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(2008) 02 P&H CK 0063

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Narayan Dass and etc.		APPELLANT
	Vs	
State of Haryana and etc.		RESPONDENT

Date of Decision: Feb. 29, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 357
- Evidence Act, 1872 - Section 30
- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 307, 323

Citation: (2008) CriLJ 4000

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This judgment shall dispose of the Crl. Appeal No. 109- SB of 1996 filed by Narayan Dass, Crl. Appeal No. 341-SB of 1996 filed by Mohan Lal and Crl. Revision No. 219 of 2006, filed by Som Parkash, complainant arising out of the judgment of conviction, and the order of sentence dated 5.2.1996 rendered by the Court of Additional Sessions Judge, Kurukshetra, vide which it convicted and sentenced the accused/appellants, as also Kashmir Singh, co-accused as under:

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Name of          Convicted for   Sentence
the convict      the offence   awarded
Narayan Dass  u/s 364 read   Rl for a period of
 with Section 120-B, IPC  5 years and to pay
     a fine of Rs. 1,000/-
     in default of pay-
     ment of fine to fur-
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     ther undergo RI for
     a period of six
     months.
 u/s 365 read   RI for a period of
 with Section 120-B, IPC  3 years
 u/s 368 read   RI for a period of
 with Section 120-B, IPC  2 years
MohanLal        u/s 364 read   RI for a period of
 with Section 120-B IPC  5 years and to pay
     a fine of Rs. 1,000/-
     in default of pay-
     ment of fine to
     further undergo RI
     for a period of six
     months.
 u/s 365 read   RI for a period of
 with Section 120-B IPC  3 years
 u/s 368 read   RI for a period of
 with Section 120-B IPC  2 years.
Kashmir Singh   u/s 364 read   RI for a period of
 with Section 120-B IPC  5 years and to pay
     a fine of Rs. 1,000/-
     in default of pay-
     ment of fine to
     further undergo RI
     for a period of six
     months.
 u/s 365 read   RI for a period of
 with Section 120-B IPC  3 years
 u/s 368 read   RI for a period of
 with Section 120-B IPC  2 years
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The substantive sentences of the appellants were ordered to run concurrently.

2. Kashmir Singh, accused, though convicted and sentenced vide the aforesaid judgment by the trial Court, but he seemed to have not filed any appeal. Aadesh Kumar, accused was, however, acquitted by the trial Court.

3. The facts, in brief, are that Som Parkash s/o Amar Chand, caste Odd Rajput, employed as Junior Engineer in Canal Department, Kurukshetra, was residing in quarter No. 23 Canal colony, Kurukshetra. He had got two sons, namely, Pushpinder and Mohit. Pankaj and Ankit sons of his brother Charan Dass were also residing with him.

4. On 10.9.1993 at about 7.30 A.M. Geeta Ram, Chowkidar had taken his son Mohit aged about six years and nephew Pankaj aged about 5 years to the School on a bicycle, as usual. At about 1.00 P.M., when Geeta Ram, Chowkidar returned to his house, only Pankaj was with him and his son Mohit was not with him. On enquiry he revealed to his wife, that when at about 10/10.05 a.m. he was going to the school, to fetch the children, two persons met him. One of them namely Kashmir Singh was known to him, because he was spotted many times, in the house of Som Parkash. He was married. Chowkidar further told that Kashmir Singh and his companion along with him took tea. Thereafter, the chowkidar went to the school and brought both the children, out of the gate of the school. In the meanwhile, Kashmira, accused, was also found standing with bicycle. Therefore, Kashmir Singh suggested to the chowkidar that he would give lift to Mohit on his bicycle. Chowkidar enquired from Mohit, as to whether, he knew Kashmir Singh, whereupon he replied, in the affirmative. Thereafter, Geeta Ram, chowkidar and Kashmir Singh took both the children upto Gurudwara 6th Patshahi. After reaching near the Gurudwara, Kashmira told Geeta Ram, chowkidar that he should come and wait at Birla Mandir and he would come after purchasing some fruits etc. for the children. Geeta Ram, chowkidar waited near Birla Mandir but Kashmir Singh did not reach there. On hearing this, version of Geeta Ram, Chowkidar, Som Parkash went to the house of Kashmir Singh in his village Bharian. He also went to his original Village Raison. He also went to the brother and relation of Kashmir Singh. However, Kashmir Singh and his child Mohit were not traceable. Mohit was wearing a white shirt and blue Nicker, along with red socks, and black shoes. His height was 2 feet. Som Parkash made statement, before the police narrating the aforesaid facts on the basis whereof FIR Ex. PF was registered.

