the usual and ordinary course of business and stored on the hard disc of the company server.

In cross-examination, the witness expressed ignorance with regard to the names of the accused persons and further admitted that though the tower numbers qua the calls were not mentioned, the tower cell I.Ds. were referred to.

PW27 Soaravdeep Singh, Nodal Officer, Spice Communications Limited, Mohali proved the location list of all the towers of his company during January 2008 with the cell I.D. of various towers and exhibited the said document as Ex. PW27/A. He also proved the call details for the period 9.1.2008 to 16.1.2008 relating to mobile SIM numbers 98140-60441, 98148-81082 (recovered from accused Gurinder) and 98553-64086 (recovered from appellant Sukhmeet) and 99144-16396 of Naresh Kumar and exhibited the documents with regard thereto separately.

In cross-examination, the witness clarified that the cell numbers 98148-81082 and 98553-64086 functioned between 11.1.2008 to 16.1.2008 whereas the others were not put to use after 10.1.2008. He further asserted that the call details had been issued by him from the computer which was under his control and did bear his signature on each of the pages. He conceded however that no certificate of correctness was appended thereto. The witness clarified that the calls were computer generated which did not admit of any manual intervention. He admitted further that the call details did refer to cell I.D. indicating the tower location. According to him, no document was taken into custody by the police from him under his signature. He admitted as well that the documents produced by him do not bear the date of their preparation and further there was no reference of the server therein as well.

6. To complete the narration of the evidence adduced, apposite it would be to briefly survey the testimony of the defence witnesses.

DW1 Gurdeep Singh, who was then the Senior Assistant, State Bank of India, New Grain Market, Jalandhar proved the statement of account in the name of Jarnail Singh, father of appellant Sukhmeet for the period 30.6.2007 to 30.6.2008 which disclosed, amongst others that the holder had withdrawn Rs. 10 lakhs from his account on 7.11.2007.

DW2 Naginder Singh deposed about the proposed sale of the land of Jarnail Singh situated at village Rasoolpur for Rs. 32 lakhs and further that on the basis of an written agreement, he had paid by way of Rs. 8 lakhs by way of advance on 6.12.2007 and further Rs. 6 lakhs on 21.12.2007 to Jarnail Singh. The witness however admitted that due to some financial compulsions, the finalization of the deal had to be deferred. In cross-examination, the witness conceded that the stamp papers of the agreement had been purchased by Jarnail Singh, 1/2 months earlier thereto. He however denied the suggestion that the written agreement Ex. D2 referred to by him was a fabricated document.

DW3 Jarnail Singh, father of the appellant Sukhmeet Singh in substance testified that the false implication of his son in the case was motivated by political rivalry. He deposed that on 14.1.2008, the police raided his house and had taken away Rs. 25 lakhs which he had kept for purchasing land near Jalandhar. According to him, out of the said amount, Rs. 10 lakhs had been withdrawn by him from the bank and that the rest had been deposited with him by way of advance money for selling his land to Naginder Singh and Manmohan Singh. According to him, the agreement for sale of his land had been scribed on 6.12.2007 on the stamp paper purchased by him.

DW8 Sushil Kumar on oath stated that he belonged to the Congress Party and accused Jatinder Singh @ Sabbi was his supporter. He also referred to recent confrontations with the members of the rival political party during some elections for which criminal cases had also to be registered. According to the witness, accused Jatinder Singh @ Sabbi had been falsely implicated in the case.

7. Mounting challenge to the decision impugned, Mr. R. Basant, learned senior counsel arguing for the appellant in Appeal No. 2539 of 2014, has insistently urged that having regard to the evidence adduced by the prosecution, the complicity of the accused Harpal Singh @ Chhota remains unproved. According to him, the charge of this accused being either a part of the alleged conspiracy or a

partner in the execution thereof, is belied by the materials on record. The learned senior counsel has maintained that the sequence of events, as sought to be unfolded by the prosecution, warrant that the roles of the accused persons allegedly involved be analysed individually in order to determine the nature and extent of their involvement. Mr. Basant asserted that not only the evidence forthcoming after the arrest of Harpal Singh @ Chhota together with the recovery of cash or fire arm and the Honda City car does not in any way establish any nexus with him and the crime perpetrated, the calls details of the cell phones said to have been involved are per se inadmissible in evidence in the face of apparent non-compliance of the mandatory prescriptions of Section 65B of the Act. The learned senior counsel underlined that the finger prints collected from the Honda City car did not match with that of any of the accused persons sent up for trial and in absence of the TIP, their identity, as participants in the offence, has also remained unproved. The learned senior counsel was particularly emphatic on the aspect that the victim noticeably did not either name or refer to the appellant Harpal Singh @ Chhota in his statements under Sections 161 and 164 Cr.P.C., which were the earliest in point of time, to be one of his abductors and that he sought to improve on him by naming him only at the trial. The learned senior counsel maintained as well that the inexplicable omission on the part of the prosecution to examine Chetan Chopra, the friend of the victim, who had accompanied him in the first round of discussion on the land deal, laid as a preface according to the prosecution, culminating in the abduction, renders the charge, doubtful. According to Mr. Basant, the examination of the appellant Harpal Singh @ Chhota under Section 313 Cr.P.C. had been general and omnibus without laying the specific incriminating circumstances against him, thus, denying him the opportunity to explain the same. On this count as well, the impugned conviction is unsustainable in law and is liable to be set-aside, he urged. In buttress of the plea against admissibility of the calls details, the learned senior counsel has placed reliance on the decision of this Court in *Anvar P.V. vs. P.K. Basheer and others* (2014) 10 SCC 473.

