

(1993) 11 AHC CK 0067

Allahabad High Court

Case No: Government Appeal No. 1548 of 1978

State of U.P.

APPELLANT

Vs

Smt. Barphi and Others

RESPONDENT

Date of Decision: Nov. 2, 1993**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 294, 294(1), 294(3), 82
- Evidence Act, 1872 - Section 17, 30, 45, 47
- Penal Code, 1860 (IPC) - Section 109, 361, 363, 364, 365

Citation: (1994) 18 ACR 256**Hon'ble Judges:** Giridhar Malaviya, J; A.B. Srivastava, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

A.B. Srivastava, J.

Against a judgment and order dated 1-3-1978 of Shri K.S. Misra then Assistant Sessions Judge, Mathura, acquitting accused Respondents Smt. Barfi, Ganga Prasad, Devi Ram and Har Charan of offences under Sections 363, 364, 365, all read with Sections 109 and 368 of the IPC and Radha Ballabh alias Bitta, Raghubir, Lalta Prasad, Smt. Basanti and Bissu under Sections 363, 364, 365/109 368 and 386 IPC. The State has preferred appeal. Against the same judgment, the criminal revision has been preferred by the complainant Shyam Sunder.

2. Briefly stated the facts relevant are that the complainant Shyam Sunder (PW I), son of Mohan Lal is a resident of House No. 337, Mohalla Chuna Kankar, situated in Holi wali, lane in the City of Mathura. His Son Lalit, aged about 4 years was during the relevant period a student of a school known as Gyandip School along with the other children of the family. They used to go to the school by a rickshaw and return by the same. On 26-9-1975 the date of occurrence Lain as usual had gone to the school with his sister and the cousins and returned home around 12.30 P.M. with

them and was seen going upstairs in the house by his father Shyam Sunder who later went to sleep at about 1.30 P.M. Near about 3.30 P.M. the mother of Shyam Sunder informed that Lalit was not traceable in the house. He had also not presented himself before the tutor who at that time was teaching other children in the ground floor hall of the house. On this Shyam Sunder and other family members set out in search of the boy who was not to be found and an information regarding the same was given by Shyam Sunder to the Police Control Room. It was recorded in the diary of the flying squad at 5 P.M. on 26-9-1975 vide Exhibit Ka 2. Apart from searching the boy at various places including bus stand etc announcement was also made on the loud speaker and through All India Radio and Hindi newspaper Amar Ujala dated 29-9-1975. When all efforts failed, apprehending that the child had been kidnapped a written report Exhibit Ka 1 was delivered at Police Station Kotwale Mathura by the complainant on 29-9-1975 disclosing his apprehension about the kidnapping having been done to harm and even to kill the child. After some preliminary enquiry by A.S.I. Uma Shankar Misra (PW 11) FIR was registered at the Police Station on 3-10-1975 vide GD Entry No. 4. Investigation of the case was then entrusted to R.K. Punaha (PW 14) then Second Officer at Police Kotwali, Mathura who besides making efforts to search the child Lalit also deputed informers for the purpose.

3. On 6-11-1975 he learnt from one of the informers that Goklesh Chaturvedi (PW 4), Gopal Prasad (PW 5), Chandi Prasad (PW 10), Gopal Nath, Jagmohan and Dharmvir had knowledge of some facts relating to the kidnapping of Lalit. On this he recorded the statements of these witnesses the same day. The facts revealed in the statements of these persons u/s 161 Code of Criminal Procedure indicated that the child Lalit was kidnapped as a result of a well-knit conspiracy. Accused Respondent Smt. Basanti, who was on visiting terms with the family of the complainant, along with the accused Radha Ballabh were seen in the company of the boy Lalit at about 2.30 P.M. on the shop of Shanker Halwai on the outskirts of the Holi Gate. Daya Shanker (PW 2) and Jagmohari who were eating "kachauris" in front of the said shop saw a woman and a man, later identified as Basanti and Radha Ballabh, coming to the said shop taking Lalit with them. They purchased 100 gms of "jalebi" and giving the same in the hands of Lalit they proceeded towards the lane leading to Antapara. Thereafter the said persons Basanti and Radha Ballabh with Lalit reached in the lane behind the temple of Raageshwar Mahadev in Mohalla Antapara. Goklesh (PW 4) Chandi Prasad (PW 10) and Gopal Jogi who were present at the back side of the temple and talking, saw three persons, subsequently identified as accused Lalta Prasad, Raghuvir and Bissu, coming on a motorcycle and stopping there. Shortly afterwards the aforesaid two persons with Lalit came there and the five had a talk amongst them. The woman asked Lalit whether he would sit on motorcycle. On the child responding in affirmative, gave him to the person driving the motorcycle (Lalta Prasad) and told him to bring the child soon after giving him a ride on the motorcycle. Thereafter the said three persons with the child proceeded on the

motorcycle, towards Krishnapuri and the man and the woman bringing the child went towards the Rangeshwar temple. On way, the said persons riding the motorcycle with the child stopped at the cycle shop of Gopal Prasad (PW 5) at Bhuteshwar Crossing at about 3-3.15 P.M. and got air filled in the front wheel of the motorcycle by Gopal Prasad Dharmvir who at that time was getting his cycle repaired at the shop addressed the boy as Lalit.

4. The boy Lalit, it is alleged, was then taken to village Karhala to which place the accused Respondent Radha Ballabh, his wife Smt. Barfi, brother Bissu and nephew accused Ganga Prasad belong. There he was kept in the house of these accused persons for a few days, during the course of which Badri Piasad (PW 6) while passing one day from in front of the house of Radha Ballabh saw the boy aged about 4-4-1/2 years in the lap of Barfi Devi. Accused Ganga Prasad enquired addressing the boy as Lalit whether he would go to market. On this the boy went in his lap and Ganga Prasad took him towards the shops situated in the village. Again after 2-3 days Badri Prasad, Ram Ratan Pradhan (PW 7) and Bal Mukund saw accused Bissu taking the same child named Lalit ON a cycle towards Barsana. Thereafter the child was not seen in the said village.

5. On 17-12-1975 the Investigating Officer Shri Punetha received information from another informer deputed by him that the boy Lalit was being kept since about 20.25 days in their house in village Kamai, by accused Devi Ram and Har Charan and if a raid was conducted he might be recovered. On this, the Investigating Officer along with some members of the police force reached village Kamai and made enquiries from Nannoo Ram (PW 8), Durga Prasad (PW 9) and Ram Bharose, leading to the information that for about 20-25 days a boy aged 4-5 years of very fair complexion was seen with accused Har Charan and Devi Ram in their house. On being enquired the boy gave out his name as Lalit son of Shyam Sunder resident of Mathura, and referred to Devi Ram and Har Charan as Mama During the said period accused Radha Ballabh alias Ballo and Bissu were also once seen at the place of Devi Ram and Har Charan and all the four were talking amongst themselves.

6. The Investigating Officer S.I. Punetha on 17-12-75 searched for the child and the accused Devi Charan and Har "Charan but they were not found. Having come to know about the complicity of Radha Ballabh, Bissu and Ganga Prasad, the Investigating Officer with the police party went in search of them to village Karhala. On search of their house accused Ganga Prasad was arrested. No other accused nor the boy Lalit was found. After interrogating Ganga Prasad he made him baparda on the spot of arrest. Thereafter he again proceeded to village Kamai and finding Devi Charan and Har Charan, effected their arrest but failed to trace Lalit.

7. On 20-12-1975 the Investigating Officer arrested Radha Ballabh and Raghubir at about 10.30 A.M. near the Dongipur Park Museum, interrogated and made them baparda. They were taken in the same condition to village karhala and on their pointing search was made of the house of Radha Ballabh in the presence of his wife

accused Barfi Devi. From inside the residential room of Radha Ballabh and Barfi Devi, a "bushirt, the right side half of which only was intact and the rest missing, was found hung, which was stated by the said accused persons to belong to the kidnapped child Lalit. The same was duly sealed and its memo was prepared by Shri. Punetha and was signed by him and the witnesses in whose presence the recovery was effected. The Investigating Officer also arrested Smt. Barfi. From there he proceeded to village Lohwan and arrested accused Basanti Devi who was also made baparda. All these accused were then brought to the police station Kotwali and were lodged in the lock up, Radha Ballabh, Raghubir and Basanti Devi being in baparda condition. The recovered property (part of bushirt) was deposited in the Maikhana of the Police Station.