5. The police searched Mohit at a number of places. Ultimately, on the night of 15/16.9.1993, one Puran Chand, Ex-Sarpanch resident of Village Raison, informed the police, that Narayan Dass, accused resident of Village Raison, had made an extra judicial confession, before him to the effect that he with the help of Kashmir Singh, and Mohan Lal kidnapped Mohit. Puran Chand further informed the police that he would produce Narayan Dass, accused, before it, provided that he was not harassed. The Investigating Officer agreed to the proposal, and asked Puran Chand to bring Narayan Dass. Puran Chand, produced Narayan Dass, accused, before the Investigating Officer at Kurukshetra where he was arrested. Narayan Dass, accused, made a disclosure statement to the effect that the child had been kept at the tubewell of Aadesh Kumar Brahman of Village HasanpuV in Uttar Pradesh and he could get him recovered by pointing out. His disclosure statement was recorded. Thereafter, he led the police party, to the pre-disclosed place and got recovered Mohit, who was found lying, on a cot, amongst Kashmir Singh and Mohan Lal accused. Kashmir Singh and Mohan Lal accused were also arrested. Aadesh, being the owner of the tubewell, in the room whereof, Mohit was found was also arrested. After completion of Investigation, the accused were challaned.

6. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, charge under Sections 364, 365 and 368 read with Section 120-B IPC was framed against Narayan Dass, Kashmir Singh and Mohan Lal accused whereas separate charge u/s 368 IPC was framed against Aadesh, accused. It was read over and explained to them, to which they pleaded not guilty, and claimed judicial trial.

7. The prosecution, in support of its case, examined Mukesh Kumar, Draftsman, PW-1, who prepared the site plan Ex.PA, Kuldeep Chand, Headmaster, Geeta Vidya Mandir, Kurukshetra, PW-2, who brought the admission register pertaining to the said School, and deposed that Mohit son of Som Parkash was admitted in the school on 17.4.1993, and was studying in the same. His name was registered at S.No. 4485 in the admission register. He prepared the certificate Ex. PB, on the basis of the admission register. Krishan Lal Constable, PW-3, took special report to the Illaqa Magistrate and tendered affidavit Ex. PC, Rajbir Singh. Constable, PW-4 was associated in the investigation, in whose presence Mohit was recovered, Geeta Ram, Chowkidar, PW-5, took Mohit and Pankaj to the School on that day, and deposed that Kashmir Singh, accused, gave lift to Mohit, while he was coming back to the house. Som Parkash, PW-6, complainant is the father of Mohit. Before Puran Chand, Ex-Sarpanch, PW-7, extra judicial confession was made by Narayan Dass, accused, inculpating him and his co-accused Mohan Lal and Kashmir Singh, accused in the commission of crime. Sohan Singh, PW-8, is the Investigating Officer. Thereafter, the Additional Public Prosecutor for the State, closed the prosecution evidence.

8. The statements of the accused u/s 313 Cr.P.C. were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. Kashmir Singh, accused, in his statement u/s 313 Cr.P.C. stated that his father was a contractor and he had a dispute over commission, with Som Parkash, complainant, as a result whereof, he was falsely involved in the present case.

9. Mohan Lal accused, in his statement u/s 313 Cr.P.C., stated that he being a friend of Kashmir Singh, was falsely implicated in the present case.

10. Narayan Dass, accused, in his statement u/s 313 Cr.P.C., stated that he along with his brother Dharam Pal was illegally brought by the police on 11.9.1993. S.I. Ranbir Singh Verma of CIA staff demanded a sum of Rs. 60,000/-, for their release. The respectables approached him and, thereafter, his brother Dharam Pal was released on the ground, that he should bring the money. His brother made a complaint to the higher authorities and an enquiry was held. It was further stated that the Additional SP and the DSP, Crime Branch, also made enquiries, and found that S.I. Ranbir Singh acted illegally. He denied that he made extra judicial confession, inculpating him, as also his co-accused, in the commission of crime, before Puran Chand, Ex-Sarpanch.

11. Aadesh Kumar, in his statement u/s 313 Cr.P.C. stated that he was neither the owner nor in possession of a tubewell, in Village Hasanpur.

12. The accused examined Om Parkash, D.S.P., (Head Quarter) Rohtak, DW-1, Suraj Pal, S.P., who was posted as Additional Superintendent of Police at Kurukshetra from October, 1993 to June, 1994, as DW-2, Dharam Pal son of Laxman Dass, brother of Narayan Dass, DW-3, and Surat Singh Virk, DW-4. There is one statement dated 22.1.1995 of Mohan Lal recorded by the trial Court, wherein, he confessed that he had taken a child whose name he did not remember. He further stated that he took the child with a view to demand money, from Som Parkash. He further confessed that he took the child to Saharanpur, Thereafter, the accused closed their defence evidence

13. After hearing the Additional Public Prosecutor for the State, the Counsel for the accused, and, on going through the evidence, on record, the trial Court, convicted and sentenced the accused, as stated hereinbefore.