Mr. Subromaniam Parsad, learned senior counsel for the appellant in Criminal Appeal No. 388 of 2015 in supplementation repudiated the testimony of the victim in particular in identifying appellant Sukhmeet @ Deputy to be one of his abductors. He has urged that it having been admitted by the victim that the appellant Sukhmeet was known to him from before the incident, reference about him by his nick-name Deputy, renders his testimony to this effect wholly untrustworthy. The learned senior counsel has similarly dismissed the recovery/seizure of currency notes, fire-arms and the Honda City car in particular, as unworthy of any reliance or significance, besides being effected without adhering to the legally prescribed procedure, therefor. Referring to the evidence of DW1, DW2 and DW3 in particular, about the seizure of cash from the house of Jarnail Singh, the father of appellant Sukhmeet Singh, Mr. Prasad has insisted that this amount had no nexus at all with the ransom money, said to have been paid. He discarded as well the endeavour on the part of the prosecution through PW14 to identify some of the currency notes on the basis of initials/names written on some of the packets containing the same. According to the learned senior counsel, the prosecution has utterly failed to adduce unimpeachable evidence to establish the culpability of the appellants and thus the impugned decision, as a whole, is liable to be set at naught.

Per contra, the learned counsel for the respondent-State, has maintained that the evidence adduced when considered in entirety, does establish the indictment against all the accused persons convicted, beyond all reasonable doubt. He urged that the prosecution has been successful in substantiating the involvement of the accused persons in the nefarious and willful design of theirs to abduct the victim for ransom and having regard to the gravity of the proved offences, no interference is called for. In particular, he has contended that the defence having failed in its endeavour to de-link the currency notes, seized from the house of Jarnail Singh, the father of the appellant Sukhmeet Singh from the ransom money paid, he is not entitled to any benefit therefrom.

8. We have extended our thoughtful scrutiny to the materials available on record as well as the competing arguments based thereon. Admittedly, the only eye witness to the actual act of abduction is the victim himself who had suffered the ordeal. He thereafter encountered the treatment meted out to him in captivity and is privy too, to the ransom claim made by his abductors to his father. The statement made by the victim (PW1) under Section 161 Cr.P.C. though had outlined the whole incident in the bare essentials, his version under Section 164 Cr.P.C. and at the trial are adequately elaborate to project the whole gamut of the development, commencing from his forcible abduction till his release. There is as such no mutually mutative inconsistency in the three renditions of his, so as to render the prosecution case untrustworthy and discardable on all counts. True, it is that the victim in his statements under Sections 161 and 164 Cr.P.C. did not specifically name Harpal Singh @ Chhota, while naming the other abductors who were the occupants as well of the Honda City car in the dickey of which he was abducted, he did identify and involve this appellant/accused during his testimony at the trial. Not only, in our comprehension, it is likely that in his bewildered and perplexed state of mind at the relevant point of time, he might have omitted to name Harpal Singh @ Chhota, in the face of the other

overwhelming evidence and materials on record, nothing much turns thereon in favour of the defence.

The progression of events as unveiled by the testimony, in particular of the victim and supported by his father PW2, reveals that the first caller to initiate the negotiations for the land deal to which the victim was drawn, was Gurinder Singh @ Ginda. The victim in his deposition has in details narrated the developments thereafter which do indicate the keenness on the part of the negotiators to entrap the victim in the bargain, by gradually building his confidence in the same and in the proponents. These endeavours, as the prosecution has asserted, really were the build up steps as a part of the conspiratorial scheme to eventually culminate in the abduction of the victim for realisation of ransom in return. Noticeably the perpetrators did not betray any haste on their part and designedly took their time to strike at the opportune moment.

