

State of U.P. Vs Smt. Barphi and Others

Court: Allahabad High Court

Date of Decision: Nov. 2, 1993

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161, 294, 294(1), 294(3), 82
 Evidence Act, 1872 â€” Section 17, 30, 45, 47
 Penal Code, 1860 (IPC) â€” 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. Is 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, Jagmchan 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 Prasad (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 kidnaped 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 identification 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,

charges 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 kidnaped 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 witnesses 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 (Exhibit Ka 17). The defence

dispensed with formal proof and admitted the genuineness of Exhibits Ka 14 to Ka 17 as well 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 consins 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 Koja 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 for 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 Baiiab, 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 hesitation 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 Baiiab. 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 she 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 Lalii from the portion

of the house in the occupation of accused Radha Ballabh and his wife accused Barfii. 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 tae 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 e 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 10 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 thought 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 has not been 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 not 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 Firozpuri 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 corpse 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 Rangeswar 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 categorioially admitted his own involvement in

this incident of kidaapping for ransom, as well she involvement of accused-Respondents Basanti, Lalta, Raghubir, Radha Ballabh and Devi Ram.

He has given a clear description of the entire incidence of kidaapping confident and movement of the boy Lalit and has admited his own

involvement in the incident of kidnapping from the stage the boy was handed over by accused Basanti near the Rangeswar 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 Raghabir 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 in criminating 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 kidnaped is established or

not. On the material brought on record, as already stated above, there does not remain 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 being detained in the village Kamai in the

house of Devi Ram and Har Charan for about 20-25 days, 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

Baliabh, who handed him over to accused Bissu, Raghubir and Lalta shortly thereafter near Rangeswar 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.