14. Feeling aggrieved, against the judgment of conviction and the order of sentence, the aforesaid two appeals, were filed by the appellants/accused and the revision petition was filed by the complainant.

15. I have heard the learned Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

16. The Counsel for the appellants at the very outset, contended that there was no evidence, on the record, to the effect, that Mohit son of Som Parkash, aged 6 years, actually went to the School on 10.9.1993 and while he was coming back to the house, along-with Geeta Ram, Chowkidar, Kashmir Singh, accused gave him lift. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. Som Parkash, father of the child when appeared as, PW-6, in clear-cut terms stated that as usual on 10.9.1993 at 7.30 A.M., Chowkidar had taken Mohit and Pankaj to their School, but when he came back to the house only Pankaj, his nephew, was with him, but his son Mohit was not with him. Kuldeep Singh, PW-2, in clear-cut terms, stated that Mohit son of Som Parkash was admitted in the school on 17.4.1993 and an entry to this effect was made at S.No. 4485 in the admission register. On the basis of the said register, he issued the certificate Ex.PB, regarding the admission of the aforesaid child. Not only this, Geeta Ram, Chowkidar, PW-5, who took Mohit and Pankaj to the School, in clear-cut terms, stated that as usual, Mohit @ Monu son of Som Parkash and Pankaj, son of his brother, were taken by him to the School, at 7.30 A.M. on the bicycle. After leaving them in the school, he came back to the Colony. Thereafter, on the same day, he again went to the School to bring the children back. At IIIrd gate of Kurukshetra University, Kashmir Singh met him. He further stated that he along with Kashmir Singh, who was already known to him as he used to come to the house of Som Parkash, and another person took tea. He brought Mohit son of Som Parkash and Pankaj his brother''s son from

the school. Near the gate of the school Kashmir Singh, accused, met him, who was on his bicycle. Kashmir Singh, accused suggested him that he would give lift to Mohit. Since Mohit knew him, he did not object to it. It was thereafter that Kashmir Singh kid-napped him. The trial Court was, thus, right in placing reliance on the evidence of these witnesses, and coming to the conclusion, that actually Mohit was taken to the School by Geeta Ram on 10.9.1993 and when he was being brought back, Kashmir Singh, accused gave him lift and kidnapped him. The submission of the Counsel for the appellants, in this regard, being without merit, must fail and the same stands rejected.

17. It was next contended by the Counsel for the appellants, that no extra judicial confession was allegedly made by Narayan Dass, accused before Puran Chand, PW-7. They further submitted that even the evidence of Puran Chand was not reliable as he is a man of dubious character. The submission of the learned Counsel for the appellants in this regard, does not appear to be correct. Puran Chand, PW-7, Ex-Sarpanch in clear-cut terms stated that on 15.9.1993, he along with Sunder Singh son of Bakhtawar Singh of Village Garasi was sitting in his baithak, and taking meals. At that time Narain, accused of Village Raison, came to them and while weeping told them that his father Lachman Dass after entering into an agreement to purchase land measuring 4 acres, in the year 1985, had gone to Madhya Pradesh for arranging the money to get the sale deed executed, but he did not return from there till date. He further told that he was suspecting that his father had been eliminated by Som Parkash, or his father or they had got eliminated him through some body. He further told them that for taking revenge of his father, he conspired with one Kashmir Singh of Village Bhairion, for abducting the son of Som Parkash and agreed to pay a sum of Rs. 50,000/-, for kidnapping the boy. Puran Chand deposed that Narayan Dass told him that thereafter he (Narayan Dass) visited the Village of Kashmir Singh, and one more person met him, and the bargain was struck. Puran Chand further deposed that Narayan Dass told them that 15/20 days thereafter, Kashmir Singh and another person Mohan Lal came to him, and asked him to arrange the money as his work was likely to be done in a short period. Puran Chand further deposed that since the boy had been kidnapped and the police was after him, he be produced, before the police, as the police was known to him. Puran Chand deposed that Narayan Dass asked him that he should help him, as the police was harassing him. Puran Chand further deposed that Narayan Dass told him that the child was kidnapped by Kashmir Singh and Mohan Lal and had been taken to U.P. Thereafter Puran Chand and Sunder Singh satisfied themselves, after making enquiries from Narayan Dass separately, Narayan Dass was left in the care of Sunder Singh, and Puran Chand left for Kurukshetra, to inform the police. The police met him at IIIrd Gate of Kurukshetra University, Kurukshetra and then he narrated the entire story to it. The police assured Puran Chand that it would not harass Narayan Dass, and asked him to produce him. Thereafter Puran Chand along with Narayan Dass and Sunder Singh proceeded to the Police Post IIIrd Gate, where