8. Meanwhile about two weeks after the boy Lalit was kidnapped the complainant Shyam Sunder, who had been making frantic efforts to search his missing child, received by a Registered Post in an envelop, Exhibit I, two pieces of cloth. Exhibits 2 and 3, being parts of the bushirt worn by Lalit at the time he was kidnapped, along with two letters Exhibits 4 and 5 purporting to be by some Thakur Hukum Singh Azad. The letters addressed to Mohan Lal, father of informant Shyam Sunder, contained the demand of ransom Rs. 1,25,000/- for releasing the child, failing which there was a threat to kill him. There was also a warning against contacting the police or (the C.I.D. About 19-20 days thereafter another envelop, Exhibit 6. addressed to Mohan Lal and Shyam Sunder, containing letter, Exhibit. 7, was received by post informing that despite police being contacted the kidnappee was not murdered being a small child, and demanding at last Rs. 50,000/- as ransom. About two weeks thereafter another letter, Exhibit 9, in envelop, Exhibit 8, by post was received by the informant reiterating the demand of ransom and threat to kill the child Lalit.

9. During the course of investigation, in test identification proceedings conducted by the executive magistrate in District Jail, Mathura accused Radha Ballabh was iueutified by PW 2 Daya Shanker and PW 4 Goklesh. Accused Raghubir was identified by PW 4 Goklesh. PW 5 Gopal Prasad and PW 10 Chandi Prasad. The Investigating Officer S.I. Punetha thereupon submitted charge-sheet, Exhibit Ka 7, dated 28-2-1976, against dccused Raghubir, Radha Ballabh alias Bitta, Smt. Barfi, Ganga Prasad, Devi Ram and Har Charan.

10. After the transfer of S.I. Punetha further investigation was taken up by PW 15 Hira Singh Sirohi then S.H.O., Kotwali, Mathura. Accused Lalta Prasad, who could not be arrested earlier, surrendered in the Court of the Magistrate on 23-2-1976 and in baparda condition was sent to the District Jail. Mathura. The test indentification proceedings in respect of Smt. Basanti and Lalta Prasad were conducted by the executive magistrate in the said jail on 10-3-1976. Basanti was identified by PW 2 Daya Shanker. PW 4, Goklesh, PW 10 Chandi Prasad and Jagmohan. Accused Lalta Prasad was identified by PW 4 Goklesh. PW 5 Gopal Prasad, PW 10 Chandi Prasad and Dharmvir. Charge sheet Exhibit Ka 8, dated 31-3-1976, was then submitted by

the investigating officer against these two accused persons.

11. Since Bissu was not traceable despite issuance of warrant of arrest, process of attachment and proclamation under Sections 82 and 83 Code of Criminal Procedure were issued against him. The same was executed by A.S.I O.P. Sharma vide his report and memo Exhibit Ka 12, dated 29-2-1976.

12. On 9-7-1976 an inland letter, Exhibit 10, purporting to be by Bissu was received by the informant Shyam Suuder containing details about the entire episode of kidnapping of Lalit by the accused persons, including himself, for ransom and stating (hat his role was confined to taking the child brought by Basanti on motorcycle, keeping him in villages Karhala and Kamai and demanding ransom. It further contained information about the claim of accused Radha Ballabh to have eliminated the child Lalit but expressing belief that Lalit might not have been murdered, stating that he was greatly perturbed because of the police pressure and coming to know that informant was a very kind-hearted person, begged forgiveness and withdrawal of the police pressure against him.

13. When all hopes of recovering the boy were lost, the informant on 15-8-1976 gave the letters, Exhibits 4, 5, 7, 9 and 10, along with the envelope, Exhibits 1, 6, 8 and the pieces of bushirt, Exhibits 1 and 2, to the Investigating Officer on 15-8-1976. Meanwhile the police started vigorous search of accused Bissu who was ultimately arrested by "he Investigating Officer Hira Singh Sirohi on 8-11-1976 in front of a hotel on the Delhi Road bypass. He was interrogated, made baparda oi the spot, and brought to the police Station Kotwali where he was kept baparda in she lock-up. On 9-11-1976 he was sent to District Jail in baparda condition on 9-11-1976 with Constable Lal Chand, PW 17 and others.

14. In the test identification parade held on 15-12-1976 he was identified by Goklesh, PW 4. Gopal Prasad PW 5, and Dharamvir. Thereafter chargesheet, Exhibit Ka 20 was laid by the Investigating Officer against Bissu.

15. At the instance of the prosecuting agency, specimen writings and signatures of accused Bissu were obtained before the Magistrate and the same along with the letters. Exhibits 4, 5, 7, 9 and 10, were sent for comparison of the handwriting to the Director, Forensic Science Library, U.P., Lucknow. After due examination, the documents expert opined that the writer of the letters Exhibits ". 5, 9 and 10 was the same person who had written the specimen writings before the Magistrate. The expert submitted his report with detailed reasons. Exhibit Ka 17, in this regard.

16. On the accused persons being committed to the Court of session charges under Sections 363, 364, 365, all read with Section 109 and 368 IPC were framed against Smt. Barfi, Ganga Prasad, Devi Ram and Har Charan. Against Smt. Basanti, Radha Ballabh, Raghubir and Lalta Prasad, chages framed were under Sections 363, 364, 365 and 368/109 IPC whereas against accused Bissu the charges were under Sections 363, 364, 365, all read with Sections 109, 368 and 386/511 of the IPC.

17. All the nine accused persons pleaded not guilty to the charges before the trial Court, denying the prosecution story in tota regarding their alleged role in kidnapping Lalit, for ransom and committing his murder, concealing or confining him, and sending demand for ransom. They all claimed to be tried.

18. Accused Basanti and Radha Ballabh denied having kidnapped Lalit from the guardianship of informant Shyam Sunder, and to have handed over him to accused Bissu, Lalta and Raghubir, and being instrumental in demanding ransom for restoring the child to his father and sending pieces of bushirt of Lalit, Exhibits 2 and 3, by post to Shyam Sunder. Radha Ballabh further denied that Lalit was kept concealed by him, Barfi, Ganga Prasad and Bissu in their house in village Karahala and also denied that a part of the bushirt of Lalit was recovered from his house. Both these accused persons stated that they were shown to the witnesses at Police Station Kotwali and were identified on account of the same. They also stated that the witnesses were inimical to them.

19. Accused Ganga Prasad and Smt. Barfi denied that the boy Lalit was kept concealed by them in the house owned by them, Radha Ballabh and Bissu or that they were seen by the witnesses in the company of Lalit. They also denied recovery of part of bushirt of Lalit from the portion of house in the occupation of Radha Ballabh and Smt. Barfi, and claimed to have been falsely implicated on account of the enmity with the witnesses.

20. Accused Raghubir and Lalta denied that along with Bissu, they took Lalit, brought by Basanti, to village Karshala on motorcycle driven by Lalta and kept them under confinement first at Karahala and then at village Kamai, They also denied having been instrumental in demanding ransom or sending by post the ransom letters and pieces of bushirt of Lalit. According to Radhubir he was a student, of B.S.A. College, Mathura and in the party-bandi of students belonging to rural areas the rival students of the city area got him falsely implicated. He also stated Shyam Sunder to be inimical to him and claimed that the police did not keep him baparda. Accused Lalta Prasad alleged enmity with witnesses Goklesh, Gopal Prasad, Chandi Prasad and informant Shyam Sunder. He also stated that he was a candidate for a post in students' union in B.S.A. College, Mathura. His photograph was published in the college journal. From the Court after his surrender he was taken to jail baparda. Accused Devi Charan and Har Charan denied having kept the kidnappee Lalit in their house in village Kamai and to have been seen by the witnesses in the company of the said boy Lalit They alleged that the witnesses of the prosecution are inimical to them.

21. Accused Bissu while denying his complicity in the act of kidnapping the child Lalit, also denied having sent the letters. Exhibits 4, 5, 7 and 9 for ransom to Mohan Lal and Shyam Sunder and the inland letter, Exhibit 10, giving details of the incident, About the contents of Exhibits 4, 5, 7, 9 and 10 he stated that while under detention at Police Station Kotwali. Mathura, he was forced to write these letters under duress.

He also denied having sent Exhibits 2 and 3, alleged pieces of bushirt to the informant, and further denied recovery of part of the bushirt of Lalit from the room in occupation of Radha Ballabh and Smt. Barfi in the house owned by the said accused persons, him, and Ganga Prasad.

22. On behalf of the defence, two witnesses were also examined. DW 1 Dr. R.C. Sharma, Lecturer, in the B.S.A. College, Mathura, to state that in the session 1973-74 accused Lalta Prasad and Raghubir, who were students of the said college, were class representatives of their respective classes. Their photographs were also published in the college magazine: and DW 2 Lala Ram, Booking Clerk of the U.P. Roadways Bus Station, Mathura, to state that on 17-12- 1975, while on way to his office, he saw accused Raghubir being brought under arrest at 5 A.M. No one else however saw Raghubir. The DW 2 further stated that Smt. Basanti did not reside at the house of Shyam Sunder.