The evidence of the victim (PW1) as a whole, in our estimate, is truthful, having regard to the details provided with accompanying clarity and conviction. His elaborate testimony not only has projected the stage-wise developments following his abduction till his release, the same has remained unshaken substantially even by his cross- examination. This witness not only had the opportunity of seeing his abductors but also had heard their exchanges by referring to their nick names. He was in their company and under their surveillance for almost two days in course whereof they not only interacted with him but also had closely followed his conversation with his father on more than one occasion on the aspect of ransom. Apart from the fact that there is nothing convincing on record to even infer any false implication of the accused persons, we are of the unhesitant opinion that the mere omission on the part of the victim to mention at the first instance the name of appellant Harpal Singh @ Chhota, having regard to the charge of conspiracy and the concerted steps, to actualise the same is of no fatal bearing on the prosecution case, more particularly he having named/identified him at the trial as one of the perpetrators of the offence. In this perspective, the omission on the part of the investigating agency to hold the TIP is not fatal, in the facts and circumstances of the case.

In the face of the overall evidence on record, the above purported deficiencies do not at all detract from the veracity of the prosecution case .

The evidence adduced vis-a-vis the stage wise recovery of the currency notes, fire-arms, the Honda City car etc. from the successive disclosures made by the accused persons also do establish their complicity in the offence. The testimony of the witnesses to the above effect authenticate that the procedure prescribed by law for effecting such seizures had been complied with. The factum of each discovery based on the disclosures of the accused persons is not only a relevant fact under Section 27 of the Act but also noticeably has not been very seriously disputed by the defence. These seized articles have been produced and identified in the court by the witnesses as well. The testimony of the lenders and that of PW14 in particular, identifying some of the packets of the currency notes by the initials or the names as labelled by him also cannot be lightly ignored. PW2, the father of the victim, apart from stating generally about the abduction of his son and his release has however in minutest details described the particulars of the ransom calls received and his desperate endeavours to collect the amount to the extent possible within the dead line of time to save his son in distress. The witnesses examined by the prosecution as the lenders of different amounts not only were referred to by this witness in his deposition, to reiterate they also endorsed to have responded to his clarion call.

Having regard to the series of frightful experiences which the victim had to encounter during his captivity of a period of almost two days in the scary company of his abductors and the fearful moments that he had to pass under the constant threat of being killed by them, as threatened from time to time, it is natural that he must have had sufficient opportunity to note their features to enable him to identify them even by their looks at a later point of time. That the abductors, during the relevant time, had intimidated the victim as well as his father that if the ransom amount demanded is not paid in time, the hostage would be done away with, has been stated on oath by both of them in categorical terms. The manner in which the victim was abducted and was shifted from place to place parallely following up the demand of ransom under the threat of his elimination leaves no manner of doubt that they had resorted to a plot to extract a handsome amount by way of ransom under the threat to the life of victim. We are thus left unconvinced by the defence plea of want of identification of the abductors including the appellants. The omission on the part of the victim to refer to the appellant Sukhmeet by his name instead of his nick-name Deputy also does not appeal to us. The victim in his deposition has clarified that though he knew Sukhmeet Singh was a Municipal Councillor, but had no personal intimacy with him so as to be able to identify him by seeing him.

9. Noticeably all the recoveries, be it of currency notes, fire- arms, the cars and the seizures of various articles therefrom have been on the basis of disclosures made by the accused persons from time to time which were duly recorded in the presence of the witnesses, as required in law. Not only the Honda City car proved to have been used in the commission of the offence was traced out being parked near the well of the accused Gurinder Singh @ Ginda under the cover of standing maize crop thereat, the seizure, amongst others of the driving licence of the victim from the dicky thereof lends formidable support to the credibility of the prosecution case. In all the cases of recovery, as the evidence demonstrates, the accused persons including the appellants after making the related disclosures had led the investigating agency to the places wherefrom seizures were made. That the seized articles were duly deposited in the appropriate custody and were produced at the trial and identified by the witnesses are also matters of record.

10. It is no longer *res integra* that the fact discovered as envisaged under Section 27 of the Act, in consequence of any information received from a person in the custody of a police officer, embraces the place from which any object is produced and the knowledge of the accused as to this provided the information given relate distinctively to the fact, as had been held by the Privy Council in *Pullukuri Kotayya and others vs. King Emperor*, AIR 1947 PC 67. This enunciation, hallowed by time, has been oft quoted with approval by this Court in a plethora of subsequent pronouncements while interpreting the scope and purport of the above legal provision.

Amongst others in *Bodhraj @ Bodha and Others vs. State of Jamu & Kashmir* (2002) 8 SCC 45, it has been elucidated that the doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, while in the custody of a police officer, such a discovery is a guarantee that the information supplied by the prisoner is true. It had been held that the information may be confessional or non inculpatory in nature, but if it results in discovery of facts, it becomes a reliable information.