Inspector Sohan Singh met them. Narayan Dass, accused, was produced before the police and he was arrested. Narayan Dass was thereafter interrogated, by the police, and he disclosed that Mohit son of Som Parkash, after being kidnapped, had been kept at Village Hasanpur in U.P. His disclosure statement Ex. PG, was recorded, which was signed by him, and attested by Puran Chand, Sunder Singh and Jagdish Rana, ASI. In pursuance of the disclosure statement, Narayan Dass, accused led the police party to the pre-disclosed place, and got recovered Mohit alias Monu from the tubewell room of Aadesh, since acquitted. Recovery memo Ex.PD was prepared. Site plan Ex. PH of the place, from where Mohit was got recovered was prepared. Since Puran Chand was the Ex-Sarpanch of Village Raison where Narayan accused was residing and the police was after him (Narayan Dass), he thought it better to make a clean breast of his guilt, as also of the guilt of his co-accused before him (Puran Chand) as he knew that he (Puran Chand), was very well known to the police, and could save him, from harassment. Puran Chand did not produce Narayan Dass, immediately before the police, after he made extra judicial confession before him. He, in the first instance, went to Kurukshetra, met the police, and after getting assurance from Sohan Lal Inspector, that Narayan Dass who had made extra judicial confession before him, would not be harassed produced him (Narayan Dass). Since Puran Chand being a man very well known to the police, in the capacity of Ex-Sarpanch, it was natural for Narayan Dass to repose confidence in him. No ill-will, enmity or grudge, against Puran Chand, was alleged or proved by the accused. However, his evidence was sought to be attacked, on the ground, that he was a man of dubious character, which shall be dealt with, in the succeeding paragraphs. The prosecution was, thus, successful, in proving that extra judicial confession was made by Narayan Dass before Puran Chand.

18. The extra judicial confession made by Naryan Dass before Puran Chand and Sunder Singh was without any coercion. The truthfulness of the extrajudicial confession, was further strengthened, from the fact, that in pursuance thereof, Mohit alias Monu son of Som Parkash, complainant, who had been kidnapped was recovered. In Piara Singh and Others Vs. State of Punjab, , it was held that there was no necessity of corroboration of extra judicial confession, made by the accused. It was further held that where the extra judicial confession was proved by an independent witness, who was a responsible person and who bore no animus against the appellants the same can be believed. In Madan Gopal Kakkad and Anr. v. Naval Dubey and Anr. 1992 (3) RCR Crl. 461 : AIR 1992 SCW 1480, it was held that if the confession is not obtained by coercion, promise of favour or false hope, and voluntary, in nature, acknowledging guilt, law does not require that same to be corroborated, in all cases. The principle of law, laid down, in the aforesaid authorities, is fully applicable to the facts of the present case. The trial Court was, thus, right in holding that Narayan Dass made extra judicial confession before Puran Chand, PW-7 and Sunder Singh. The trial Court was, also right in holding that the evidence of Puran Chand, PW-7 was trustworthy. On scrutiny of the evidence of

Puran Chand, PW-7, by this Court, nothing could be found therein, which could discredit the same. The trial Court, thus, rightly relied upon the extra judicial confession, made by Narayan Dass, to Puran Chand, inculpating him and also his co-accused, in the commission of crime. The submission of the learned Counsel for the appellants, in this regard, being without merit, must fail and the same stands rejected.