23. In support of its case, the prosecution examined 17 witnesses in all. Out of them, PW 1 Shyam Sunder is the informant and stated about his son Lalit becoming untraceable from his house in the city of Mathura sometime between 1.30 and 3.30 P.M. of 26-9-1975. He at first lodged information regarding the said fact with the flying squad on 26-9-1975 at 5 P.M. and when after hectic search and announcement on the loudspeaker, radio and newspaper the boy could not be found, lodged complaint at Police Station Kotwali, Mathura on 29-9-1975, which was registered on 3-10-1975. He also stated to have received (he letters Exhibits 4, 5, 7 and 9 in envelopes Exhibits 1, 6 and 8 by post, demanding ransom and also having received Exhibits 2 and 3, pieces of bushirt worn by his son Lalit at the time he was kidnapped, in the envelope Exhibit 1. Further, he stated about having received on 9-7-1976 Exhibit 10, an inland letter written, by Bissu, containing his confessing about his complicity in the kidnapping of Lalit and the details of the incident from the time of kidnapping onwards.

24. In the 2nd set of witnesses examined is, PW 2 Daya Shanker claiming to have seen Lalit being brought to a "halwai" shop in Mohalla Holi Gate by a woman and a man and purchasing "jalebis" for Lalit and then proceeding towards Antapara. Later, in the test identification he identified Basanti and Radha Ballabh as the person? who had brought Lalit, and also identified them in the Court.

25. The 3rd set of witnesses consists of Goklesh (PW 4) and Chandi Prasad (PW 1), who stated to have been present in the lane behind Rageshwar Mahadeo temple in Mohalla Antapara along with Gopal Yogi when three persons (accused Lalta Prasad, Raghubir and Bissu) came there on a motorcycle. Shortly later, accused Basanti and Radha Ballabh came there with Lalit and enquired whether he would like to sit on motorcycle : when Lalit replied in affirmative, they gave him to the person driving the motorcycle asking them to bring back the boy soon, after a ride. The said three persons went with Lalit on the motorcycle towards Krishnapuri. Both these witnesses identified accused Lalta Prasad, Raghubir and Bissu as the three persons

who took Lalit on the motorcycle and also identified in the Court. The PW 4 identified Exhibit 2 as piece of the same bushirt which the said boy was wearing at the time he was kidnapped.

26. In the 4th set is, PW 5 Gopal Prasad who has his cycle shop at Bhuteshwar crossing and stated that at about 3.15 P.M. while he was at his shop, repairing the cycle of one Dharmvir, the three persons on a motorcycle with a boy aged 4 5 years came there and got air filled in the front wheel of the motorcycle. Dharmvir addressed the child once as Lalit. The child was wearing a printed terricot bushirt. He identified Exhibit 2 as a piece of cloth similar to the cloth of bushirt of the said boy and further stated that from his shop the said persons with boy went towards Krishna Nagar. He identified Raghubir, Lalta Prasad and Bissu in the test identification parade as well as in the Court.

27. PW 6 Badri Prasad and PW 7 Ram Ratan, the witnesses of the 5th set, are residents of village Karahala to which place accused Radha Ballabh, his wife Smt. Barfi, brother Bissu and nephew Ganga Prasad also belong. The PW 6 Badri Prasad stated that his house is towards west of the house of Radha Ballabh intervened by 3-4 houses. About 20-23 months prior to his statement, one day at about 2-3 P.M. when he passed from in front of the house of Radha Ballabh, he saw accused Barfi Devi standing near her "chabutara" with a boy, aged 4-4-1/2 years, of fair colour. Accused Ganga Prasad, who came out of his house, enquired from the boy addressing him as Lalit, whether he would go to market. On this, the boy, named Lalit, went in his lap and he went in the direction of market. Two three days later, along with Ram Ratan and Bal Mukund, at about 4-4.30 P.M. he saw accused Bissu taking the same boy Lalit on a cycle towards Barsana, whereafter he was not seen in village Karahala. PW 7 Ram Ratan stated that about 22-23 months ago he saw Barfi Devi getting a boy named Lalit attend the call of nature, and Ganga Prasad playing with the child in his lap. The boy was about 4-4 1/2 years of age. Two" three days later he saw Bissu taking the same boy on cycle towards Barasana.

28. The 6th set of witnesses, Nanhoo Ram (PW 8) and Durga Prasad (PW 9) belong to village Kamai under Police Station Barsana, district Mathura. The PW 8 Nanhoo Ram stated that about 22-23 months ago he saw a boy aged about 4-5 years residing with accused Har Charan and Devi Ram, for about 20-25 days. One day he had a talk with the said boy who gave his name as Lalit, son of Shyam Sunder, resident of Mathura. After remaining there for 20-25 days, the boy was not seen again in village Kamai. The PW 8 Durga Prasad stated that about 23-24 months ago he had seen the boy aged 4-5 years, of fair colour, residing in the house of Devi Prasad and Har Charan. One day at about 12 noon the boy came to his house and told him to give "roti" and "dal" as his Mama (maternal uncles) gave him only "dalia" to eat. When enquired, the boy gave his name as Lalit, father"s name Shyam Sunder and resident of Mathura. Shortly afterwards accused Devi Ram came there searching the child, gave him a slap and took him in his lap to his house Four-five days after it, he saw

accused Radha Ballabh and Bissu also at the place of Devi Ram and Har Charan talking amongst themselves. After the said day, Lalit was not seen in the village or at the house of Devi Ram and Har Charan.

29. The rest of the witnesses examined by the prosecution are formal. PW 3 retired S.I. Har Prasad Awasthi, proved Exhibit Ka 2, the entry in the Control Room, register of Police Station Kotwali, Mathura dated 26-9-1975. 5 P.M. regarding Lalit being missing; PW 11 S.I. Uma Shanker Misra after preliminary enquiry got the FIR registered on 3-10-1975 on the basis of the written report, Exhibit Ka 1, dated 29-9-1975, of informant Shyam Sunder; PW 12 H.C. Neelami Singh proved the G.D. entry dated 29-9-1975, Exhibit Ka 3, about submitting the report Exhibit Ka 1 by the informant. He also stated about accused Radha Ballabh, Raghubir and Basanti being sent baparda to District Jail. Mathura on 21-12-1975 vide G.D. entry, Exhibit Ka 18. Further, he stated about the accused Bissu being brought and kept baparda in the lock up of Police Station Kotwali on 8-11-1976 vide G.D. entry, Exhibit Ka 13, and sending him to jail baparda on 9-11-1976 vide G.D. entry Exhibit Ka 19. PW 13 H.C. TikaRam proved the G D. entry, dated 3-10-1975, regarding registration of the FIR PW 16 Constable Nahd Kishore stated about taking Radha Ballabh, Raghubir and Basanti on 21-12-1975 to District Jail, Mathura, in baparda condition ; PW 17 Constable Lal Chandra stated about taking accused Bissu to the District Jail, baparda on 9-11-1976. Another witness H.C. Dhanpal Singh stated on 23-2-1976 immediately after his surrender accused Lalta Prasad was made baparda and taken in same condition to the Court lock-up, from where he was sent to jail through Constable Sukhpal and Sukhvir in baparda condition.

30. The PW 14 R.K. Punetha who conducted the investigation after the preliminary enquiry by A.S.I. Uma Shanker Misra stated that during the course of investigation he recorded the statement of informant Shyam Sunder and deputed several informers to gather information regarding this crime as well as the whereabouts of the missing boy. On 6-11-1975, one of the informers informed him that Shanker Sharma, Jagmohan, Gopal Nath. Dharmvir, Goklesh (PW 4" Gopal Prasad (PW 5) and Chandi Prasad had knowledge about the episode relating to the boy Lalit. The same day he summoned and examined these witnesses and learnt about the kidnapping of Lalit. On 17-12-1975, learning from another informer that the boy was kept at their house by Devi Ram and Har Charan for about 20-25 days, and if a raid is conducted he may be recovered. Reaching Kamai, the same day, he enquired from Ram Bharosey, Nanhoo Ram (PW 8) and Durga Prasad. Accused Devi Ram and Har Charan were not found then in their house or the village, as such he proceeded to village Karahala in search of accused Radha Ballabh, Bissu and Ganga Prasad whose complicity had come to light. On search of their house accused Ganga Prasad was found and arrested but neither Lalit nor any other thing was recovered. He made Ganga Prasad baparda. On his interrogation he learnt about the complicity of Radha Ballabh, Bissu, Raghubir, Lalta, Devi Ram, Har Charan and one more woman. Thereafter returning to village Kamai he arrested Devi Ram, Har Charan. On