It is unnecessary, in view of such a settled propounded legal postulation to multiply authorities on the point. Suffice it to state in the backdrop of the state of law on the admissibility of the information of a person accused of any offence in the custody of a police officer so far as it relates distinctly to the fact thereby discovered, the irresistible conclusion in the facts of the case in hand is that the disclosures made by the accused persons leading to the recoveries and seizures are indeed relevant facts in support of the charge levelled against them.

11. Qua the admissibility of the call details, it is a matter of record that though PWs 24, 25, 26 and 27 have endeavoured to prove on the basis of the printed copy of the computer generated call details kept in usual ordinary course of business and stored in a hard disc of the company server, to co-relate the calls made from and to the cell phones involved including those, amongst others recovered from the accused persons, the prosecution has failed to adduce a certificate relatable thereto as required under Section 65B(4) of the Act. Though the High Court, in its impugned judgment, while dwelling on this aspect, has dismissed the plea of inadmissibility of such call details by observing that all the stipulations contained under Section 65 of the Act had been complied with, in the teeth of the decision of this Court in *Anvar P.V.* (supra) ordaining an inflexible adherence to the enjoinders of Sections 65B(2) and (4) of the Act, we are unable to sustain this finding. As apparently the prosecution has relied upon the secondary evidence in the form of printed copy of the call details, even assuming that the mandate of Section 65B(2) had been complied with, in absence of a certificate under Section 65B(4), the same has to be held inadmissible in evidence.

This Court in *Anvar P.V.* (supra) has held in no uncertain terms that the evidence relating to electronic record being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Act would have to yield thereto. It has been propounded that any electric record in the form of secondary evidence cannot be admitted in evidence unless the requirements of Section 65B are satisfied. This conclusion of ours is inevitable in view of the exposition of law pertaining to Sections 65A and 65B of the Act as above.

12 Be that as it may, on an overall assessment of the entire gamut of evidence, we are of the comprehension that the charges against the accused persons including the appellants stand proved beyond reasonable doubt even sans the call details. To reiterate, the gravamen of the imputations levelled against them is that of conspiracy and abduction of the victim pursuant thereto for ransom by detaining him under the threat to cause death or hurt and thereby to compel his father to meet their demand.

13. As it is, as has been exposted by this Court on umpteen occasions, conspiracy requires an act i.e. actus reus and an accompanying mental state i.e. mens rea. Whereas the agreement constitutes the act, the intention to achieve the unlawful objectives of the agreement comprises the required mental state. This Court in *Ferozuddin Basheeruddin and Others vs. State of Kerala* (2001) 7 SCC 596 held that conspiracy is a clandestine activity and by the sheer nature thereof, an agreement to that effect can rarely be established by direct proof and must be inferred from circumstantial evidence of cooperation between the conspirators. It has been enunciated that conspiracy is not only a substantive crime but also serves as a basis for holding one person liable for the crime of others where application of the usual doctrines of complicity would not render that person liable and thus the test of the role of a co-conspirator would be decisively significant in determining the liability of the others in the face of the supervening fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts. Qua the admissibility of evidence, it was proclaimed that loosened standards prevail in a conspiracy trial and contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. It was thus ruled that conspirators are liable on an agency theory by the statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.

In a later pronouncement in *Mir Nagvi Askari vs. Central Bureau of Investigation* (2009) 15 SCC 643, it was ruled in the same vein that while drawing an inference from the materials brought on record to arrive at a finding as to whether the charge of the criminal conspiracy had been proved or not, it must be borne in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The following extract from the decision in *Mohd. Amin Vs. CBI* (2008) 15 SCC 49 was quoted with approval:

774. The principles which can be deduced from the above-noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every detail of the conspiracy so long as they are co-participants in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy. As would be patent from the above excerpt that qua a charge of conspiracy, it is not necessary that all the conspirators should know each and every detail of the plot so long as they are co-participants in the main object thereof and it is also not necessary that all of them should participate from the inception of the stratagem till the end, the determinative factor, being unity of object or purpose and their participation at different stages. Such is therefore the encompassing sweep of culpability of an offence of conspiracy, if proved, even from the established attendant circumstances.

14. Having regard to the proved facts and the state of law, adverted to hereinabove, we are of the considered view that the prosecution has been able to prove the charges levelled against the appellants. Both the courts below have analysed the evidence in the correct perspectives and in the face of the conclusions recorded on the different aspects of the imputations levelled against them, we are of the opinion that no interference is called for with the impugned judgment of conviction and sentence recorded against them. The appeals thus fail and are dismissed. Registry is directed to transmit the original record to the Trial Court immediately.

?.....J.

(A.K. SIKRI) ?.....J.

(AMITAVA ROY) NEW DELHI;

NOVEMBER 21, 2016