19. The next question, that arises for consideration is, as to whether, the extra judicial confession made by Narayan Dass inculpating him as also his co-accused in the commission of crime could be used, against his co-accused Kashmir Singh and Mohan Lal or not. In Prakash Dhawal Khairnar (Patil) Vs. State of Maharashtra, , it was held that confession by an accused, is admissible against his co-accused, u/s 30 of the Indian Evidence Act, 1872, if circumstances exist that more persons than one are being tried jointly, the joint trial of the persons was for the same offence; the confession was made by one of such persons, who were being tried jointly, for the same offence, and if such confession affects the maker as well as such persons (who are being tried jointly for the same offence). In Ammine and Others Vs. State of Kerala, , it was also held that where there was reasonable ground to believe that the other accused, had conspired together, in committing murder, in such a case, confession made by one accused, could be used against the other accused also. In view of the principle of law, laid down, in the aforementioned authorities, no doubt, therefore, is left that extra judicial confession made by one accused inculpating him as also as his co-accused, in the circumstances, referred to above, can be used against his other co-accused also. In the instant case, admittedly Narayan Dass was jointly tried along with his co-accused Kashmir Singh and Mohan Lal in the same trial. In the circumstances, referred to above, the extra judicial confession made by Narayan Dass inculpating himself and his co-accused, could be used against them (co-accused) also as per the provisions of Section 30 of the Indian Evidence Act, 1872. Such an extra judicial confession can be pressed into service to reassure the truthfulness of the case of the prosecution, if the evidence other than the same, was sufficient to prove the case of the prosecution. In the instant case, the evidence of Geeta Ram, Chowkidar, and Som Parkash complainant was sufficient to prove that Mohit alias Monu, a child of 6 years was kidnapped by Kashmir Singh and Mohan Lal on 10.9.1993, while he was coming back from the school, to take revenge from Som Parkash, so as to kill the child or put his life in danger. Even the recovery of the child was got effected by Narayan Dass, accused from a tubewell room of Hasanpur, Uttar Pradesh, when he was in the custody of Mohan Lal and Kashmir Singh, accused. Since the evidence, independent of the extrajudicial confession, produced by the prosecution, to prove its case, was clinching, the same (extra judicial confession) could certainly be considered as a reassuring circumstance. The trial Court was, thus, right in relying upon the extra judicial confession made by Narayan Dass, for holding him, as also his co-accused guilty.

20. The Counsel for the appellants, however, submitted that the evidence of Puran Chand was not at all trustworthy, for the reason, that he was a man of dubious character. During the course of cross examination, Puran Chand, admitted that his grandmother had been missing since 1975-76 approximately. He further stated that he was arrested on suspicion, regarding the murder of his grandmother. He was, however, discharged later on in that case. He further stated, during the course of his cross examination that he did not know, as to whether, Amar Chand, father of Som Parkash, PW-6 was also joined, in the said investigation. He further stated that so many persons of the village were associated, during the Investigation of that case. He further stated that he did not know, whether Amar Chand was kept in CIA staff, for many days, or not. He further stated that he did not remain in Jail, in another case, at Karnal. He also stated that he contested the election of Sarpanch twice. However, he lost the election second time. At that time Amar Chand was the other contestant who was elected as Sarpanch. The mere fact that Puran Chand, PW-7, on suspicion, that he had committed the murder of his grandmother, was arrested by the police, but was released later on , on being found innocent did not mean that he was a man of dubious character. If the police had suspicion with regard to the commission of crime, against any person, it can detain that person. Ultimately, when Puran Chand, was not found involved in the commission of that crime, he was discharged. It means that he was innocent. This circumstance did not make his character, in any way, stigmatic. It also did not go to make his evidence, in this case, untrustworthy, in any manner. Nothing could be brought out, during the course of cross-examination of this witness, which could prove that he was inimically disposed towards Narayan Dass, or was interested in Som Parkash. Nothing could be brought out during his cross examination, that he was thick with the complainant. In these circumstances, the evidence of Puran Chand to the effect that Narayan Dass made extra judicial confession, before him inculpating himself as also his co-accused, in the commission of crime, could, by no stretch of imagination, be disbelieved. The submission of the Counsel for the appellants, in this regard, being without merit, must fail and the same stands rejected.

21. The Counsel for the appellants, by placing reliance on Sakharam Shankar Bansode Vs. State of Maharashtra, and The State of Punjab Vs. Bhajan Singh and Others, , contended that since the evidence, of Puran Chand, PW-7 before whom the extra judicial confession was allegedly made by Narayan Dass was un-reliable, the trial Court was wrong in acting upon the same. In Sakharam Shankar Bansode''s case (supra), the evidence of the witness before whom the extra judicial confession was made, was held to be unreliable. His conduct was also found to be doubtful. There was no other circumstance, to connect the accused, with the crime. In those premises, the Apex Court, held that the conviction based solely, on the retracted extra-judicial confession, was not proper and, ultimately, acquitted the accused. In State of Punjab''s case (supra) , the extra judicial confession was found to be improbable, and lacking in credence. In these circumstances, the same was not

relied upon. In the instant case, extra judicial confession made by Narayan Dass, accused, inculpating himself, as also his co-accused, in the commission of crime, before Puran Chand, Ex-Sarpanch, PW-7, has been held to be reliable. The evidence of Puran Chand has also been held to be trustworthy. The conduct of Puran Chand, PW-7, is also not found to be doubtful. In these circumstances, no help can be drawn by the Counsel for the appellants, from the aforesaid authorities, the facts whereof, being distinguishable. The submission of the learned Counsel for the appellants, thus, being without merit, must fail, and the same stands rejected.