20-12-1975 he arrested Radha Ballabh and Raghubir and made them bapsrda. In the same condition he brought them to village Karahala in the hope of making some recovery. He searched the portion of the house in exclusive possession of Radha Bailabh and his wife Barfi and from his residential room recovered portion of a bushirt Exhibit 11 hung on a peg in the wall, on the pointing of accused Radha Ballabh. The said recovery was made and the recovered article duly sealed in the presence of witnessses vide memo Exhibit Ka 5. Smt. Barfi was also arrested. Thereafter the same day he arrested accused Basanti Devi from village Lohwan and made her baparda. All these were brought to the Police Station and kept there in the lock up in the same condition vide G.D. entry dated 20-12-1975, 6 30 P.M. (Exhibit Ka 6). After receipt of the result of the test identification he laid charge-sheet against Raghubir, Radha Ballabh, Smt. Barfi, Ganga Prasad, Devi Ram and Har Charan. The PW 15 Hira Singh Sirohi who took up the investigation after transfer of Shri Punetha, proved the charge-sheet Exhibit Ka 8, submitted by him against Basanti and Lalta Prasad. He also proved the documents regarding execution of process u/s 82/83 Code of Criminal Procedure against accused Bissu (Exhibits Ka 9 to Ka 12). He arrested accused Bissu on 8-11-1976 from Delhi Road bypass in front of hotel Niyamat, made him baparda and lodged in the same condition in the lock up of the Police Station, vide G.D. Exhibit Ka 13 He further stated that on 15-8-1976 informant Shyam Sunder gave to him the letters Exhibits 4, 5, 7, 9 and 10 and the postal envelopes in which these were received and he forwarded the same to the Court.

31. The prosecution also tendered in evidence besides Exhibits 1 to 11 aforesaid, the identification memos Exhibits Ka 14 to Ka 16 relating to accused Radha Ballabh, Raghubir, Basanti, Lalta Prasad and Bissu, the report with reasons of the document expert (Exihibit Ka 17). The defence dispensed with formal proof and admitted the genuineness of Exhibits Ka 14 to Ka 17 as welt as the photographs of the disputed and specimen documents prepared by expert for his comparison.

32. In this appeal we have heard at length, the learned A.G.A. appearing on behalf of the Appellant State Shri S.V. Goswami appearing on behalf of the informant-revisionist, and Shri K.C. Saxena the learned Counsel for the accused Respondents. We have also been taken through the entire evidence oral and documentary on record.

33. The contention on behalf of the Appellant (prosecution) is that there is sufficient and overwhelming evidence on record to prove that the boy Lalit aged about 4 years was kidnapped by accused Radha Ballabh, Basanti, Bissu, Lalta Prasad and Raghubir, for ransom and being killed in the event the same is not paid that ransom and threatening letters under a fake name Thakur Hukum Singh Azad, written by accused Bissu, were sent by these accused persons by post to the first informant, along with two pieces of bushirt, worn by the boy at the time of his kidnapping, that the boy was taken to village Karahala and detained there in the house of Radha Ballabh by him, his wife Barfi, brother Bissu and nephew Ganga Prasad, from there

he was taken to village Kamai and was detained at the house of accused Har Charan and Devi Ram. from where he was taken away by accused Bissu, whereafter he was never seen alive. The ingredients of the offences charged thus, it is contended, are fully established against the accused Respondents, and the findings and judgment of acquittal rendered by the learned trial Court being totally against the weight of evidence on record and perverse are liable to be set aside and the accused convicted.

34. The contention on the other hand, on behalf of the Respondents is that there is no reliable or legally admissible evidence to connect the accused person, or any one or more of them, with this crime, the witnesses of the prosecution are got up, and their evidence suffers from serious infirmities, identity of the alleged kidnappee is not established as Lalit, son of informant Shyam Sunder, by any satisfactory evidence, the result of the test identification is not reliable, the report of the document expert is not admissible, the letters relied on the prosecution are not proved to be in the hand writing of the accused Bissu, in any case these were got written under duress by the police, and even if these are taken to be in the hand writing of accused Bissu, these do not constitute an admission of guilt by him nor does it provide any incriminating evidence against rest of the accused.

35. Now in the back ground of the above stated facts, and the submissions of the two sides the questions which call for determination in this appeal are:

1. Whether Lalit, aged about 4 years, son of informant Shyam Sunder was kidnapped from his lawful guardianship from his house in Mohalla Chuna Kankar, Mathura City?.
2. Whether in the first phase of kidnapping the boy was taken away from his father's house by accused Radha Ballabh and Basanti?.
3. Whether in the second phase they handed over Lalit to accused Raghubir, Lalta Prasad and Bissu to be carried away on a motorcycle?.
4. Whether thereafter the boy Lalit was taken to village Karahala and was kept a few days at the house belonging the Radha Ballabh, Barfi and Bissu in the direction of Barsatia and was kept for about 20-25 days in the house of Har Charan and Devi Ram and, thereafter was not seen any more?
5. Whether during the aforesaid period letters Exhibits 4 and 5 along with pieces of bushirt of Lalit Exhibits 2 and 3, were received by Registered Post and letters Exhibits 7 and 9 were received by post by informant Shyam Sunder and his father Mohan Lai demanding ransom and threatening to kill the boy and whether the letters Exhibit 4, 5 and 9 are in the handwriting of accused Bissu?
6. Whether the boy Lalit not having been recovered or seen alive after his confinement in village Kamai and ao ransom having been paid, he will be presumed to be not alive having been killed?.

7. Whether the inland letter Exhibit 10 was received by informant Shyam Sunder by post on 9-7-1976, whether the said letter is in the hand writing of accused Bissu and constitutes his admission of guilt and also incriminating evidence against the other accused persons, admissible in law, and

8. Whether the conclusions of the trial Court are against the weight of evidence on record and unsustainable, and the prosecution has established beyond reasonable doubts the guilt of the accused persons and the charges framed against them?

36. As far as the factum of kidnapping is concerned, the prosecution version has nowhere been assailed by the defence. That Lalit, aged about 4 years, was son of informant Shyam Sunder, a resident of House No. 337, Holiwali Lane, Mohalla Chuna Kankar, Mathura City is not disputed. The statement of informant Shyam Sunder, PW 1, that Lalit at the time he was kidnapped was studying in a school for children, that as usual he returned home along with his sister and cousins from the school around 12.30 P.M. on 26-9-1975 has also not been assailed in cross examination. Similarly, unchallenged is his version that Lalit was found missing from home at about 3.30 P.M. and despite hectic search he could not be found or recovered. There is not the slightest suggestion in cross examination to this witness that Lalit left home on his own, nor is it probable that the boy, aged 4 years, and residing in his parental house along with his family members could have escaped from the house on his own. There could also be no reason for the informant to set up a false theory of kidnapping, as he had no axe to grind against the accused persons or to stage manager's story of kidnapping to wreak vengeance against them. There, thus, remains no doubt about the fact that the boy Lalit was victim of kidnapping and that he was kidnapped from the lawful guardianship of his father Shyam Sunder between 1.30 and 3.20 P.M. on 26-9-1975. Now this brings us to the question regarding the manner in which, the persons by whom, he was kidnapped and the purpose behind the same? As stated above, although the kidnapping having been done clandestinely, it was not known to the informant and others in his family, as to who, and, in what manner, kidnapped the boy, the prosecution case is that as a result of investigation and deployment of informers it came to light that the kidnapping was a result of well-knit conspiracy and was meticulously executed by the accused persons, in various phases. The evidence on record will thus be required to be analysed as to whether the prosecution has been able to establish the various links of its story regarding complicity of the accused persons in the act of kidnapping Lalit, keeping him in confinement, demanding ransom and ultimately eliminating the boy.

37. According to the prosecution version the boy Lalit was lured out of his parental house by accused Basanti and Radha Ballabh, around 2.30 P.M. on 26-9-1975 and was taken to the lane behind Rangeswar Mahadeo temple in Mohalla Antapara and was handed over to accused Lalta, Bissu and Raghubir to be taken away on a motorcycle. It is established from the statement in cross examination of the PW I

Shyam Sunder that accused Smt. Basanti was regular visitor to his house prior to the incident, as well as thereafter till before her arrest. The evidence led with regard to this phase of the incident, consists of the statements of PW 2 Daya Shanker, PW 4 Goklesh, PW 5 Gopal Prasad and PW 10 Chaudi Prasad. The PW 2 Daya Shanker who is a resident of Mohalla Salghara in the city of Mathura at a distance of about two furlongs from the house of informant Shyam Sunder, and has his shop at a still shorter distance from the informant's house stated to have seen the boy Lalit in the company of Smt. Basanti and Radha Ballabh whom he did not know from before, (sic) the sweetmeat shop of one Shanker on the outskirts of Holi Gate lane. where they purchased 100 gins "jalebi" for the boy and proceeded towards Antapara. However, he stated that 3-4 days after the incident he left Mathura for Koia and returned after a month when he learnt that Lalit had been kidnapped. Yet he did not go to Shyam Sunder and for the first time stated to the Investigating Officer (on 6-11-1975). He claims to have identified Basanti and Radha Ballabh on account of having seen them in the company of Lalit at the shop of Shanker. Obviously the plea of this witness that he did not know about Lalit being kidnapped or missing for 2-3 days after the incident before leaving for Kota is hardly acceptable in view of the fact that due publicity was made of Lalit being missing on loudspeaker, radio and in the newspaper. Even otherwise he claims to have learnt about the kidnapping a month after the incident. Yet, however, he did not inform Shyam Sunder about what he had seen. This is clearly indicative of the fact that his version of having seen Lalit in the company of Basanti and Radha Ballabh at the shop of Shanker. Hatwai is not believable. As far as identification of these accused persons is concerned, he being a resident of the locality would have seen Basanti who was a regular visitor to the place of Shyam Sunder, and may be that he had seen Radha Ballabh also in her company prior to the incident, in the said locality.