22. It was next contended by the Counsel for the appellants, that there was no evidence, on the record, that Mohit, child was got recovered on the pointing out of Narayan Dass, accused. They further contended that no document was prepared with regard to the alleged recovery of the child, from the tubewell room of Aadesh Kumar, accused (since acquitted) when he was allegedly found in the custody of Kashmir Singh and Mohan Lal. They further contended that even no official of the Uttar Pardesh Police was joined, at the time of the alleged recovery of the child. They further contended that, in these circumstances, the recovery of the child was planted against the accused. The submission of the Counsel for the appellants, in this regard, does not appear to be correct. Sohan Lal Inspector, the Investigating Officer stated that he summoned Som Parkash, complainant and thereafter constituted a raiding party consisting of Puran Chand, Ranbir Singh, Sunder Singh, Jagdish Singh, ASI and four head constables, besides other constables, and started for Village Hasanpur. Accused Narayan Dass was also with them at that time. When they reached on the turning of Hasanpur Village, on the Delhi road, two officials of the U.P. Police, were joined by him. They were Constables Rajbir and Om Parkash, who were present there, per chance. After joining them in the raiding party, they reached Village Hasanpur. He further stated that, in the Village, he tried to join some respectables, in the investigation, but they showed their helplessness, due to the fear of Aadesh Kumar, accused (since acquitted) and his brother Sewa Ram. Thereafter, Narayan Dass accused led the raiding party to the tubewell Kotha of Aadesh Kumar. Sohan Lal Inspector saw Kashmir Singh and Mohan Lal accused, lying on a bed in the tubewell room, and in between them the boy Mohit alias Monu was lying. Mohit was identified by Som Parkash, his father as his son. He was recovered and recovery memo Ex. PD in this regard, was prepared, which was duly attested by Som Parkash, Puran Chand Rajbir, Constable, Police Station, Gagalheri, Saharanpur, U.P. Sunder Singh and Jagdish Singh, ASI. Site plan Ex. PH of the place of recovery of the child was also prepared. The police officials of the U.P. Police were, thus, joined at the time of recovery of the child and even at the time of preparing the recovery memo, referred to hereinbefore. Even the evidence of Sohan Lal Inspector, was duly corroborated regarding the recovery of the child, on the pointing out of Narayan Dass, by Som Parkash and Puran Chand, prosecution witnesses. The trial Court was, thus, right in holding that the child namely Mohit was got recovered by Narayan Dass, accused, in pursuance of his disclosure statement,

PG, when he was found in the custody of Kashmir Singh and Mohan Lal. The trial Court was, thus, right in relying upon the trustworthy evidence, regarding the recovery of Mohit, kidnapped child. The submission of the Counsel for the appellants, being without merit, must fail, and the same stands rejected.

23. There was also a motive, with Narayan Dass, to commit the crime. In extra judicial confession made by him before Puran Chand, Ex-Sarpanch, PW-7, he in clear-cut terms, stated that he suspected the father of Som Parkash in the dis-appearance of his (Narayan Dass''s) father and with a view to take revenge, he hatched conspiracy with Kashmir Singh and Mohan Lal accused and paid a sum of Rs. 50,000/-, for the purpose of kidnapping Mohit son of Som Prakash. Since Kashmir Singh used to come to the house of Som Prakash, Mohit alias Monu, child on his asking took lift from him on his bicycle and finding the opportunity he (Kashmir Singh) kidnapped him, as he had already entered into a conspiracy with Narayan Dass and Mohan Lal his co-accused. The proof of motive, lends further assurance to the prosecution story.