38. Despite the rejection of the evidence of PW 2 Daya Shanker we, however, find in the testimony of the PWs 4, 5 and 10 reliable evidence to establish the prosecution version regarding Lalit having been kidnapped from his father's house by Basanti and Radha Ballabh, being handed over to accused Lalta Prasad, Bissu and Raghubir and being taken away by them on a motorcycle via Bhuteshwar locality towards village Karhala, and kept there in the house belonging to Radha Ballabh and his other family members. The PW 4 Goklesh Prasad has categorically stated that while present in the lane behind the Rangeshwar Mahadeo temple in Mohalla Antapara along with one Chandi Prasad and one Gopal Yogi he saw the three accused persons Lalta Prasad, Bissu and Raghubir coming on a motorcycle and stopping the vehicle in the lane. Shortly afterwards the two accused Smt. Basanti and Radha Ballabh came there with a boy, aged 4 years with "jalebis" in a "Dona" in his hand and gave the boy to the three accused persons present with motorcycle asking them to take the boy whom the woman Basanti addressed as Lalit for a ride. The three accused persons then took Lalit on the motorcycle and drove towards Krisbnapuri while the two accused persons who had brought the boy went towards the temple. He

correctly identified all the five accused persons Radha Baiiabh, Basanti, Lalta Prasad, Raghubir and Bissu in test identification as well as in the Court. He has been fully corroborated in his testimony by the PW 10 Chandi Prasad, who identified three of the accused. Basanti, Lalta Prasad and Reghubir in test identification as well as in the Court. The cross examination of these witnesses has not yielded anything to discredit their version. Their testimony cannot be rejected on account of mere fact that they did not inform Shyam Sunder about what they had seen when they learnt a few days after the incident about the son of shyam Sunder being missed. They have stated that they did not do so as they did not want to involve themselves. However, they had spoken to some persons of the locality in this regard. Obviously the information to the Investigating Officer about the knowledge to these witnesses reached through the informer under these circumstances It is also important in this connection that none of these two witnesses Goklesh and Chandi Prasad had any enmity with the accused persons or any affinity with the informant, so as to falsely depose hi support of the prosecution case.

39. The PW 5 Gopal Prasad is also an important link in this phase of the incident in so far as on the day of occurrence at about 3 P.M. accused Raghubir, Lalta Prasad and Bissu came to his cycle repairing shop on the Bhuteshwar crossing and get air filled in the froot wheel of the motorcycle. One Dharmvir present at his shop addressed the boy as Lalit. This witness has identified all the three accused Raghubir, Laita Prasad and Bissu in test identification as well as in the Court. None of these three witnesses committed any mistake in the parades of any of the accused persons. There is produced cogent link evidence by the prosecution to prove that of these five accused persons four, viz, accused Basanti, Radha Ballabh, Raghubir and Bissu were kept baparda throughout from the time of their arrest upto their entry in the jail and Lalta Prasad remained baparda from the time of his surrender till his entry in the jail Under these circumstances, their testimony of identification is fully reliable. The PW 4 Goklesh and PW 5 Gopal Prasad also identified Exhibit 2 as a piece of cloth from the bushirt, worn by Lalit at the time he was seen by them in the company of his kidnappers.

40. The incident being of day time these witnesses had full and ample opportunity to watch the faces of these accused as well as the features of the boy and his bushirt, so as to leave a lasting impact on their minds and identify on its basis.

41. We, thus, have no hestitation in holding that Lalit, aged about 4 years, was kidnapped from the lawful guardianship of his parents near about 2.30 P.M. on 26-9-1975. He was lured and taken from his father"s house by accused Basanti and Radha Baiiabh. who after providing "jalebis" to him to eat took him to the lane behind Rangeshwar temple in Mohalla Antapara. There they handed him over to accused Lalta, Bissu and Raghubir to be taken away on a motorcycle driven by Lalta, to the place of his confinement. In this process these accused person sons were seen by their faces by PW 4 Gokiesb, PW 10 Chandi Prasad and PW 5 Gopal Prasad

who on the basis of the same identified these five accused persons in test identification and in the trial Court.

42. Now this brings us to the next phase of the incident in which, the prosecution alleges, the boy Lalit was first kept in confinement in village Karahala in the house belonging to Radha Ballabh, Barfi, Bissu and Ganga Prasad and thereafter in village Kamai in the house of Har Charan and Devi Ram. The vidence with regard to the confinement in village Karahala consists of the direct testimony of PW 6 Badri Prasad and PW 7 Ram Ratan besides the evidence of the Investigating Officer R.K. Punetha regarding recovery of a substantial part of the bushirt of Lalit from the portion of the house in the occupation of accused Radha Ballabh and his wife accused Barfi. As already stated above, the PWs 6 and 7, both, having their houses in the vicinity of the house of Radha Ballabh in village Karahala, have testified that they saw the boy aged about 4-4 1/2 years, with a fair complexion, staying for some days in the house belonging to accused Radha Ballabh. Both the PWs 6 and 7 stated that they saw the boy on a few occasions in the company of Barfi Devi and then of accused Ganga Prasad, who addressed the boy as Lalit. A few days thereafter they saw the same boy Lalit being taken by accused Bissu on a cycle in the direction of Barsana. That was the last occasion they saw the said boy in village Karahala or at the place of these accused persons. The cross examination of these witnesses have also not yielded anything tangible to discredit their testimony.

43. On behalf of the Respondents, their learned Counsel has assailed the testimony of these witnesses on the ground that their version is quite unnatural in so far as if they had actually seen a stranger boy in the house of the accused persons, they would certainly have become suspicious and would have informed the police or other authorities. This contention, however, does not appear sound in view of the fact that there was no occasion for these persons to have suspected the boy to have been kidnapped and brought to the house of Radha Ballabh. Considering the fact that he was a child aged about 4 years and was taken away from his parent's house by Smt. Basanti, who was a regular visitor to his parents' house and was looked after well thereafter, he appears to have developed some sort of intimacy with his kidnappers and in this state of affair his behaviour could not have given the slightest cause to these witnesses, or for that matter, the other people in the neighbourhood to suspect it to be a case of kidnapping. The PW 6 Badri Prasad specifically stated that he did not suspect anything foul on seeing the child in the company of the family members of Radha Ballabh and Bissu. When Ganga Prasad was arrested, a few weeks later, he for the first time realised that it was a case of kidnapping. Under all these circumstances no occasion arose for the witnesses to inform the police about the presence of the boy Lalit at the place of Radha Ballabh in village Kamai nor can their statement be discarded on that count. They both, however, stated to have talked to some people of their village regarding the child whom they saw at the place of Radha Ballabh, and with the members of his family. A very important factor lending credibility to the testimony of these witnesses is that fact that they

have not the slightest enmity with these accused persons and would not implicate the accused who are their own co-villagers, falsely in this crime.

44. The evidence of the PW 14 S.I. R.K. Punetha, who arrested accused Ganga Prasad from his house in village Karahala on 17-12-1975 and Barfi Devi on 20-12-1975 as to the effect that when Radha Ballabh and Raghubir were in his custody, on their pointing out, from the room in their house which was in the exclusive possession of the couple Radha Ballabh and Barfi Devi, a substantial part of the bushirt stated to have been worn by Lalit at the time he was kidnapped, was recovered. He also proved the recovery memo Exhibit Ka 5 in this regard. On the basis of his testimony the recovered bushirt was marked Exhibit 11 during the trial. The contention of the prosecution is that the recovery of a major portion of the bushirt, coupled with receiving by Registered Post the two pieces, Exhibits 2 and 3, from the same bushirt, along with letters Exhibits 4 and 5 written under a fake name Thakur Hukum Singh by accused Bissu, goes to lend further credibility to the testimony of the prosecution witnesses regarding accused Basanti, Radha Ballabh, Lalta. Raghubir and Bissu being the kidnappers and Barfi Devi, Ganga Prasad, Radha Ballabh and Bissu being responsible for keeping Lalit in confinement at their house in village Karahala. In this case, however, the recovered bushirt Exhibit 11, does not appear to have been put to informant Shyam Sunder or the PWs 4 and 5 for identification during the course of their testimony. On the direction of this Court to call for the said bushirt, it has been reported that the same was destroyed after the expiry of period of appeal as per direction of the trial Court. It is unfortunate that this material Exhibit has been destroyed due to non-adherence of rules of procedure by the trial Court, as well as the office of this Court in not informing on the appeal being filed and admitted, to preserve the said Exhibit, but the same in view of other clinching evidence on record does not go to adversely, affect the prosecution case regarding involvement of accused Basanti, Lalta. Radha Ballabh and Bissu in kidnapping and being also responsible for the subsequent confinement of the boy for ransom and murder.

45. As regards accused Barfi Devi and Ganga Prasad, of course besides the fact that the boy who was brought by Bissu and others to the house belonging to the family consisting of Radha Ballabh, Bissu and these accused persons and during the period he remained at the said place, was on a few occasions seen playing with Smt. Barfi and Ganga Prasad, being helped in attending the call of nature or taken to the market, there is no evidence to indicate that they had any knowledge, or reason to know, that the boy had been kidnapped from his parents' house. They also had no occasion to know this fact from the conduct of the boy who appears to have got thick with these persons or for that matter with his kidnappers. Possibility cannot be ruled out that these accused might have been told by Radha Ballabh or Bissu that the boy was their guest, being child of one of their acquaintances and would after a few days go back. Being inmates of the house, if Barfi, the wife of Radha Ballabh, and Ganga Prasad his nephew, performed the acts stated, towards making the stay

of the boy comfortable, they cannot be presumed to have had knowledge that he had been kidnapped. Under these circumstances, both these accused persons are entitled to benefit of doubt.

46. The prosecution thus is found to have succeeded in proving that after being kidnapped from his parents' house Lalit was taken to the house of accused Radha Ballabh and Bissu in village in Karahala where he was kept confined for a few weeks, but has failed to prove beyond reasonable doubt that accused Barfi Devi and Ganga Prasad played any part in this confinement, knowing that the boy had been kidnapped.

47. As to the next phase of confinement of the boy Lalit, in village Kamai in the house of Devi Ram and Har Charan for about 20-25 days also the oral evidence led by the prosecution appears fully trustworthy and reliable. PW 8 Nanhoo Ram and PW 9 Durga Prasad both having their house in the vicinity of that of these accused persons have categorically stated that they saw the boy residing in the house of these two accused persons. And according to Nanhoo Ram once seeing the boy, aged about 4-5 years, playing outside he enquired about his name etc. and he told his name as Lalit his father's name as Shyam Sunder, resident of Mathura Durga Prasad, PW 9, stated that the boy who used to address Devi Ram and Har Charan as Mama (maternal uncle) one day went to his house and asked for Roti and Dai saying that his maternal uncles give him Dalia" to eat. On his query the boy gave his name as Lalit, father's name as Shyam Sunder, resident of Mathura. He also stated that after about 25 days, one day he saw Radha Ballabh and Bissu also at the place of Devi Ram and Har Charan. After the said day the boy was not seen in the village. Again none of these witnesses have any axe to grind against accused Har Charan and Devi Ram so as to falsely implicate them in this crime, nor are they in any way proved to be under the influence of the informant or the police. The criticism of their testimony as being unnatural is also not tenable. To say that a boy aged 4 years could not have given out his own name, father's name or city, cannot be accepted in view of the fact that the boy, as per evidence, was studying before his kidnapping in some nursery school. As far as enquiring about name etc of a small child is concerned, it is the most natural instinct of any person coming in contact for the first time of a boy of small age. The evidence regarding the conduct of the boy cannot be rejected on the ground that, on seeing the witnesses, apart from telling his name and parentage, the boy would certainly have told that he had been surreptitiously brought there and be taken back to his parents. This probably would have been the situation if the boy had been kept in confinement behind closed doors and would per chance have peeped out of the house. Here the accused persons were cautious enough not to create such a situation where the boy could raise hue and cry or the people in the neighbourhood and the village get suspicious. There is nothing in the cross examination of these witnesses which may go to discredit their version, nor can they be dubbed as got up witnesses simply because they did not lodge any report with the police and did not try to contact the

father of the boy.

48. On behalf of the accused Respondents it has vehemently been contended that even if the statements of the prosecution witnesses (PWs 4 to 10) be accepted on face value, there is nothing to show that the boy referred to by them was Lalit the son of Shyam Sunder.

49. It is true that while in the witness box, no photograph of the boy appears to have been shown to the witnesses but in view of the preponderant evidence, as mentioned above, led by the prosecution, establishing that the boy was of the same age and complexion etc. as Lalit, and that on some occasions it were the accused persons who addressed him as Lalit and, on the others the boy himself gave out his name as Lalit and father's name, Shyam Sunder, there remains no doubt about the fact that the boy, who was seen by the aforementioned witnesses being kidnapped and thereafter confined in the house of Radha Ballabh and Bissu in village Karahala, and that of Har Charan and Devi Ram in village Kamai, was Lalit, 4 years' old son of informant Shyam Sunder (PW 1), and none-else.

50. The conclusions drawn about on the basis of the ocular testimony of the prosecution witnesses in this case, also finds ample corroboration from Exhibits 1 to 10, the communications sent by the kidnappers, to the informant Shyam Sunder and his father Mohan Lai. On the basis of contents these communications can be classified in two categories, first on the pseudonymous letters sent for ransom (Exhibits 3, 5, 7 and 9), and in the other the letter alleged to be sent under his own name and signature by accused Bissu (Exhibit 10).

51. As far as the four pseudonymous letters are concerned, according to the report Exhibit Ka 17 of the document expert, the writings in letters Exhibits 4, 5 and 9 fully with the specimen writings of accused Bissu taken before the Court. The genuineness of the said report with reasons, was admitted by the defence, vide endorsement dated 7-12-1977 of the defence Counsel before the trial Court. The document expert has given detailed reasons for his opinion in this regard and in so doing has taken into account all the relevant writing characteristics such as spied, writing habits, formation of letters, pen position, shadowing, spacing, slant, curves, directions and terminals. On a perusal of the photo enlargement of these disputed letters and the specimen writings of accused Bissu, on record of the trial Court, the genuineness of which as correct photo copies of the originals has also not been disputed, we also find marked similarity of the various writing characteristics in the specimen writing of the accused Bissu, and the letters Exhibits 4, 5 and 9. We thus agree with the opinion of the document expert regarding accused Bissu being the author of these letters-under a pseudonym Thakur Hukum Singh Azad. That these letters containing demand for ransom were despatched by post and were received in due course by the addressees, is fully established by the statement of PW 1 Shyam Sunder as well as the envelopes in which these were received. Exhibit 1 is registered envelope made of cloth, containing the address of Mohan Lai Sharma,

the father of the informant pasted on it, and bearing clear postal seal dated 8-10-1975 and it has been stated by the PW 1 that the letters Exhibits 4 and 5 along with two pieces Exhibits 2 and 3 of cloth of bushirt worn by Lalit at the time he was kidnapped, were received in it. Exhibit 8 is an envelope containing the address of informant Shyam Sunder and his father, sent by ordinary post at their address, bearing a postal seal of Mathura Post Office dated 13th November. The letter Exhibit 9 according to PW 1 was received by him in this envelope, about 5 weeks after the receipt of letters Exhibits 4 and 5. The contention of the defence that these letters are fabricated or were got written by accused Bissu after his arrest much later under coercion, is not at all substantiated. The pattern of the handwriting of these letters is itself indicative that these were not executed under duress or in a disturbed condition of mind. There is also no reason to accept the suggestion of the defence that these envelopes Exhibits 1 and 8 or the postal seals thereon, were manipulated at the instance of the police, by the postal officials.

52. The contents of these letters Exhibits 4, 5 and 9 go to clinch the conclusion that Lalit was kidnapped from the lawful guardianship of his parents on 26-9-1975 as alleged by the prosecution; that the said kidnapping was for ransom and to kill the child in the event of the same not being paid. The fact of accused Bissu being author of these letters, sent under a fictitious name also goes to lend support to the prosecution evidence regarding the complicity of accused Respondent Bissu, and for that matter his other accomplices as stated by the eye witnesses, in this crime.

53. The letter Exhibit 10 in the other category, is one sent by ordinary post on an inland card to informant Shyam Sunder and his father Mohan Lai under the signature of Bissu. This letter bears the postal seal dated 9-7-1976 i.e. about four months before the arrest of accused Respondent Bissu. The PW 1 Shyam Sunder stated that this letter was received by him on 9-7-1976. According to the report and opinion of the document expert, also referred above, the writer of this letter Exhibit 10 is the same person who wrote the specimen writings in the Court sent for comparison. Like Exhibits 4, 5 and 9, about this Exhibit 10 also the document expert has arrived at his conclusion on a consideration of all the relevant writing habits and characteristics. On a perusal of the photo enlargements of Exhibit 10 and the specimen writings, prepared by the expert, as well as the originals, we entirely agree with the conclusion of the document expert that the author of this letter Exhibit 10 also is accused Bissu.