24. It was proved, from the evidence, on record, that the complainant and Narayan Dass were from common ancestors. It has also come in the evidence that the brother of Kashmir Singh, accused, is married to the sister of Narayan Dass, accused. During the course of cross examination of Som Parkash, some facts were brought on record, which were also admitted by DW-3, Dharam Pal, brother of Narayan Dass. From the cross-examination of Som Parkash, PW-6, and the cross examination of Dharam Pal, DW-3, it was revealed that on 11.4.1994, FIR under Sections 323, 307, 148 and 149 was registered against Attar Chand, Som Parkash son of Bahadur Chand, Sanwal Dass, Gian Chand, Rattan Lal and his brother Narayan Dass for causing injuries to Som Parkash, complainant, and his family members. Dharam Pal also admitted, during the course of his cross examination, that in FIR No. 173 dated 7.4.1995, he was also challaned for causing injuries to Om Parkash, brother of the complainant. He, however, stated that he also received injuries, in the same occurrence. He denied that he went to Dabwali and caused injuries to Som Parkash and the FIR was lodged against him. He further stated that the FIR was registered against him, but the same was cancelled, being false. He admitted that his father has been missing since 1985. The aforesaid criminal cases were registered, after the present occurrence. Enmity is a double edged weapon. It was Narayan Dass who wanted to take revenge against Som Parkash as he suspected Som Parkash or his father, regarding the disappearance of his father. With a view to take revenge, he got kidnapped Mohit s/o Som Parkash. Had there been the intention of Som Parkash, complainant, to falsely implicate Narayan Dass, in the instant case, he would have in the first instance, while making statement before the Police, on the basis whereof, the FIR was registered, named Narayan Dass, as an accused, or suspect, in the commission of crime. He, however, did not mention the name of Narayan Dass, as an accused, or suspect, in the commission of crime, in the statement made, first in point of time, forming the basis of FIR. As

stated above, the FIRs, referred to, in this paragraph, were registered after the present occurrence, and, therefore, had got no relevance with the merits of the case. In these circumstances, it could not be said that the accused were falsely implicated, in the present case, by Som Parkash for taking revenge, on account of enmity. On the other hand, enmity was used as a weapon by Narayan Dass, to commit the crime, along with his co-accused. In this view of the matter, the submission of the Counsel for the appellants, being without merit, must fail and the same stands rejected.

25. The Counsel for the appellants, further contended that it was proved from the defence evidence, that Narayan Dass, was falsely implicated, in the instant case, with a view to save Ranbir Singh, Incharge CIA staff, who demanded money, from his brother Dharam Pal, for his (Narayan Dass), release against whom complaints were made by Dharam Pal and he was found guilty by the higher Police Officers. The submission of the Counsel for the appellants, does not appear to be correct, as would be discussed hereinafter. Om Parkash, DSP, (Head Quarter), Rohtak who was posted as DSP, Panchkula at the relevant time, appeared as DW-1. According to him on 19.1.1994, he received a complaint of one Dharam Pal, from D.I.G. (Crime). He made enquiry, with regard to the allegations, contained in the complaint. After enquiry he found that Narayan Dass was not involved in the commission of crime. He further stated that he deputed an ASI to get the matter probed secretly. The ASI then made his written report on the enquiry file. When he was taken through the report of the Assistant Sub Inspector, he had to admit that he had not mentioned, in his report, that Narayan Dass was innocent, in this case. Suraj Pal, Superintendent of Police, DW-2 was posted as Additional Superintendent of Police, Kurukshetra at the relevant time. He submitted enquiry report dated 3.12.1993. He stated, in that report, that SI Ranbir Singh Verma, CIA staff, Kurukshetra, demanded Rs. 60,000/- from DW-4 and snatched Rs. 2,000/- from him. When he was cross examined, he admitted that Ranbir Singh Verma, was not joined, in the enquiry proceedings. It means that the enquiry conducted by him, was an ex parte affair. The enquiry, made at the back of Ranbir Singh Verma by him, was thus, of no consequence. Even otherwise, Ranbir Singh Verma, Incharge, CIA staff, could not independently involve or absolve any suspect, of the commission of crime in the instant case, by taking bribe. Suraj Pal, Superintendent of Police, while appearing as DW-2, further stated that the investigation was rightly conducted by Ranbir Singh Verma, the Investigating Officer, in the present case. This statement was made by him, as he was the Supervisory Officer of Police Station, City Thanesar, at the relevant time. Dharam Pal, DW-3, no doubt, stated that on 11.9.1993, he and his brother Narayan Dass were forcibly lifted from their house by Ranbir Singh Verma, Incharge, CIA Staff, who was accompanied by 5/6 other police officials. He was let off on 12.9.1993, whereas Narayan Dass, was kept in Police station and no case was registered till 13.9.1993 against his brother Narayan Dass. He further stated that on 13.9.1993, he accompanied by about 50 persons, met the Chief Minister, Bhajan Lal regarding