54. It has been contended by learned Counsel for accused Respondent, Shri K.C. Saxena that the report of the document expert and the photographs relied by him, not having been proved in accordance with law, the same is not admissible in evidence to arrive at a conclusion about the identity of the writer of the letters Exhibits 4, 5, 9 and 10. Reference in this regard may, however, be made to Sub-section (3) of Section 294 of the Code of Criminal Procedure which says that where the genuineness of any document is not disputed, such document may be

read in evidence in any enquiry, trial or other proceeding under the code, without proof of signature of the person to whom it purports to be signed. Undisputedly, the genuineness of Exhibit Ka 17, the report with reasons of the expert, and the photo enlargement of the disputed and specimen writings, prepared and utilised by him, was admitted by the defence in the lower Court. It is true that the documents were not filed by the prosecution with a list as required in Sub-section (1) of Section 294 Code of Criminal Procedure but, desirable though it was that the filing should have been with a list of documents, its absence does not go to nullify the admission of genuineness made under Sub-section (3) of Section 294 Code of Criminal Procedure. There was also not made out any case under the proviso to Section 294 to require the document expert to be examined in the Court to prove his report and other documents.

55. On behalf of the accused the veracity of the letter Exhibit 10 and its contents has been assailed on the plea that the same was got written when Bissu was in police custody, under duress and threat and that the postal seals on this letter are also manipulated. There is, however, as already stated above, not the slightest reason to believe the contention of accused Bissu regarding the letter Exhibit 10 or for that matter Exhibits 4, 5 and 9 having been got written by him under coercion after his arrest on 8-11-1976, while he was in police custody. The mode of writing the letter Exhibit 10 also shows that it was written at ease in a very set handwriting and not under any duress or threat. A very important factor which fully belies the contention of the defence regarding these letters to have been got written on or after 8-11-1976, is the postal seal on these letters.

56. Under law, when a postal article, such as envelope, inland card or post-card, bearing postal seal of the date on which the article was put in post, or was delivered to the addressee, is produced in evidence, there will arise a presumption that the same was despatched through, and delivered by, the Post Office, in due course and on the date indicated by such postal seal. There being a presumption that official acts have been done in due course of business, on mere bald allegations, it cannot be held that the endorsement, including the postal seal on such an article is manipulated or antedated. The result is that the letter Exhibit 10 besides being proved to have been written by accused Bissu, is also proved to have been delivered to the first informant through the Post Office on 9-7-1976.

57. It is true that the only evidence led by the prosecution regarding the letters being in the handwriting of accused Bissu is the result of the comparison of the same with the specimen writings of the said accused taken in the Court, and no direct evidence of any persons claiming to be conversant with the handwriting or signature of the said accused has been produced but on that account alone it cannot be said that the authorship of accused Bissu of these letters is not proved, in the matter of proof of handwriting, two methods are prescribed by law. According to Section 47 of the Evidence Act one such method will be the opinion of any person

acquainted with the handwriting of the person by whom it is supposed to be written or signed, and the other would be, u/s 45, the opinion of a person specially skilled in the matter of determining the identity of handwritings. It is not that in each matter recourse has to be had to both the methods in order to prove a particular handwriting or signature, rather it can be done by adopting either of the two methods of course, the opinion of a handwriting or finger print expert in itself is no sufficient, and it has ultimately to be judged by the Court as to whether or not the identity of the disputed handwriting or signature is established. In the instant case, as already stated above, on a careful scrutiny and observation of the specimen writings of accused Bissu and the letters Exhibits 4, 5, 9 and 10, we have also arrived at the conclusion that these are in the handwriting of accused Bissu, a fact also corroborated by the own version of the defence regarding the letters being written by Bissu, though on a later date at the instance of the police.

58. The defence plea that the letters should be rejected as they were not promptly given to the police is also not tenable in view of the explanation by the PW 1 that he did not do so, fearing that the kidnappers might be provoked to kill the boy.

59. Now this brings us to the question regarding the contents of the letter Exhibit 10 and the factual and legal implications thereof. The prosecution has sought to rely on the same as an admission of accused Bissu regarding his involvement in this crime as well as some of the other accused persons named therein.

60. The salient facts stated in Exhibit 10 addressed to Mohan Lal and Shyam Sunder are as follows:

It be known to Mohan Lal and Shyam Sunder that the police is after me. I do not have the child with me Basanti brought the child from your house by catching hold of his fingers and by providing "jalebis" to him and gave him to us. She made the child sit on the motorcycle of Lalta on which we took her to Karahala, in the said night we kept the child in village Kamai at the place of Devi Yadav, where he remained for about 18 to 20 days. From there I and my nephew Ganga brought him to our house and kept confined for about 8-10 days and from there took him to Delhi. Later Ballu (Radha Ballabh) also reached and four days later we reached Firozpur Jharkha where Ballu's daughter is married. After a day I returned. Later Lalta, Raghubir and Ballu on motorcycle left with the child before sun-set. Eight-ten days later, on receiving Ballu's message I reached Mathura. On his direct"on I went to the house of Raghubir, Basanti was also called there. I enquired from Raghubir who told me that the child had been killed. Basanti started weeping....Bailu sent me to village....He (Ballu) reached home after Diwali. In the intervening period mine, Ballu"s, Raghubir"s and Lalta"s letter had been sent to the guardians of the child. Raghubir disclosed the place of killing the child in Mathura and said that he killed in the middle of Pahari Satwari and putting the cropse in water, a stone was placed over it. I had gone to Delhi during Diwali and worked as a servant in a Dhaba in Katra Lachhu Singh till after Holi. As far as I know the face of the child was not

shown and he was said to have died. My feeling is that the child is with Raghubir, Lalta and Ballu I feel he has not died. I am guilty only of bringing the child from Rangeshwar temple to my village Karahala. When ransom money was not paid I asked Lalta and. Raghubir to free the child but they declined I am a very poor person, I have heard you are kind to the poor. Forgive me also, the Police is badly after me. If you remove the police it will be your kindness. Whatever was true I have written all.

Sd/- Bissu

61. From the above narration of the contents of the letter Exhibit 10 proved to be in the handwriting of accused Bissu and to have been sent by him on his own accord by post to the first informant, it becomes abundantly clear that accused Bissu categorically admitted his own involvement in this incident of kidnapping for ransom, as well as the involvement of accused-Respondents Basanti, Lalta, Raghubir, Radha Ballabh and Devi Ram. He has given a clear description of the entire incidence of kidnapping and movement of the boy Lalit and has admitted his own involvement in the incident of kidnapping from the stage the boy was handed over by accused Basanti near the Rangeshwar temple to be carried on motorcycle driven by accused Lalta taking him to village Karahala, to which place he and Radha Ballabh belonged, "keeping him there for 8 to 10 days in their house and thereafter his confinement in village Kamai at the place of accused Devi Ram. Admitting having sent ransom letters to the parents of the boy, he further stated that such letters were also sent by Radha Ballabh, Raghubir and Laila and further disclosed that according to information given, by Raghubir the-boy has been killed, although he felt that the boy might still be alive.

62. In the above state of facts there remains no ground to accept the contention advanced on behalf of the accused Respondents that the statements contained in the letter Exhibit 10 do not constitute an admission of guilt by accused Bissu and do not provide inculcating evidence in regard to accused Respondents Basanti, Radha Ballabh, Raghubir, Lalta Prasad and Devi Ram.

63. It is not necessary to constitute an admission or confession of guilt that the person making it in his statement should admit verbatim the entire story of the prosecution regarding the offence. It is sufficient if the statement constitutes facts which prove the substratum of the offence or any specific part thereof, leading to definite conclusion on its own, or when read along with the other evidence oral or documentary. Admission as defined in Section 17 of the Evidence Act is a statement oral or documentary, which suggests any inference as to any fact in issue or relevant fact. The statements contained in Exhibit 10 thus clearly constitute admission of facts in issue in this case, viz., kidnapping of the child Lalit, his detention and confinement and demand of ransom, and the involvement of the maker of the statement accused Bissu, as well as coaccused. Basanti, Radha Ballabh, Raghubir, Lalta and Devi Ram. It thus is admissible against all these accused

Respondents in view of the provisions of Section 30 of the Evidence Act.

64. The contention of the learned Counsel for the Respondents that the statements in Exhibit 10 are exculpatory in nature and not inculpatory, is not warranted in view of clear admission of accused Bissu in it that he did participate in the kidnapping of the child as well as his confinement in village Karahala in the house belonging to himself and Radha Ballabh, as well as sending ransom letters to his parents, and also naming accused Basanti, Radha Ballabh, Lalta, Raghubir and Devi Ram as participants in one or the other stage of this incident. It is also aot the law that where a confessional statement contains beoth inculpatory and exculpatory protions, the entire statement has to be ignored. According to the law laid down in [Bhagwan Singh Rana Vs. The State of Haryana](#), it is permissible to believe one part of a confessional statement and to disbelieve another, and it is enough that the whole of the confession is tendered in evidence so that it may be open to the Court to reject the exculpatory part and to take inculpatory part into consideration if there is other evidence to prove its correctness.

65. It has also been contended by the learned Counsel for the Respondents that since the entire sequence of events as stated in Exhibit 10, does not tally with the same as stated by the prosecution and its witnesses, Exhibit 10 should be rejected as a confession and consequently the prosecution story also should be disbelieved. We find ourselves unable to accept this contention. It is true that the oral evidence led by the prosecution does not speak about the kidnapped boy being taken to Delhi at any stage, as mentioned in Exhibit 10, but that alone in our opinion is not sufficient to reject either the inculpatory part in Exhibit 10, or the prosecution version regarding the kidnapping of Lalit, being taken to village Karahala, confined there for a few days in the house of Radha Ballabh and Bissu, and thereafter to village Kamai and confined in the house of Devi Ram and Har Charan. In this connection it is also worth mention that the prosecution in this case has not accounted for, nor was it possible for it to do so. The movement of the kidnapped boy for each day from the date of his kidnapping. It has led evidence about those aspects of the crime, which could be available as a result of investigation, and what is required to be seen is, whether on these facts the participation of the accused Respondents or any one or more of them in the act of kidnapping, detention and demand of ransom and threat to kill the kidnappee is established or not. On the material brought on record, as already stated aooove, there does not Temain any scope for reasonable doubt about the correctness of the prosecution version regarding the participation of accused Basanti and Radha Ballabh in taking away the child Lalit from the lawful guardianship of his father, handing him over to accused Bissu, Lalta Prasad and Raghubir to be carried on a motorcycle, his being taken to village Karahala and being detained there for about 8 to 10 days in the house belonging to Radha Ballabh and Bissu and then heing detained in the village Kamai in the house of Devi Ram and Har Charan for about 20-25 dajs, whereafter he was not seen alive, nor restored to his parents.

66. The fact of the boy Lalit not being seen alive by any one, after he was last seen by the PWs 8 and 9 in village Kamal, about five weeks after the date of his kidnapping, and was never restored to his parents, will also raise a presumption about his being killed. In view of the same, although it was permissible to frame charge for the offence of murder, in pursuance of conspiracy, against the accused Respondents, we have refrained from so doing, in view of the fact that it would have prolonged the already delayed proceedings, and also taking note of the fact that the charge u/s 364 of the IPC, already framed, is serious, enough inviting punishment upto imprisonment for life.

67. To sum up, on the basis of all the above discussed facts, circumstances and the evidence, we find that the prosecution has been able to establish beyond reasonable doubts that Lalit, aged about 4 years, son of informant Shyam Sunder (PW 1) was taken out of the keeping of his lawful guardian the (PW I) from his house without his consent, near about 3 P.M. on 26-9-1975 by accused Respondents Basanti and Radha Ballabh, who handed him over to accused Bissu, Raghubir and Lalta shortly thereafter near Rangeshwar temple in Mohalla Antapari in the city of Mathura, who took him away on a motorcycle driven by reused Lalta to village Karahala to which place Radha Ballabh and Bissu belonged and was kept in their house, in which accused Smt. Barfi and Gauga Prasad also resided, and from the said place the boy was taken to village Kamai. where he was kept by accused Har Charan and Devi Ram in their house for a period of about 25 days, whereafter the said boy was taken to an unknown destination. The prosecution has also established by producing reliable oral and documentary evidence, including the admissions made by accused Bissu in his letter Exhibit 10, that Lalit was kidnapped with the purpose of dishonestly inducing his lawful guardians, by putting them in fear of dishonestly Lalit to pay ransom money and also in order that the said boy Lalit may be murdered or may be so disposed of as to be put in danger of being murdered in the event of the ransom money not being paid, The boy Lalit who was last seen alive, about five weeks after the kidnapping, in the company of Devi Ram and Har Charan in village Kamai and was not seen alive thereafter nor restored to his parents, the lawful guardians, and is accordingly presumed to have been done to death on account of non payment of ransom money.

68. Now, therefore, arises the question as to what offences, if any, have been committed by the accused Respondents, or anyone or more of them, on the findings recorded above by us.

69. As far as accused-Respondent Basanti, Radha Ballabh, Bissu, Lalta and Raghubir are concerned, their role in the act of taking Lalit out of the keeping of his lawful guardian, constitutes kidnapping within the meaning of the said term defined in Section 361 of the IPC. There is no force in the contention of the Respondents that the boy having already been taken out of his parent's house by Basanti and Radha Ballabh on their handing him over to Bissu, Lalta and Raghubir these could not be

said to have participated in the kidnapping.

70. The act of taking having continued from the stage the boy was lured out of his parent's house till he was driven on the motorcycle occupied by these accused persons to the place of his confinement, all these five accused persons will be guilty of the offence u/s 363 IPC. Their modus operandi being demand of ransom and for that purpose putting the father and grand father of Lalit in fright of the boy being murdered, and their being throughout likelihood of the boy being murdered in case the ransom money was not paid for some reason or other, all the five are also guilty of the offence punishable u/s 364 See [Ram Chandra and Another Vs. State of Uttar Pradesh](#) .

71. Since their intention also was to secretly and wrongfully confine the boy they are also guilty of having committed an offence punishable u/s 365 IPC. They being the kidnapers themselves, however, they will not be liable to be convicted of the offence u/s 368 IPC, Accused Bissu of course is also liable for the offence of extortion u/s 386 of the IPC.

72. As far accused Devi Ram and Har Charan are concerned they having wrongfully confined Lalit knowing that he has been kidnapped, are liable to be convicted u/s 368 IPC though not under Sections 363/109, 364/109 or 365/109 IPC as charged by the trial Court.

73. The allegations against remaining two accused Respondents Smt. Barfi and Ganga Prasad not having been proved beyond reasonable doubts, they are entitled to be acquitted of all the charges giving benefit of doubt.

74. For all the above discussed reasons we have come to the conclusion that the findings, and (he verdict of acquittal recorded by the trial Court in respect of Respondents Basanti, Radha Ballabh, Bissu, Lalta, Rghubir, Devi Ram and Har Charan are wholly against the weight of evidence on record and the law, and deserve to be set aside. The finding of acquittal in respect of Smt. Barfi and Ganga Prasad however deserves to be sustained though for different reasons. The appeal and the revision deserve accordingly to be allowed in part.

75. The appeal and revision are partly allowed Setting aside the order of acquittal, accused-Respondents Basanti, Radha Ballabh Lalta Prasad and Raghubir are convicted under Sections 363, 364, and 365 of the IPC and are sentenced u/s 363 IPC to R.I. for 5 years and u/s 364 IPC to R.I. for 10 years each. No separate sentence is however awarded u/s 365 IPC.

76. Accused Bissu is convicted of the offences under Sections 363, 364, 365 and 386 IPC and considering the role played by him in this entire incident is sentenced u/s 363 IPC to R.I. for five years u/s 364 IPC to imprisonment for life and u/s 386 IPC to R.I. for 10 years. No separate sentence is awarded u/s 365 IPC.

77. Accused Respondents Devi Ram and Har Charan are convicted of the offence u/s 368 IPC and are sentenced to R.I. for 5 years each.

78. The acquittal of Respondents Smt. Barfi and Ganga Prasad is upheld. They need not surrender. Their sureties are discharged.

79. All the above awarded sentences shall run concurrently Respondents Basanti, Radha Ballabh, Bissu, Lalta Prasad, Raghubir, Devi Ram and Har Charan shall surrender forthwith to serve out their sentences and their bail bonds shall be cancelled.

80. Before parting we would like to impress upon all the Sessions/ Assistant Sessions Judges, the necessity of strict observance of the requirements of Section 294(1) before entering into recording of oral evidence. While delivering a judgment either of conviction or acquittal, the trial Courts instead of ordering material exhibits to be destroyed after the expiry of period of appeal, should direct it to be preserved till the disposal of appeal. On its part, the office of the High Court should, on an appeal being filed or admitted obtain orders from the Court and send prompt information to the trial Court to preserve such of the material exhibits as may be deemed necessary. The Registrar shall, after obtaining approval of Hon"ble the Chief Justice, issue, circular letters to all concerned for necessary action and future guidance in these regards.