false implication of his brother. On 14.9.1993, he summoned Surat Singh Virk of Village Dauchar, through some person of his Village, and narrated the whole story to him. Thereafter, he along with him and one Gian Chand went to CIA staff on 15.9.1993, at Kurukshetra. At that time Narayan Dass was crying with pain and the SI was sitting on the chair. It was further stated by him that Surat Singh and he were taken aside by Ranbir Singh Verma, and he told them that Som Parkash, JE had given Rs. 50,000/- to him and if he was interested in the release of Narayan Dass he should give Rs. 60,000/-. Mr. Virk retorted, as to why he was demanding money as Narayan Dass was innocent. He further stated that Ranbir Singh Verma told them that they should go and make arrangement for money. On 16.9.1993, when they again went to CIA staff, they noticed that his brother Narayan Dass was not in the CIA staff. When they enquired from Ranbir Singh Verma he told that after waiting a lot, for them, he had sent Narayan Dass to judicial lock up. Thereafter Ranbir Singh Verma got up and put his hand in the front pocket of Surat Singh Virk and snatched Rs. 2,000/- from him. When these witnesses were cross examined by the Public Prosecutor, they could not stand on their legs. The FIR Ex. PF was received by the Magistrate at 1.05 A.M. on 11.9.1993. When Dharam Pal defence witness was confronted with application DW/2/B dated 13.9.1993, the factum that Som Parkash had got falsely implicated Narayan Dass after giving Rs. 50,000/- was not mentioned therein. In the subsequent application dated 25.9.1993 in para 5 it was not mentioned that Som Parkash gave Rs. 50,000/- to Kashmir Singh, co-accused and got implicated Narayan Dass, accused in the present case. It was also not mentioned that in case they gave Rs. 50,000/- Narayan Dass would be released. However, in the application dated 25.9.1993, it was mentioned that with a view to falsely implicate Narayan Dass, Som Parkash and his father paid Rs. 50,000/- to Inspector Verma posted in CIA staff, Kurukshetra, along with his co-officials, which was a known fact in the streets. In para No. 6, it was mentioned that the whole work had been done by his father and this fact was also known to the public. The factum of snatching of Rs. 2,000/- from the pocket of Mr. Surat Singh Virk, was not mentioned, in any of the complaints sent by Dharam Pal. The perusal of cross-examination of both these witnesses clearly reveals that upto 25.9.1993, no allegation of passing of money by Som Parkash to the Police was made. The evidence of both these witnesses could not be said to be trustworthy. It was unbelievable that when a child of 6/7 years of age of a person, was kidnapped, he would enter into a conspiracy with one accused, to implicate another accused. The trial Court was also right in holding that the occurrence took place on 10.9.1993 and the FIR was registered on the same day, whereas, copy thereof was received by the Illaqa Magistrate on 11.9.1993 at 1.05 P.M. The trial Court was also right in holding that by moving an application dated 13.9.1993 for the first time regarding false implication of the accused, a story was concocted by the defence witnesses to save the accused from the dragnet of law. The trial Court was also right in holding that even in the application dated 13.9.1993, the allegation of demand of money by Ranbir Singh Verma Incharge CIA staff was not made. The trial Court was, thus, right in disbelieving the evidence of the defence

witnesses, for the reasons recorded hereinbefore. In this view of the matter, the submission of the Counsel for the appellants, being without merit, must fail and the same stands rejected.

26. In the revision petition, filed by the complainant, prayer was made for the enhancement of sentence, awarded to the accused/appellants, by the trial Court and award of compensation. After carefully going through the facts, circumstances and evidence, on record, this Court has come to the conclusion, that the sentence awarded by the trial Court was in consonance with the guilt of the accused. There is no such glaring circumstance, on the record, which may persuade this Court, to come to the conclusion, that the sentence awarded by the trial Court, is extremely, on the lower side, and thus, warrants enhancement. In these circumstances, finding no ground for enhancement of sentence awarded to the accused/appellants, by the trial Court, the prayer, in this regard by the Counsel for the revision petitioner, is declined.

27. Coming to the prayer for the grant of compensation, it may be stated here, that the trial Court, also awarded sentence of fine, for the offence punishable u/s 364 read with Section 120-B IPC, to the accused. Since the fine forms part of sentence, awarded to the accused, by the trial Court, u/s 364 read with Section 120-B IPC, as per the provisions of Section 357(3) of Cr.P.C., compensation could not be awarded. In this view of the matter, the prayer, made in this regard, also does not merit acceptance. The Revision Petition is, thus, liable to be dismissed.

28. No other point was raised, by the Counsel for the parties.

29. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, rendered by the trial Court, do not suffer from any illegality, or infirmity. The same, being based on the correct appreciation of evidence, and law on the point, deserve to be upheld.

30. For the reasons recorded hereinbefore, appeal Nos. 109-SB of 1996 and 341-SB of 1996 are dismissed. The judgment of conviction and the order of sentence dated 5.2.1996, are upheld. The bail bonds of the appellants are cancelled. The Chief Judicial Magistrate, Kurukshetra, shall take necessary steps to comply with the judgment of this Court, with due promptitude.

31. Revision Petition No. 219 of 2006, being devoid of merit, is also dismissed.